impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, the nonattainment determinations and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. In addition, attainment date extensions under section 188(d) of the CAA do not impose any new requirements on any sectors of the economy; nor do they result in a materially adverse impact on State, local, or tribal governments or communities.

Determinations of nonattainment areas under section 188(b)(2) of the CAA and extensions under section 188(d) of the CAA do not create any new requirements. Therefore, because these actions do not impose any new requirements, I certify that it does not have a significant impact on small entities.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 10, 1995.

Charles Findley,

Acting Regional Administrator.

[FR Doc. 95–21277 Filed 8–25–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 8]

RIN 2130–AA80

Locomotive Visibility; Minimum Standards for Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes to amend the locomotive safety standards to increase train visibility. This action requires that certain locomotives be equipped with auxiliary lights to enable motorists, railroad employees and pedestrians to recognize approaching trains at a greater distance. The proposed rule would require that locomotives operated over public highway-rail crossings at greater speeds than 20 miles per hour be equipped with auxiliary lights.

DATES: *Written comments.* Comments must be received by October 27, 1995. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public hearing. If requested by September 27, 1995, FRA will schedule a public hearing to receive oral comments from any interested party.

ADDRESSES: *Written comments.* Comments should identify the docket and notice numbers, and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Parties who want notice that FRA has received their comments should include a stamped, self-addressed postcard with their filing. The Docket Clerk will indicate on the postcard the date of receipt and will return the card to the addressee. Written comments will be available for examination before and after the closing date for comments during regular business hours at the above address.

Public hearing. FRA will hold a public hearing on this proposed rule if requested by a party to this rulemaking.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone: 202–366–9186); Grady Cothen, Jr., Deputy Associate Administrator for Safety Standards, FRA, 400 Seventh Street SW., Washington, D.C. 20590 (telephone: 202–366–0897); or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–366–0635).

SUPPLEMENTARY INFORMATION: On February 3, 1993, FRA published an interim rule (58 FR 6899, codified at 49 C.F.R. 229.133), with request for comments, concerning measures to enhance the visibility of locomotives. The interim rule implemented mandates of section 14 of the Amtrak Authorization and Development Act (Pub. L. 102–533). This enabling legislation added a new subsection (u) to § 202 of the Federal Railroad Safety Act of 1970 (FRSA) [45 U.S.C. 431(u)], to address locomotive visibility. On July 5, 1994, § 202(u) of the FRSA, together with all the other general and permanent Federal railroad safety laws, was simultaneously repealed, revised and reenacted without substantive change, and recodified as positive law at 49 U.S.C. 20143. As recodified, the section now reads as follows:

Locomotive Visibility

(a) *Definition.*—In this section, ''locomotive visibility'' means the enhancement of day and night visibility of the front end unit of a train,

considering in particular the visibility and perspective of a driver of a motor vehicle at a grade crossing.

(b) *Interim Regulations.*—Not later than December 31, 1992, the Secretary of Transportation shall prescribe temporary regulations identifying ditch, crossing, strobe, and oscillating lights as temporary locomotive visibility measures and authorizing and encouraging the installation and use of those lights. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation or to an amendment to a temporary regulation.

(c) *Review of Regulations.*—The Secretary shall review the Secretary's regulations on locomotive visibility. Not later than December 31, 1993, the Secretary shall complete the current research of the Department of Transportation on locomotive visibility. In conducting the review, the Secretary shall collect relevant information from operational experience by rail carriers using enhanced visibility measures.

(d) *Regulatory Proceeding.*—Not later than June 30, 1994, the Secretary shall begin a regulatory proceeding to prescribe final regulations requiring substantially enhanced locomotive visibility measures. In the proceeding, the Secretary shall consider at least—

(1) Revisions to the existing locomotive headlight standards, including standards for placement and intensity;

(2) Requiring the use of reflective material to enhance locomotive visibility;

(3) Requiring the use of additional alerting lights, including ditch, crossing, strobe, and oscillating lights;

(4) Requiring the use of auxiliary lights to enhance locomotive visibility when viewed from the side;

(5) The effect of an enhanced visibility measure on the vision, health, and safety of train crew members; and

(6) Separate standards for self-propelled, push-pull, and multi-unit passenger operations without a dedicated head end locomotive.

(e) *Final Regulations.*—(1) Not later than June 30, 1995, the Secretary shall prescribe final regulations requiring enhanced locomotive visibility measures. The Secretary shall require that not later than December 31, 1997, a locomotive not excluded from the regulations be equipped with temporary visibility measures under subsection (b) of this section or the visibility measures the final regulations require.

(2) In prescribing regulations under paragraph (1) of this subsection, the Secretary may exclude a category of trains or rail operations from a specific visibility requirement if the Secretary decides the exclusion is in the public interest and is consistent with rail safety, including grade-crossing safety.

(3) A locomotive equipped with temporary visibility measures prescribed under subsection (b) of this section when final regulations are prescribed under paragraph (1) of this subsection is deemed to be complying with the final regulations for 4 years after the final regulations are prescribed.

The interim rule was revised in response to comments and published on May 13, 1994 (59 FR 24960). The revision broadened the permissible dimensions for placement of ditch lights, crossing lights and strobe lights, and broadened and redefined the range of frequencies for flashing lights.

The interim rules designate ditch lights, crossing lights, strobe lights and oscillating lights as interim locomotive visibility measures. All locomotives not excluded from the final regulations must be equipped by December 31, 1997, with either the interim visibility lighting arrangements or the arrangements mandated by the final regulation. Locomotives that comply with the interim rule or its amendments are deemed to comply with any final rule for four years after the final rule's issuance.

FRA Study of Auxiliary Lights

FRA's Office of Research and Development, through the Volpe National Transportation Systems Center, has studied the impact of auxiliary lights as alerting devices to improve locomotive visibility. A copy of the final report will be placed in the docket of this rulemaking.

As part of this study, FRA initially evaluated various lighting systems, paint schemes, and reflective materials. Four of the alerting light systems were selected for further study: standard locomotive headlights and crossing, ditch, and strobe lights. FRA evaluated the lights for compliance with FRA's interim advisory standards, cost and reliability, and conducted field tests on their ability to increase an approaching train's visibility.

Preliminary results are showing that the addition of auxiliary lights significantly increases train visibility compared to use of standard headlights alone. Results indicate a 10 to 20 percent increase in the distance an approaching train can be recognized. Tests also suggest that motorists are better able to predict the time it takes for an approaching train to enter a crossing. Limited data collected from three railroads participating in the study suggest that accident rates drop significantly when auxiliary lights are used. Further, the research provides clues that appear helpful in distinguishing among candidate auxiliary lights. These findings are further discussed below.

After review, FRA has found no basis for changing current requirements for placement and intensity of locomotive headlights. The headlight serves its purpose without blinding other people approaching the right-of-way. As discussed below, when augmented by auxiliary alerting lights, the headlight becomes a part of the unique light triangle that will make approaching trains more recognizable to motorists.

FRA is continuing to review the use of auxiliary lights to enhance side visibility of locomotives. Displaying a distinct pattern is key to making the side of a locomotive more readily recognizable in the dark. Use of retro-reflective materials (further discussed below) appears to be the most promising approach to increasing the visibility of the sides of rail equipment.

Section Analysis

1. Three-Light Triangle: § 229.125(d)

FRA believes that a uniform light configuration on locomotives will help the public become familiar with and quickly recognize the appearance of an approaching locomotive. A configuration of three front-mounted lights (defined in the interim rule, together with the headlight, as ''ditch lights'' or ''crossing lights'') is the most common system adopted by the railroad industry since the issuance of the first interim rule in 1993. Those three lights form a triangle with one major dimension (base or vertical axis) of at least 60 inches.

The normal human eye can discern two objects as separate when the objects are spaced to form a visual angle of approximately one-half of one degree. When the lights are seen as separate, the observer can better estimate the speed of an approaching train because as the locomotive moves closer the lights will appear to move further apart. A space of 60 inches between lights causes the lights to appear separate at 572 feet from the observer. Beyond 572 feet the lights are commonly seen as one. This distance corresponds to an approach time of 13 seconds for a train moving at 30 miles per hour, or 6.5 seconds for a train moving at 60 miles per hour.

Given the prevalence and practicality of the three-light triangle system, the desire for a uniform appearance of an approaching locomotive, and the physical advantages of this system, FRA believes it to be the best lighting system to accomplish the purpose of this rule.

The dimensions proposed for the three-light triangle are the same as those specified in the interim rule as revised on May 13, 1994. Those dimensions were prescribed as the result of comments made on the first interim rule of February 3, 1993. They are functionally the same, but the second interim rule permits more flexibility in light placement on locomotives to accommodate various locomotive configurations and placement of other vital appliances.

Since the second interim rule was issued, FRA has received no negative comments and no indication of problems with the prescribed light placement. If any problems have arisen with these prescribed dimensions, FRA would be most interested in knowing the nature of the problem, and any suggested alternatives that would maintain the effectiveness of visibility devices.

The 36-inch minimum height requirement will permit maintenance of the 60-inch vertical dimension on locomotives with the headlight mounted in a low front hood. This height requirement also aids the observer's sight distance. The maximum vertical curve recommended by the American Railway Engineering Association for main track has a rate of change of grade of 0.2 percent per 100 feet. On this vertical curve, a light three feet above the track will be visible to an observer at a distance of 1,095 feet, provided the observer's eyes are three feet above the track. A reduction in height of one foot, of either the observer or the light, reduces the sight distance by approximately 100 feet.

One comment to the first interim rule requested a lower height above the rail for lights on cab control cars in suburban passenger service. FRA believes that an inflexible requirement to place lights on cab control cars or other multiple unit locomotives as defined in this regulation at a height of 36 inches might lead to a reduction in the integrity of the car body structure at this critical location. Such reduced structural integrity could increase the risk of injury to the occupants of the equipment in the event of an accident. The proposed final rule would therefore permit auxiliary lights to be mounted at heights down to 24 inches above the rail on equipment that would not readily accommodate a higher placement.

However, the lower, 24-inch minimum height for multiple unit locomotives and cab control cars is not suitable for general railroad service, owing to the reduced visibility on vertical curves, and susceptibility to damage from snow and foreign material away from commuter lines. FRA therefore believes that the minimum height of 36 inches for auxiliary lights should be retained for all other applications.

Horizontal orientation of the auxiliary lights should also be reasonably uniform in order to ensure recognition. FRA has selected the ''crossing light'' configuration (focused within plus or minus 15 degrees of a line parallel to the centerline of the locomotive) in lieu of the extreme ''ditch light'' configuration as described in the grandfathering rule (turned outward up to 45 degrees). In the extreme ditch light configuration, there appears to be a risk that the auxiliary lights might affect the night vision of motorists on parallel roadways.

Research on locomotive conspicuity has noted that the alerting lights meeting the criteria of the interim rule are considerably higher in effective candela than lights used for similar purposes in aviation and marine service. In addition, it was noted that a ditch light application with the lights aligned outwardly might produce glare affecting motorist vision. Presumably in light of similar considerations, railroads applying auxiliary alerting lights have generally opted for alignment directly down the railroad or inward alignment at about 1 degree (''crosseyed''). FRA specifically requests comment as to whether the final rule should contain more severe restrictions than the 15-degree latitude provided in the interim rule and this notice.

FRA also requests comment as to whether a dimmer feature should be required for auxiliary lights similar to the dimmer used on headlights, the minimum and/or maximum candela that should result, and, if a dimmer is required, when use of the feature might be warranted. In addition, FRA requests comment as to whether a maximum luminous intensity should be specified for auxiliary alerting lights.

The interim rule and the proposed rule provide a minimum intensity requirement of 200,000 candela for each auxiliary light. The criterion assumes steady-state operation. Field observations suggest that current alerting light pulsing systems provide more than adequate effective candela; however, research conducted to date evaluated only strobe lights for effective intensity in a pulsing or flashing mode. Should a separate effective intensity requirement be stated in the final rule for systems operating in the pulse mode? If so, what are the appropropriate standard and test procedure?

FRA proposes to permit use of either the steady-state or pulsing auxiliary lights, drawing permissible features from both the ''ditch lights'' and ''crossing lights'' as described in the interim requirements.

It should be noted that nomenclature for auxiliary lights is not standard. For example, most non-pulsing installations referred to by railroads as ''ditch lights'' have, in practice, been aligned within 15 degrees of centerline and would therefore meet FRA's proposed requirements for permanent auxiliary lights. This proposed rule does not elect a single option from among the configurations that railroads continue to evaluate. Rather, it proposes a minimum standardization of placement and alignment of the two auxiliary lights that, with the locomotive headlight, form the distinct triangle.

FRA has considered the use of oscillating lights and strobe lights for inclusion in this section. Both light systems offer significant advantages but have unique drawbacks. An oscillating light can provide a startling effect when the light rapidly reflects off nearby objects, fog, or snow. However, in general, oscillating lights are costly and difficult to maintain. Oscillating lights have often been used individually, a configuration inconsistent with the triangular signature common in European rail.

Desirable effects can also be achieved with pulsating strobe lights, particularly those lights operated in pairs. However, extensive use of strobe and oscillating-type lights on emergency vehicles has reduced their usefulness as a distinct warning of an approaching train. Further, strobe lights can tend to wash out against a light background and may not compete well for attention in a nighttime environment with a variety of light sources.

Research in support of this proceeding indicates that crossing lights and ditch lights—the auxiliary lights most widely used by U.S. railroads—also appear to perform well under both experimental conditions and in revenue service. Experimental field tests compared the performance of a lone headlight with combinations of a headlight and each of the following: (i) pulsing ''crossing lights'' that were aligned straight down the railroad, (ii) steady burning ''ditch lights'' that were outwardly aligned at 15 degrees, and (iii) dual strobe lights mounted on the top of the locomotive. All three types of auxiliary lights outperformed the lone headlight by significantly increasing the distance a train can be detected and improving an observer's ability to estimate a train's arrival time at the crossing. For detection distance, the crossing light performed best, followed

by the ditch and strobe lights. With respect to estimation of time of arrival, the crossing lights were judged to result in the smallest estimation errors for actual arrival time intervals between 7 and 22 seconds. However, the ditch lights clearly aided estimation of arrival, as well.[1]

The Volpe Center gathered limited data from Norfolk Southern, Conrail, and CalTrans (California) comparing accident experience of locomotives equipped with crossing lights to locomotives equipped with a headlight alone. These data suggest that the use of crossing lights may result in a greater than 50-percent reduction in accident rates. Although these trials lasted from only nine to twenty-four months, and some of the accident reduction may have resulted from a ''novelty effect'' (an initial impact that wanes as risk-taking motorists become accustomed to the new lights), there is no reason to believe that there will not be substantial and continuing benefits from use of auxiliary lights.

All of the service applications examined by the Volpe Center involved pulsing auxiliary lights, and the experimental field tests potentially relevant to this issue involved a confounding variable (angle of alignment). Accordingly, no empirically-based comparisons can be made at this time between lights that pulse (alternately flash) on approach to a crossing and those that burn steadily. Yet FRA is required to issue a rule that would require that by December 31, 1997, locomotives be equipped with a form of auxiliary lights. In order to develop additional information that may later provide a basis for distinguishing between steady burning and alternately pulsing arrangements, FRA has requested that Association of American Railroads (AAR) conduct a further study under which two or more major railroads would equip portions of their fleets used in the same service with steady and pulsing lights. In order to eliminate transient effects, the study would follow the two matched fleets for a period of approximately three years. The progress of this study will be tracked on an annual basis, and at the conclusion of the study, FRA will review the data to determine if a statistically significant difference can be discerned between the effectiveness of steady and flashing lights. The results of the study should provide a factual basis for determining whether further refinement of the rule is appropriate and, if so, the degree of urgency associated with any such change.

2. Flash Rates: § 229.125(e)

Subsection (e) provides that auxiliary lights may be illumined continuously or may be arranged to flash on approach to a highway-rail grade crossing. If flashing lights are used, the rate must be not fewer than 40 and not more than 180 per minute, as provided in the second interim rule. FRA has received no negative comments regarding the range of flash rates permitted for locomotive visibility lights in the second interim rule. The rates are constrained by the need for visibility but also the need to avoid a ''flicker vertigo'' effect on train crew members.

FRA proposes to leave control of flashing lights to the discretion of the railroad. Depending on their operations, some railroads might consider it advisable to interconnect the horn and lighting controls to provide joint activation when approaching a crossing, but that question probably need not be addressed in a regulation.

3. Operation of Auxiliary Lights: § 229.125(f)

Subsection (f) would require operation of auxiliary lights for a period of at least 20 seconds prior to arrival of the locomotive at the crossing. This is the same minimum period of warning utilized for automated warning systems at public highway-rail grade crossings (*see,* e.g., 49 CFR 234.225). Railroads using locomotives with flashing lights would not be required to flash the lights in all operations, but the auxiliary lights would be required to be illumined for at least 20 seconds prior to the arrival of the locomotive.

FRA specifically requests comment on whether allowance should be made for not illuminating auxiliary lights under certain circumstances for the safety of motorists, railroad employees working in the area, or others. FRA believes that any such exception should be sufficiently objective in nature to avoid controversy subsequent to a grade crossing accident regarding the appropriateness of the decision not to use the auxiliary lights.

4. Other Uses of Auxiliary Lights: § 229.125(g)

Subsection (g) authorizes use of auxiliary lights for operations at lower speeds over highway-rail grade crossings. Railroads are, in fact, utilizing auxiliary lights for lower-speed movements. However, circumstances may exist where use of the lights may affect night vision of people along the railroad, outweighing the limited value of the lights in preventing highway-rail grade crossing accidents in areas of low speed rail operations. The proposed rule authorizes use of auxiliary lights along the railroad between grade crossings. Auxiliary lights offer promise for gaining the attention of trespassers on rail rights-of-way who may be struck by trains. Although it can be strongly argued that the railroads owe no duty of care to these people, it can be hoped that the attention-getting light triangle may discourage trespassing.

FRA does not believe that requiring continuous operation of auxiliary lights should be mandated. Circumstances differ widely among railroad operating environments, and railroads require the flexibility to adopt policies adequately suited to these environments. Railroads may wish to extinguish auxiliary lights when the headlight is dimmed under existing operating rules. Rule 5.9 of the General Code of Operating Rules, for instance, requires that the headlight be dimmed at stations and yards where switching is done, when the engine is stopped close behind another engine, when passing another train, and under specified circumstances.

5. Defective en Route: § 229.125(h)

Subsection (h) permits a lead locomotive with one defective auxiliary light to proceed to a point where repairs can be made. FRA believes this is a reasonable accommodation, given the low risk of an accident at any given time and the ready availability of standard lamps at railroad facilities along the way. If both auxiliary lights are out, § 229.9 (movement of non-complying locomotives) would apply, which would ordinarily require that the locomotive be switched to a trailing position or be operated at less than 20 miles per hour. It should be noted that the requirement for auxiliary lights applies only to a lead locomotive.

6. Grandfathering: § 229.133

The interim provisions on auxiliary lights are contained in 49 CFR 229.133. Subsection (c), which makes use of auxiliary lights elective during the period prior to December 31, 1997, would be repealed on that date.

[1] In the field tests, observers wore headphones to mask noise from the oncoming locomotive. FRA has conducted separate analyses that indicate locomotive horns provide a very powerful (though not always sufficient) warning to motorists that the train is present and its arrival at the crossing is imminent. FRA recognizes that some overlap may exist between the two warning systems; however, to the extent this overlap may be beneficial in modifying risky behavior, its potential should be exploited. The actual service experience tends to confirm the possibility that such an effect may exist.

The interim provisions identify four alerting light arrangements that FRA believed would increase locomotive visibility. First, ditch lights, which are composed of two white lights focused within 45 degrees of the longitudinal centerline of the locomotive. Second, strobe lights, which are two white stroboscopic lights that flash at a rate between one pulse every 1.0 to 1.3 seconds. Third, crossing lights, which are two white standard lights that flash at the same rate as the strobes and are focused within 15 degrees of the longitudinal centerline of the locomotive. And the final alerting lights system, an oscillating light, which is composed of one white light that casts a moving beam in circular shapes in front of the locomotive. These alerting light systems will be ''grandfathered'' and considered in temporary compliance with any final rule.

By law, ''grandfathered'' auxiliary lights installed before the final rule is issued may continue in use for four years from the date the final rule is issued. FRA encourages early installation of auxiliary lights.

Related Issues

Other Light Systems

FRA believes that the public will soon become accustomed to the appearance of the triangular light pattern at the front of locomotives. The value of this standardization is increased if the triangle's base is uniform along the lower front portion of the locomotive, rather than the top (as with dual strobe light installations). The limited number of locomotives equipped exclusively with strobe lights or oscillating lights could eventually present a hazard to motorists and others who could draw false visual clues from the lack of a triangular light pattern. Nothing in this proposed rule would prohibit the use of such additional lights should the operating railroad so desire, but their use would not meet the requirements of the proposed rule.

Reflective Materials

The enabling legislation requires that the Secretary consider the use of reflective materials to enhance locomotive visibility. Research has shown that the frontal visibility of a locomotive displaying a headlight is not affected by reflective material or distinctive colors. The headlight is visible at a far greater distance than any light reflected from the front of the locomotive.

Analysis of the 4,240 highway-rail grade crossing accidents reported to FRA in 1993 shows that the lead locomotive of a train struck the motor vehicle in 3,171 of the accidents. The motor vehicle struck the lead locomotive in 664 accidents. In the remaining 405 accidents, the motor vehicle struck the train at a point behind the lead locomotive.

This information suggests that enhancing the visibility of the front of the train could affect up to 90 percent of crossing accidents. The effect of increasing the visibility of the side of the train does not have as clearly defined a potential to reduce accidents. Nevertheless, FRA continues to conduct research, including analysis of recently designed retro-reflective materials and evaluation of the accident experience of car fleets equipped with retro-reflective material. FRA is required by other legislation to consider the use of retro-reflective materials on railroad cars as well as locomotives, and will address the issue in a separate proceeding. See 49 U.S.C. 20148, Pub. L. 103–440, § 212 (Nov. 2, 1994). As soon as sufficient information becomes available to support a decision on whether to place reflective material on cars and locomotives, FRA will act accordingly. Such action might take the form of a proposal to amend this regulation before any rulemaking affecting railroad cars.

Applicability: Steam Locomotives; Locomotives Used Exclusively off the General System; and Private Grade Crossings

This proposal would amend Part 229 of title 49, Code of Federal Regulations, which applies, in general, to railroads in the general system and only to non-steam locomotives. FRA believes that, as a general rule, steam locomotives are used with relatively less frequency or at lower speeds than non-steam locomotives. Equipping steam locomotives with alerting lights would likely cost more per unit, and some steam operators would likely view the modification as detracting from the historic authenticity of this antique equipment. FRA presently has insufficient specific information indicating that safety would benefit from application of auxiliary lights to steam units. However, in light of the broad statutory mandate, FRA reserves the right to require application of auxiliary lights to such units in the final rule.

In 1992, FRA reviewed its policy regarding tourist, scenic and excursion railroads that transport passengers on lines separate from the general system of rail transportation. While in the past FRA has usually limited its exercise of jurisdiction over passenger operations to those on the general system, FRA determined that public safety required a uniform floor of regulation for this growing segment of the railroad marketplace. Only those railroads deemed ''insular'' were excluded from this exercise of jurisdiction; however, several existing sets of regulations, including Part 229, do not apply to passenger railroads that are not part of the general rail system. Since a major criterion of non-insular status is the presence of a public highway-rail grade crossing, the issue is presented in this proceeding whether these non-general system railroads should be required to equip their locomotives with auxiliary alerting lights.

Recently, FRA determined that all railroads with automated warning devices at public highway-rail crossings should be subject to new regulations governing the inspection, testing and maintenance of these ''grade crossing signals'' (59 FR 50086; September 30, 1994). The provision of the instant proposal that would exclude locomotives that do not operate at greater than 20 miles per hour would render the proposal inapplicable to many non-steam locomotives owned and operated by non-insular passenger railroads off the general system. However, in a minority of cases the proposed rule might require application of auxiliary lights. There may be reasonable basis for excluding some or all of these locomotives. For example, excursion service is often provided seasonally and on a limited basis. On some small passenger railroads, crossings may be less numerous or less heavily used by highway traffic. In other cases, service may be provided only in the daytime (when, according to experimental data, auxiliary lights may be less effective in gaining the attention of motorists).

The statute permits FRA to exclude categories of operations if the exclusion is in the public interest and consistent with safety. Although the statute does not expressly authorize use of cost/benefit analysis to make the findings justifying an exclusion, FRA has applied similar statutory language to consider effectiveness and cost impacts to enlighten the agency's deliberations. FRA solicits comment on the issue of steam locomotives and locomotives used exclusively off the general system. FRA has specifically invited the Tourist Railroad Association (TRAIN) to address the question on behalf of its member organizations.

FRA is also concerned with the safety of private grade crossings. The proposed rule requires use of auxiliary lights only at public grade crossings. Railroads clearly have an interest in reducing

accidents at private crossings and therefore may elect on their own to use auxiliary lights at such locations. FRA, however, requests comments on whether the agency should require use of auxiliary lights at all highway-rail grade crossings.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and is considered ''nonsignificant'' under Executive Order 12866. It is also considered to be not significant under DOT policies and procedures. See 44 FR 11034.

Although the rule is ''nonsignificant,'' FRA nonetheless has prepared a regulatory evaluation addressing the economic impact of the rule. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

The evaluation found costs and benefits associated with the proposed rule calculated for a twenty-year period using the seven percent discount rate required by federal regulatory evaluation guidelines. FRA expects twenty-year auxiliary light installation and maintenance costs, which the railroad industry would not incur in the absence of the proposed rule, to total between $87 million and $106 million. The lower estimate is based on a scenario in which all future auxiliary lights are steady beam. The higher estimate is based on a scenario in which all future auxiliary lights are pulsing. Information available to FRA suggests that about 7,946 locomotives are currently equipped with auxiliary lights that comply with the proposed rule. About 52.84 percent of these locomotives have pulsing lights. The remaining 47.16 percent have steady beams. Assuming the industry continues to install auxiliary lights in this proportion, FRA expects costs to reach approximately $97 million over the next twenty years.

Although specifications for pulsing and steady beam lights differ, data are not available to establish that one light system is the more effective. Assuming both are equally effective, to justify incurring $97 million in costs, auxiliary lights must provide a benefit of preventing an average of at least 11 accidents annually. FRA estimates that auxiliary lights will prevent approximately 6,300 accidents (involving 1,493 fatalities and 3,056 injuries) valued at $2.424 billion over twenty years. Analysis indicates this accident reduction will almost certainly be achieved, and probably exceeded, by using auxiliary lights.

Costs and benefits associated with the industry voluntary in-service tests are not quantified in this analysis. FRA recognizes that participating railroads will incur data collection costs. However, given the permissive nature of the in-service tests, we cannot determine the level of participation or the magnitude of costs which the industry will incur. Nevertheless, safety benefits resulting from the knowledge gained should far outweigh costs incurred by the participants. Including test costs would not change the outcome of this analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. It is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not require information collection; therefore, it is not necessary to estimate the public reporting burden for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, a Federalism Assessment is not necessary.

Under 49 U.S.C. 20106 (formerly codified at 45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at a local safety hazard if that provision is consistent with this rule and does not impose an undue burden on interstate commerce.

List of Subjects in 49 CFR Part 229

Railroad safety.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Part 229, Title 49, Code of Federal Regulations as follows:

PART 229—[AMENDED]

1. Revise the authority citation for Part 229 to read as follows:

Authority: 49 U.S.C. 20102–20103, 20110–20112, 20114, 20137, 20143, 20301–20303, 20306, 20701–20703, 21301–21302, 21304, 21306, and 21311; 49 CFR 1.49 (c), (g) and (m).

2. Amend § 229.125 by revising the section heading and by adding paragraphs (d),(e),(f), (g) and (h) to read as follows:

§ 229.125 Headlights and auxiliary lights.

* * * * *

(d) Effective December 31, 1997, each lead locomotive operated at a speed greater than 20 miles per hour over one or more public highway-rail crossings shall be equipped with operative auxiliary lights, in addition to the headlight required by paragraph (a) or (b) of this section. A locomotive equipped on [date of publication of final rule] with auxiliary lights in conformance with § 229.133 shall be deemed to conform to the requirements of this section until [date four years after date of publication of final rule]. Auxiliary lights shall be composed as follows:

(1) Two white auxiliary lights shall be placed at the front of the locomotive to form a triangle with the headlight.

(i) The auxiliary lights shall be at least 36 inches above the top of the rail, except on MU locomotives and control cab locomotives where such placement would compromise the integrity of the car body or be otherwise impractical. Auxiliary lights on such MU locomotives and control cab locomotives shall be at least 24 inches above the top of the rail.

(ii) The auxiliary lights shall be spaced at least 36 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is 60 inches or more.

(iii) The auxiliary lights shall be spaced at least 60 inches apart if the vertical distance from the headlight to the horizontal axis of the auxiliary lights is less than 60 inches.

(2) Each auxiliary light shall produce at least 200,000 candela.

(3) The auxiliary lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(e) Auxiliary lights required by paragraph (d) of this section may be arranged to burn steadily or flash on approach to a crossing. If the auxiliary lights are arranged to flash, they shall flash alternately at a rate of at least 40 flashes per minute and at most 180 flashes per minute, for at least 20 seconds before the front of the train occupies the crossing. The flashing feature may be activated automatically and shall be capable of manual activation and deactivation by the locomotive engineer.

(f) Auxiliary lights required by paragraph (d) of this section shall be illuminated not less than 20 seconds before the locomotive arrives at a public highway-rail grade crossing.

(g) For the safety of persons along the right of way, including railroad employees and contractors—

(1) Railroads may elect to operate auxiliary lights when the speed over the crossing is less than 20 miles per hour; and

(2) Railroads shall have the discretion to illuminate locomotive auxiliary lights in other circumstances in addition to approaching a public highway-rail grade crossing.

(h) When one required auxiliary light and the headlight of a locomotive remain operative after the train has departed its initial terminal, the locomotive may proceed as an equipped locomotive until reaching the next point at which repairs to the inoperative light can be made. If no required auxiliary light remains operative, the locomotive may be moved only if the requirements of § 229.9 are met.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 95–21143 Filed 8–25–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AC79

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1995-96 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on September 7, 1995.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1995

On March 24, 1995, the Service published for public comment in the **Federal Register** (60 FR 15642) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 4 for late-season proposals. Due to some unforeseen and uncontrollable publishing delays in the proposed late-season regulations frameworks, the Service has extended the public comment period to September 7, 1995. On June 16, 1995, the Service published for public comment a second document (60 FR 31890) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

On June 22, 1995, a public hearing was held in Washington, DC, as announced in the March 24 and June 16 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons.

On July 21, 1995, the Service published in the **Federal Register** (60 FR 37754) a third document which dealt specifically with proposed early-season frameworks for the 1995-96 season.

On August 3, 1995, a public hearing was held in Washington, DC, as announced in the March 24, June 16, and July 21 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early seasons from which wildlife conservation agency officials from the States and Territories selected early-season hunting dates, hours, areas, and limits.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, hours, areas, and limits. All pertinent comments on the proposals received through August 3, 1995, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the **Federal Register** on or about September 25, 1995.

Presentations at Public Hearing

A report on the status of waterfowl was presented. This report is briefly reviewed below as a matter of public information, and is a summary of information contained in the ''Status of Waterfowl and Fall Flight Forecast'' report.

Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be similar to those of last year. Production of young in 1995 is expected to be above average for most populations. Generally, spring phenology was earlier than normal in the western Arctic and Ungave Peninsula, later than normal in the prairie pothole region, and near normal in other important nesting areas. Habitat