will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The Audio Division, at the request of Plan 9 Broadcasting, allots Channel 229A at Port Angeles, Washington, as that community's fifth local aural transmission service. The reference coordinates for Channel 229A at Port Angeles are 48–06–54 North Latitude and 123–26–36 West Longitude. This allotment is at city reference coordinates and requires no site restriction. Port Angeles is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Canadian concurrence has been requested for this allotment, as a specially negotiated short-spaced allotment because the proposed Port Angeles allotment is short-spaced to Canadian Station CJJR–FM, Channel 229C, Vancouver, BC and vacant Channel 230A at Port Renfrew, BC. However, notification from Canada has not been received. Therefore, if a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian government, the construction permit will include the following condition: ''Operation with the facilities specified for Port Angeles herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA-Canadian FM Broadcast Agreement.''

The Audio Division, at the request of Sutton Communications Company, allots Channel 249A at Ty Ty, Georgia, as that community's first local aural transmission service. The reference coordinates for Channel 249A at Ty Ty are 31–34–01 North Latitude and 83–40–07 West Longitude. This allotment requires a site restriction of 10.8 kilometers (6.7 miles) north to avoid short-spacing to the application site of Station WDMG–FM, Channel 250A, Ambrose, Georgia and license site of Station WRAK–FM, Channel 247C, Bainbridge, Georgia.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Ty Ty, Channel 249A.

■ 3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Channel 240A at Goldendale; and by adding Port Angeles, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–21548 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 05–175, MB Docket No. 04–312, RM–11049]

Television Broadcast Service; Phoenix and Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of NBC Telemundo Phoenix, Inc. (Telemundo) and Community Television Educators, Inc. (CTE) has amended the Television Table of Allotments to remove the noncommercial reservation of analog Channel *39 at Phoenix, Arizona, and reserve analog Channel 11 for noncommercial educational use at Holbrook, Arizona. The Commission has also modified the license of Telemundo's station KPHZ(TV) to specify Channel 39, Phoenix, and the license of CTE's station KDTP(TV) to specify Channel *11, Holbrook. With this action, this proceeding is terminated.

DATES: Effective November 28, 2005.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 04–312, adopted October 5, 2005, and released October 13, 2005. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 301–816–2820, facsimile 301–816–0169, or via e-mail *joshir@erols.com.*

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Memorandum Opinion and Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Arizona, is amended by removing TV channel 11+ and adding TV channel *11+ at Holbrook.

■ 3. Section 73.606(b), the Table of Television Allotments under Arizona, is amended by removing TV channel *39 at Phoenix and adding TV channel 39, Phoenix.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–21869 Filed 11–1–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA 2005–22522]

RIN 2130–AB71

Track Safety Standards; Inspection of Joints in Continuous Welded Rail (CWR)

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

ACTION: Interim final rule.

SUMMARY: FRA is amending the Federal Track Safety Standards to improve the inspection of rail joints in continuous welded rail (CWR). This interim final rule (IFR) requires track owners to develop and implement a procedure for the detailed inspection of rail joints in CWR. This IFR also requires track owners to keep records of those inspections.

DATES: This final rule is effective December 2, 2005.

(1) *Written Comments:* Written comments must be received on or before December 19, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* Requests for a public hearing must be in writing and must be submitted to the Department of Transportation Docket Management System at the address below on or before December 19, 2005. If a public hearing is requested and scheduled, FRA will announce the date, location, and additional details concerning the hearing by separate notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA 2005–22522 by any of the following methods:

Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Chief Engineer—Structures, Office of Safety, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (*Gordon.Davids@fra.dot.gov* or 202–493–6320); or Christina McDonald, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (*Christina.McDonald@fra.dot.gov* or 202–493–6032).

SUPPLEMENTARY INFORMATION:

I. Continuous Welded Rail (CWR)

A. General

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is normally one continuous rail, there can be joints [1] in it for one or more reasons: The need for insulated joints that electrically separate track segments for signaling purposes, the need to terminate CWR installations at a segment of jointed rail, or the need to remove and replace a section of defective rail.

B. Statutory and Regulatory History of CWR

The Federal Railroad Administration (FRA) issued the first Federal Track Safety Standards in 1971. See 36 FR 20336. FRA addressed CWR in a rather general manner, stating, in § 213.119, that railroads must install CWR at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends and that CWR should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature.

In 1982, FRA deleted § 213.119, because FRA believed it was so general in nature that it provided little guidance to railroads and it was difficult to enforce. See 47 FR 7275 and 47 FR 39398. FRA stated that ''While the importance of controlling thermal stresses within continuous welded rail has long been recognized, research has not advanced to the point where specific safety requirements can be established.'' 47 FR 7279. FRA explained that continuing research might produce reliable data in this area in the future.

In the Rail Safety Enforcement and Review Act of 1992 (Public Law 102–365, September 3, 1992), Congress mandated that FRA evaluate procedures for installing and maintaining CWR. In 1994, in the Federal Railroad Safety Reauthorization Act (Pub. L. 103–272, July 5, 1994), Congress required DOT to evaluate cold weather installation procedures for CWR. In light of the evaluation of those procedures, as well as information resulting from FRA's own research and development, FRA addressed CWR procedures by adding § 213.119 during its 1998 revision of the Track Safety Standards. See 63 FR 33992.

Section 213.119, as added in 1998, requires railroads to develop procedures that, at a minimum, provide for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal recordkeeping requirements. Section 213.119 does not dictate which procedures a railroad must use in their CWR plans. It allows railroads to develop and implement their individual CWR plans based on procedures which have proven effective for them over the years. Accordingly, procedures can vary from railroad to railroad.

II. SAFETEA–LU

On August 10, 2005, President Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), (Pub. L. 109–59, August 10, 2005) into law. Section 9005(a) of SAFETEA–LU amended 49 U.S.C. 20142 by adding a new subsection (e) as follows:

(e) Track Standards.—

(1) In General.—Within 90 days after the date of enactment of this subsection, the Federal Railroad Administration shall—

(A) Require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) Instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) Establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) Inspection.—Whenever the Administration determines that it is necessary or appropriate, the Administration

[1] Rail joints commonly consist of two joint bars that are bolted to the sides of the rail and that contact the rail at the bottom surface of the rail head and the top surface of the rail base.

may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.

Pursuant to that mandate, FRA is revising the Track Safety Standards located in 49 CFR part 213.

III. Train Accidents Involving Joints in CWR

Since FRA's 1998 revision of the Track Safety Standards, there have been a number of train accidents in which the failure of a rail joint in CWR was a factor. The National Transportation Safety Board (NTSB) investigated three recent accidents and made recommendations to FRA concerning joints in CWR. The NTSB recommendations closely parallel the statutory mandate requiring this IFR. The three accidents and subsequent NTSB recommendations are described below.

A. Derailment of Canadian Pacific Railroad Train 292–16 Near Minot, ND

On January 18, 2002, Canadian Pacific Railway (CPR) freight train 292–15 derailed 31 of its 112 cars about ½ mile west of the city limits of Minot, North Dakota. Five tank cars carrying anhydrous ammonia, a liquefied compressed gas, catastrophically ruptured, and a vapor plume covered the derailment site and surrounding area. About 11,600 people occupied the area affected by the vapor plume. One resident was fatally injured, and 60 to 65 residents of the neighborhood nearest the derailment site were rescued. As a result of the accident, 11 people sustained serious injuries, and 322 people, including the 2 train crewmembers, sustained major injuries. Damages exceeded $2 million, and more than $8 million has been spent in environmental remediation.

In its Railroad Accident Report,[2] the NTSB determined that the probable cause of the derailment was ''an ineffective Canadian Pacific Railway inspection and maintenance program that did not identify and replace cracked joint bars before they completely fractured and led to the breaking of the rail at the joint.'' The NTSB found that the catastrophic failure of five tank cars and the instantaneous release of 146,700 gallons of anhydrous ammonia also contributed to the severity of the accident.

The NTSB issued several findings in its report. The NTSB found that the train derailed because joint bars at the east end of the plug rail[3] fractured (either under the previous train or as the accident train passed over the joint), and then, after the joint bars fractured, the rail itself also fractured and broke away. The NTSB found that CPR's inspection procedures regarding rail joint bars in CWR were inadequate to properly inspect and maintain joints within CWR, and those inadequate procedures allowed undetected cracking in the joint bars at the accident location to grow to a critical size. In a similar vein, the NTSB found that FRA's requirements regarding rail joint bars in CWR were ineffective, because they did not require on-the-ground visual inspections or nondestructive testing adequate to identify cracks before they grow to critical size and result in joint bar failure.

The NTSB also found that FRA's oversight of CPR's CWR program was ineffective, because FRA neither reviewed the CWR program nor ensured that its track inspectors had copies of the CWR programs to determine if the railroad was in compliance with it.

As a result of these findings, the NTSB made seven safety recommendations, of which the most relevant are quoted below.

> Require all railroads with continuous welded rail track to include procedures (in the programs that are filed with the Federal Railroad Administration) that prescribe on-the-ground visual inspections and nondestructive testing techniques for identifying cracks in rail joint bars before they grow to critical size. (R–04–1).
>
> Establish a program to periodically review continuous welded rail joint bar inspection data from railroads and Federal Railroad Administration track inspectors and, when determined necessary, require railroads to increase the frequency or improve the methods of inspection of joint bars in continuous welded rail. (R–04–2).
>
> Instruct Federal Railroad Administration track inspectors to obtain copies of the most recent continuous welded rail programs of the railroads that fall within the inspectors' areas of responsibility and require that inspectors use those programs when conducting track inspections. (R–04–3).

B. Derailment of Amtrak Train No. 58 Near Flora, MS

On April 6, 2004, National Railroad Passenger Corporation (Amtrak) train No. 58 (City of New Orleans) derailed on Canadian National Railway Company track near Flora, Mississippi. The entire train derailed, including one locomotive, one baggage car, and eight passenger cars. The derailment resulted in one fatality, three serious injuries, and 43 minor injuries. The equipment costs associated with the accident totaled about $7 million.

In its Railroad Accident Report,[4] the NTSB determined that the probable cause of the accident was ''the failure of the Canadian National Railway Company to properly maintain and inspect its track, resulting in rail shift and the subsequent derailment of the train, and the Federal Railroad Administration's ineffective oversight to ensure proper maintenance of the track by the railroad.''

The NTSB made two recommendations to FRA, one of which is relevant to the discussion here.

> Emphasize to your track inspectors the importance of enforcing a railroad's continuous welded rail program as a part of the Federal Track Safety Standards, and verify that inspectors are documenting noncompliance with the railroad's program. (R–05–05).

C. Derailment of Union Pacific Train ZLAMN–16 Near Pico Rivera, CA

On October 16, 2004, Union Pacific (UP) freight train ZLAMN–16 derailed 3 locomotives and 11 cars near Pico Rivera, California. Small amounts of hazardous materials were released from the transported cargo. There were no injuries to area residents, the train crew, or the emergency response personnel. UP estimated the monetary damage at $2.7 million.

In its Railroad Accident Brief,[5] the NTSB determined ''that the probable cause of the derailment was the failure of a pair of insulated joint bars due to fatigue cracking. Contributing to the accident was the lack of an adequate on-the-ground inspection program for identifying cracks in rail joint bars before they grow to critical size.''

The NTSB reiterated two of the recommendations that it had made to FRA after the Minot, North Dakota accident: (1) R–04–01 about on-the-ground visual inspections and nondestructive testing techniques and (2) R–04–02 about a program to review joint bar inspection data. The NTSB further stated in its brief:

> The CWR track involved in the Pico Rivera accident had all the inspections required by the UP and the FRA. In some instances, the inspections were done more frequently than required. Nevertheless, the inspections failed

[2] NTSB Railroad Accident Report: Derailment of Canadian Pacific Railway Freight Train 292–16 and Subsequent Release of Anhydrous Ammonia Near Minot, North Dakota, January 18, 2002 (NTSB/RAR–04–01) (March 9, 2004).

[3] A ''plug rail'' describes a short piece of rail inserted into a length of CWR to replace a similar piece that was removed because of defects or damage.

[4] NTSB Railroad Accident Report: Derailment of Amtrak Train No. 58, City of New Orleans, Near Flora, Mississippi, April 6, 2004 (NTSB/RAR–05/02) (July 26, 2005).

[5] NTSB Railroad Accident Brief: Accident No. DCA–05–FR–002 (NTSB/RAB–05/02) (March 9, 2004).

to detect the developing problems and prevent the ultimate failure. Additionally, during the 2 days after the last inspection, more than 100 trains passed over the insulated joint bars without either discovering or reporting a defect. Trains traversed the area after the insulated joint bars were completely broken, as evidenced by the rail batter in both directions.

Several indications of an imminent or actual defect were present before this accident, which the inspection from a moving vehicle did not discover:

- The epoxy bead was missing from the center section of the insulated joint bar, indicating vertical movement.
- The joint bars cracked before they completely fractured. Part of each crack was visible on the lower outer portion of the bar for some time before its failure.
- Rail end batter developed when the joint bars completely fractured and trains continued to pass over them in both directions.

These indications developed over time, and a close visual inspection from the ground would have likely uncovered the emerging problem and allowed corrective action to be taken to avoid the accident.

IV. FRA's Approach to CWR in This IFR

Earlier versions of § 213.119 did not require track owners to include any provisions in their CWR plan related to joints in CWR. Track owners were required simply to address joints in CWR in the same manner as they addressed joints in conventional jointed rail. See 49 CFR 213.121. This IFR now requires track owners to specifically address joints in CWR in their respective CWR plans.

To meet the statutory requirement that FRA issue this regulation within 90 days of the enactment of SAFETEA–LU, FRA is issuing this IFR. This IFR addresses 49 U.S.C. 20142(e)(1)(A) and (e)(1)(C) (hereinafter referred to as (e)(1)(A) and (e)(1)(C)). Because 49 U.S.C. 20142(e)(1)(B) does not require regulatory action on the part of FRA, FRA is not addressing it in this rulemaking.

Subparagraph (e)(1)(A) mandates that FRA require each track owner to ''include procedures * * * to improve the identification of cracks in rail joint bars.'' Congress did not specify how FRA should effect that improvement. One way of improving the identification of such cracks is through on-foot inspection of joints in CWR. Because most cracks in joint bars can be detected by eye before they grow to failure, on-foot inspections can be of great value in identifying joint failure. Accordingly, FRA is requiring railroads to conduct periodic and special on-foot inspections of CWR joints. See 213.119(g)(1).

Rather than limit these on-foot inspections to the identification of joint bar cracks, FRA is requiring track owners to also inspect for joint conditions that can lead to the development of joint bar cracks. Track owners should inspect all safety-critical aspects of joints, including any indications of potential failure of the joint itself; any indications of potential failure of any components of the joint (*e.g.*, rails, bolts, supporting crossties, and track fasteners); and the track itself in the vicinity of the joint (including the effectiveness of rail anchors or other devices for restraint of longitudinal movement of the rail). In the rule, FRA lists examples of conditions that may indicate potential failure. This list is not all-inclusive. There are several other conditions, and FRA urges track owners to consider all conditions, not just the listed examples.

In doing this, railroads will address the root of the problem—*i.e.*, preventing cracks from developing—rather than merely reacting to cracks after they have developed. It is understood that certain conditions involving rail joints and the surrounding CWR contribute to the development and propagation of cracks in rail joints. If track inspectors can inspect for these conditions, detect these conditions, and provide information so that railroads can correct these conditions, it will reduce the probability of joint failures and subsequent train accidents.

Furthermore, this preventive approach is more appropriate given that the development of a crack in a rail joint bar can progress at an unpredictable rate. Some cracks might exist for years without causing a rupture of the joint, while other cracks can progress rapidly from an undetectable size to complete failure. For example, a joint can completely fail under a single impact load if the joint is subjected to low temperatures and very high-tension forces.

FRA believes that the time and effort it takes a track inspector to perform a complete inspection will be minimal while the benefit of a complete inspection will be high. Once a track inspector has arrived at a location to inspect a joint and begun inspecting that joint, it takes little time and effort (over and above the effort to search for and identify cracks in joint bars) for him or her to note the condition of the entire joint and its surroundings. There are both safety and management benefits to a complete inspection. The safety benefit is obvious in that it prevents derailments. As for management benefits, track owners will save money and time, because it is easier and more cost effective to repair incipient joint conditions than actual joint cracks. For example, it is more economical to replace joint bolts or to reset rail anchors (*i.e.*, incipient failure conditions) than it is to replace a joint bar after it has developed a crack.

FRA realizes that inspections at a frequency that could detect incipient cracks prior to the possibility of failure in every case are not feasible given the current levels of railroad staffing and in light of the impediments to train operations that would result from restrictions required to provide for the safety and mobility of inspection personnel. However, proper preparation and maintenance of joints, together with appropriate instructions, can reduce the frequency of crack formation and also prevent rapid propagation in most cases—making a program of inspection both more feasible and more cost effective.

Subparagraph (e)(1)(C) requires that FRA ''establish a program to [periodically] review continuous welded rail joint bar inspection data'' from railroads and FRA track inspectors. Clearly, FRA can gather and review the joint bar inspection data from its own inspectors' inspections. However, in order for FRA to review railroad CWR joint bar inspection data, track owners must gather that data and make it available to FRA for review. Accordingly, this rule now requires track owners to keep this data and make it available to FRA. See § 213.119(i)(3).

In order to effectively manage the joint inspection process, a track owner must be able to clearly locate and identify each joint to be inspected. Location means that the inspector knows the right place to go. Identification means that the inspector can find the proper joint. The location might be in miles to the nearest one-hundredth or in Global Positioning System (GPS) coordinates to the nearest ten meters. Because there could be several joints (*e.g.*, three or four) in that same location, the identification of the joint will resolve that ambiguity. The identification might be a unique mark on the joint or a description in the record (*e.g.*, first joint in the south rail of Track 2, 37 feet west of the insulated joint at Signal 109.2).

A track owner will need to pass on this information to maintenance groups responsible for remedying the deficiencies found during inspections. It is important that track owners provide accurate information on the location of the joint and a clear identification of the joint, to ensure that the maintenance groups are working in the right place. An adequate inspection process must also identify the joints that have received the required inspection and

those that are due for inspection. This ensures that the track owner performs inspections at the required frequency.

FRA notes that, in many cases, this same information is already required to carry out existing CWR plans since most joints in CWR territory are now so-called ''temporary joints'' that correspond with locations where adjustment of the track structure is needed to prevent track buckling that results from a combination of thermal inputs and disturbance at other-than-neutral temperature. These joints, in most cases, were created when a section of the rail was cut out to remove an internal flaw.

There is not yet an established, efficient method for detecting cracks in joint bars by means of automated non-destructive testing (NDT). FRA believes that such a system might be developed, and that a requirement for effective joint bar inspection by either visual or other effective means can provide an incentive for the railroad industry to develop such a system. FRA is aware that some railroads do employ portable, hand-held equipment to conduct NDT of joint bars.

Use of this NDT technology, in addition to careful visual inspection, is encouraged where judged effective. However, FRA notes that there is insufficient engineering data to establish the effectiveness of NDT techniques as applied to joint bars in the service environment. Further, as illustrated by the ongoing examination of NDT technology and services by the joint FRA/industry Rail Integrity Task Force,[6] operator qualification and quality control remain areas of concern. Accordingly, FRA focuses the ''benchmark'' inspection requirements of this IFR on visual inspection by a qualified track inspector.

FRA requests comments on this IFR. FRA will consider any comments it receives and where appropriate, revise the final rule accordingly. In addition, FRA had provided the Railroad Safety Advisory Committee (RSAC) with an opportunity to review the prospective comments to this IFR. There was a meeting of the full RSAC on October 11, 2005. At that time, FRA offered the RSAC the task of reviewing comments to the IFR and more generally examining the status of railroad CWR plans, including joint integrity. The RSAC would have been free to suggest improvements to this IFR, together with other proposals that will advance the safety of train operations over CWR track, however the RSAC was unable to agree upon a task statement (defining the scope of the activity) that would meet the needs of each of the major stakeholder organizations whose participation would have been required in a RSAC working group. Failing consensus among the major stakeholders, FRA indicated that a task may be offered at a subsequent meeting.

V. Section-by-Section Analysis

Section 213.119, in General

FRA is revising § 213.119 by requiring track owners to incorporate into their CWR plans written procedures on the inspection of joints in CWR. This will require most track owners to amend their existing CWR plans. Track owners must also create and maintain records of these inspections. FRA provides details of these new provisions below.

Section 213.119(g)

Paragraph (g) requires each track owner to include in its CWR plan provisions for the scheduling and conducting of joint inspections. A person who is qualified under § 213.7 should perform these inspections on foot at the joint.

Section 213.119(g)(1)

New subparagraph (g)(1) identifies those items relating to joint inspections which track owners must address in their CWR plans. FRA notes that these items are the minimum, which track owners should address. Track owners are, of course, free to include additional items in their respective CWR plans.

This subparagraph refers to both periodic and special on-foot inspections. ''Periodic inspections'' are those inspections of joints in CWR that railroads will conduct on a regular basis. ''Special inspections'' are those inspections that track owners should initiate in response to (1) indications of damage to a joint, (2) environmental conditions, including severe cold weather, that can adversely effect the integrity of the joint, or (3) other unusual circumstances concerning a joint.

Track inspectors should identify and record these listed items during their inspections of joints, because these items are related to the integrity of the joint and thus, to the safety of trains that operate over the joint.

Joint bars with visible or otherwise detectable cracks. These cracks should be identified, because they can progress at an unpredictable rate, leading to the eventual rupture of the joint bar and then the misalignment of the rails and a derailment.

Loose, bent, or missing joint bolt. The bolts through the joint bars and rail ends are a vital component of the joint. Bolts are supposed to keep joint bars firmly supported to the joint. Where bolts are missing, loose, or bent, the bolts will fail to keep the joint bars firmly in contact with the rails. The rails are then liable to separate when there is cold weather and the cold weather causes high-tension forces through the joint.

Bolts in joints with bars that are separated from the web of the rail at the bolt holes tend to fail when the bolts bend. When the bolts bend beyond their elastic limit, they lose their design tension, and they are no longer capable of holding the joint bars firmly against the rail. The joint then permits the rails to move in relation to each other under passing wheels, causing increased impact loads on the joint and battering of the adjoining rail ends. This can potentially lead to cracks and eventually fracture of the joint bars or rail ends.

Rail end batter or mismatch that contributes to impact loads and instability of the joint. Rail end batter refers to the displacement of rail steel in the tread at the end of the rail. Rail end batter occurs when wheels pass over a joint and (1) the rails are pulled apart to the extent that the wheels can drop slightly into the gap, and/or (2) the rail ends are mismatched. Rail ends can be mismatched because joint bolts are loose or because the rails do not match when installed.

Excessive rail end batter causes high impact forces on all components of the joint; this can cause the joint bar or the rail to rupture. Also, vibrations at a battered joint can cause loss of consolidation of ballast at the joint, leaving the joint vulnerable to thermal buckling when high compressive forces are generated in the rails.

Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors. Longitudinal rail movement is evidence that the rails might not be securely anchored, that excessive tension forces are developing in the rail when it is cold, or that the joint bolts have lost their clamping properties after

[6] The Rail Integrity Task Force is a joint FRA/industry working group. It was convened in April 2002 to identify ''best practices'' within the railroad industry regarding the inspection, maintenance, and replacement of rail. The goal of the task force is to ''reduce rail-related accidents and casualties resulting from derailments caused by broken rail.''

The task force is comprised of subject-matter experts from the major heavy-haul railroads, the Association of American Railroads, FRA's Office of Safety Assurance and Compliance, FRA's Office of Railroad Development, as well as technical support from the Volpe National Transportation Systems Center. The task force has also requested and received input from all of the service providers in the field of nondestructive testing of rail.

being stretched in bending. As wheels pass over and drop into the gap, there are high impact forces on the joint. This can have the same consequences as described above for rail end batter. These tension forces, combined with additional impact loads, have a tendency to cause cracks and to cause rupture of joint bars and rail.

Section 213.119(g)(2)

This subsection requires track owners to do the following when formulating the procedures under § 213.119(g)(1): (1) Implement a system for identifying joints in CWR; (2) institute a procedure to inventory joints in CWR; (3) specify the conditions of potential joint failure for which personnel must inspect (including, at a minimum, the items listed in subparagraph (g)(1)); (4) specify the remedial action that personnel should take when they discover joints that are out of compliance with either part 213 or the track owner's CWR plan; and (5) specify the timing of inspections.

Subparagraph (g)(2)(v) requires track owners to specify the timing of inspections. It also establishes minimum inspection frequencies for certain joints. The differences are based on the class of track and the operation of passenger trains. The rule requires all joints in CWR in track classes 4 and higher to be inspected before October 31, 2006 and within 190 days of the previous inspection thereafter. It requires all joints in class 3, and class 2 track on which passenger trains operate, to be inspected before April 30, 2007 and within 370 days of the previous inspection thereafter. FRA requires railroads to conduct inspections more frequently for the higher class tracks (classes 4, 5, and 6), because trains operate over these tracks at a faster speed and therefore the consequences of an accident are much more serious.

The rule does not establish minimum inspection frequencies for joints in class 1 track, or class 2 track over which passenger trains do not operate. FRA believes that the costs would outweigh the benefits if FRA set minimums for all the lower classes of tracks. In addition, trains that operate over the lower classes of track do so at slower speeds and so there is less risk of accident and less serious consequences of an accident.

FRA emphasizes that the inspection frequency in subparagraph (g)(2)(v) is a minimum requirement. FRA notes that certain joints, due to their configuration, condition, or environmental circumstances, will probably require more frequent inspections. Examples would be joints with only four bolts, joints that give an indication of high rail tension loads, or joints in segments of track subject to wide variations of temperature. FRA also notes that joints in CWR often provide the first indication of thermal rail distress (either high compressive or tension forces) or incipient buckling. Therefore it would be prudent for a track owner to include provisions that pay special attention to joints where there are likely to be temperature extremes at either end of the spectrum.

For a rail joint management program to be effective, the results of an inspection must be clearly associated with the joint that has been inspected. This is necessary so that a work group dispatched to repair a joint will be able to locate the joint and confirm that they are at the correct location. It is up to the track owner to determine the method of identification and correlation. Possible methods include marking the joint or the adjacent track with a unique number or using Global Positioning System receivers.

FRA notes that part 213 has existing requirements addressing rail joints, including requirements for remediating cracked or broken joint bars. For instance, pursuant to § 213.121(b), ''if a joint bar on Classes 3 through 5 track is cracked, broken, or because of wear allows excessive vertical movement of either rail when all bolts are tight, it shall be replaced.'' Also, pursuant to § 213.121(b), ''if a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.'' Existing requirements for rail joints will continue to apply to all rail joints, regardless of whether the rail joints are in CWR or in conventional jointed rail. See § 213.121.

Section 213.119(g)(3)

This subsection permits a track owner to devise an alternate program for the inspection of joints in CWR. A track owner seeking to deviate from the minimum inspection frequencies specified in §§ 213.119(g)(1) and (2) should submit the alternate procedures and a supporting statement of justification to FRA's Associate Administrator for Safety (Associate Administrator). In the supporting statement, the track owner must include data and analysis that establishes to the satisfaction of the Associate Administrator for Safety that the alternate procedures provide at least an equivalent level of safety across the railroad.

If the Associate Administrator for Safety approves the alternate procedures, the Associate Administrator will notify the track owner of such approval in writing. In that written notification, the Associate Administrator will specify the date on which the alternate procedures will become effective. After that date, the track owner shall comply with the approved procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing. While a determination is pending with the Associate Administrator, the track owner shall continue to comply with the requirements contained in §§ 213.119(g)(1) and (2).

FRA expects that the track owner will include a risk analysis in its supporting statement of justification for alternate procedures. The risk analysis, whether qualitative or quantitative, should demonstrate that the track owner's program is at least as good (as applied across the entire railroad) as the benchmark level of inspection that FRA mandates in this IFR. The risk analysis would likely address such issues as tonnage, grades, curvature, prior joint failure rates (with respect to frequency), type of traffic, average train speed, and proximity to populations. The track owner might use risk analysis techniques to focus more frequent inspections in areas of greater risk (*e.g.*, approaches to bridges, close proximity to populated areas, heavy tonnage, significant hazardous materials traffic), while utilizing a lesser frequency at other locations and optimizing safety and efficiency.

FRA will be most anxious to learn when an efficient, effective, and economical automated procedure for joint bar inspection is developed. To this end, FRA is making efforts to explore new technologies for inspecting joint bars. FRA's Office of Research and Development is currently funding research to develop an automated, vehicle-mounted, visual imaging system that can survey joint bars across a territory by recording digital photographic images and generating the data to exception reports.

The Rail Integrity Task Force,[7] a joint FRA/industry working group, is also exploring the conditions under which railroads can more effectively detect joint bar cracks. One of the primary objectives of this Task Force is to review industry best practices for the inspection, maintenance, and replacement of rail. The Task Force is examining options for vehicle-mounted non-destructive testing that might, at a future date, provide the ability to detect

[7] See footnote 6 supra.

both internal defects as well as cracks in joint bars.

Technology (including frequent automated track geometry surveys) and sound CWR management, including prompt removal of so-called ''temporary'' joints, may provide the additional information required to verify the ongoing integrity of joints in CWR. The alternative procedures provision of this IFR will allow track owners to take advantage of these new approaches as they become available.

Sections 213.119(h)–(j)

With the addition of a new section 213.119(g), FRA has renumbered the old paragraphs (g), (h), and (i). The training requirements previously located in § 213.119(g) are now located in § 213.119(h). The recordkeeping requirements previously located in § 213.119(h) are now located in § 213.119(i). The definitions section formerly located in § 213.119(i) are now located in § 213.119(j).

Section 213.119(i)

Paragraph (i) contains the recordkeeping requirements for railroads that have track constructed of CWR. At a minimum, railroads must keep records of the items listed in § 213.119(i)(1) through (i)(3). With this interim final rule, FRA has added the recordkeeping requirement listed in (i)(3).

Subparagraph (i)(3)(A) provides that railroads must keep records of joint inspections. The record must include, at the most basic level, the fact that personnel performed an inspection of the joint. The record must include the location of each joint, and each joint must be identified with sufficient precision that personnel could subsequently locate and identify the joint without ambiguity. In addition, the record must clearly convey the results of the inspection of each joint, so that the personnel correcting the deficiencies will know what actions they must take. Finally, the record must include the remedial action required (if any) by the track owner's CWR plan. Subparagraph (i)(3)(B) provides that track owners must maintain these joint inspection records in accordance with § 213.241.

Section 213.241(b)

FRA has added § 213.119 to the list of sections in § 213.241(b), thereby requiring that inspections of joints made pursuant to § 213.119 comply with the inspection record requirements found in § 213.241(b).

Section 213.343(j)

Subpart G of Part 213 contains the track safety standards for train operations at track classes 6 and higher. Section 213.343 (which is found in subpart G) contains the CWR requirements for train operations at track classes 6 and higher. FRA is adding paragraph (j) to 213.343. It applies the joint bar inspection requirements in the revised 213.119 to train operations at track classes 6 and higher. Accordingly, § 213.343(j) states that track owners shall revise their CWR plans to include provisions for the inspection of joint bars in accordance with §§ 213.119(g) and (i)(3).

Appendix B to Part 213—Schedule of Civil Penalties

FRA made a minor change to the Schedule of Civil Penalties. Because FRA added a new paragraph to § 213.119, FRA adjusted the civil penalty schedule accordingly.

VI. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 128566 and DOT policies and procedures. 44 FR 11034; February 26, 1979.

As part of the regulatory impact analysis, FRA has assessed a quantitative measurement of costs and benefits expected from the implementation of this interim final rule. The major costs anticipated from implementing this IFR include: the modification of existing CWR plans, the modification of existing software to take an inventory, and the deterioration of safety on track other than that with CWR joints. The major benefit anticipated from implementing this IFR will be a decrease in rule-affected accidents.

The rule will result in an initial cost of $137,000. Depending upon the railroad's implementation, it may also result in an increase of some accidents of $20,000 per year and a decrease in rule-affected accidents of $790,000 per year, for a net decrease in accident costs of $770,000. This yields a net benefit of $653,000 in the first year and $770,000 per year in subsequent years.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. The U.S. Small Business Administration (SBA) stipulates in its ''Size Standards'' that the largest a railroad business firm that is ''for-profit'' may be, and still be classified as a ''small entity'' is 1,500 employees for ''Line-Haul Operating Railroads,'' and 500 employees for ''Switching and Terminal Establishments.'' ''Small entity'' is defined in the Act as a small business concern that is not independently owned and operated, and is not dominant in its field of operation. SBA's ''size standards'' may be altered by federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy, which formally establishes ''small entities'' as railroads that meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

In this IFR, there are approximately 200 small railroads that have CWR and are affected. FRA has adopted a phase-in to minimize the significant economic impact on these small entities. As FRA is publishing this rule as an IFR in order to comply with statutory requirements, FRA has not received any comments yet. FRA requests comments on this economic analysis and encourages small entities to comment on the impact on small entities.

C. Paperwork Reduction Act

The information collection requirements in this IFR have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the new information collection requirements is noted and the estimated time to fulfill each of the other requirements is as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total amount burden hours	Total annual burden cost
213.4—Excepted Track					
—Designation of track as excepted	200 railroads	20 orders	15 minutes	5	$190
—Notification to FRA about removal of excepted track.	200 railroads	15 notifications	10 minutes	3	114
213.5—Responsibility of track owners	685 railroads	10 notifications	8 hours	80	3,040
213.7—Designation of qualified persons to supervise certain renewals and inspect track					
—Designations	685 railroads	1,500 names	10 minutes	250	9,500
—Designations (partially qualified) under paragraph (c) of this section.	685 railroads	250 names	10 minutes	42	1,596
213.17—Waivers	685 railroads	6 petitions	24 hours	144	5,472
213.57—Curves, elevation and speed limitations					
—Request to FRA for approval	685 railroads	2 requests	40 hours	80	3,040
—Notification to FRA with written consent of other affected track owners.	685 railroads	2 notifications	45 minutes	2	76
—Test Plans For Higher Curving Speeds.	1 railroad	2 test plans	16 hours	32	1,216
213.110—Gage Restraint Measurement Systems (GRMS)—Implementing GRMS—Notices & Reports.	685 railroads	10 notifications + 2 tech rpts.	45 min./4 hours	16	608
—GRMS Vehicle Output Reports	685 railroads	50 reports	5 minutes	4	152
—GRMS Vehicle Exception Reports	685 railroads	50 reports	5 minutes	4	152
—GRMS/PTLF—Procedures For Data Integrity.	685 railroads	4 proc. Docs.	2 hours	8	305
—GRMS Training Programs/Sessions	685 railroads	2 prog. + 5 sess.	16 hours	112	4,256
—GRMS Inspection Records	685 railroads	50 records	2 hours	100	3,800
213.119—Continuous welded rail (CWR), general					
(g) Written procedures for CWR (New)	239 railroads/ ASLRRA.	240 modif. proc.	3 hrs./1 hr.	320	0 (Included in IFA RIA) 667,652
—Alternate Procedures For Rail Joints (New).	239 railroads	7 letters + 7 proc.	30 min. + 953 hrs.	6,675	667,652
—Training Programs For CWR Procedures (New).	239 railroads/ ASLRRA.	240 training Prog.	2 hea./12 hours	490	18,620
—Record Keeping	239 railroads	2,000 records	10 minutes	233	12,654
—Record Keeping For CWR Rail Joints (New).	239 railroads	360,000 rcds.	2 minutes	12,000	456,000
—Periodic Records For CWR Rail Joints (New).	239 railroads	480,000 rcds.	1 minute	8,000	304,000
213.233—Track inspections	685 railroads	2,500 inspections	1 minute	42	1,512
213.241—Inspection records	685 railroads	1,542,089 rcds	Varies	1,672,941	60,225,876
213.303—Responsibility for Compliance	2 railroads	1 petition	8 hours	8	304
213.305—Designation of qualified individuals; general qualifications.	2 railroads	150 designations	10 minutes	25	950
—Designations (Partially qualified)	2 railroads	20 designations	10 minutes	3	114
213.317—Waivers	2 railroads	1 petition	24 hours	24	912
213.329—Curves, elevation and speed limitations					
—FRA approval of qualified equipment and higher curving speeds.	2 railroads	3 notifications	40 hours	120	4,560
—Written notification to FRA with written consent of other affected track owners.	2 railroads	3 notifications	45 minutes	2	76
2213.333—Automated Vehicle Inspection System.					
—Track Geometry Measurement System.	3 railroads	18 reports	20 hours	360	12,960
—Track/Vehicle Performance Measurement System:					
—Copies of most recent exception printouts.	2 railroads	13 printouts	20 hours	260	9,360
213.341—Initial inspection of new rail and welds					
—Mill inspection	2 railroads	2 reports	8 hours	16	608
—Welding plan inspection	2 railroads	2 reports	8 hours	16	608
—Inspection of field welds	2 railroads	125 records	20 minutes	42	1,596
213.343—Continuous welded rail (CWR)					
—Recordkeeping	2 railroads	150 records	10 minutes	25	950
213.345—Vehicle qualification testing	1 railroad	2 reports	16 hours	32	1,216

CFR section	Respondent universe	Total annual responses	Average time per response	Total amount burden hours	Total annual burden cost
213.347—Automotive or Railroad Crossings at grade—Protection Plans.	1 railroad	2 plans	8 hours	16	608
213.369—Inspection Records					
—Record of inspection	2 railroads	500 records	1 minute	8	288
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4	144

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan via e-mail at *Robert.Brogan@fra.dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Robert Brogan, Federal Railroad Administration, MS–25, 1120 Vermont Avenue, NW., Washington, 20590; or to Victor Angelo, Federal Railroad Administration, MS–35, 1120 Vermont Avenue, NW., Washington, 20590. Comments may also be sent electronically via e-mail to Mr. Brogan at *Robert.Brogan@fra.dot.gov* or to Mr. Angelo at *Victor.Angelo@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this IFR between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The IFR will respond to any OMB or public comments on the information collection requirements contained in this IFR.

FRA cannot impose a penalty on persons for violating information collection requirements, which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated these revised track safety regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts 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. This IFR meets the criteria that establish this as a non-major action for environmental purposes.

E. Federalism Implications

FRA has analyzed this IFR in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 42355. This IFR 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 various levels of government. This IFR will not have federalism implications that impose any direct compliance costs on State and local governments. FRA believes that this IFR has no federalism implications, other than the preemption of state laws covering the subject matter of this IFR, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

F. Unfunded Mandate Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This IFR will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' See 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this IFR in accordance with Executive Order 13211. FRA has determined that this IFR is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that

this IFR is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Interim Final Rule

Issuance of Interim Final Rule; Request for Public Comment

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that, before issuing a rule, the agency provide notice and the opportunity for public comment (§ 553(b)(3)(B)), except ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedures thereon are impracticable, unnecessary, or contrary to public interest.'' FRA finds that the delay inherent to normal notice and comment rulemaking would be impractical if FRA intends to fulfill the SAFETEA–LU statutory mandate that requirements be implemented within 90 days. FRA has acted both immediately to implement this mandate and has deferred other, conflicting work. FRA would be unable to meet the statutory requirement for prompt action if FRA were to issue a notice of proposed rulemaking, receive public comment, consider comments received, and prepare and issue a final rule. FRA also finds that further delay would be contrary to the public interest, given the strong safety concerns expressed by the underlying statute. FRA believes that Congress clearly intended that FRA issue this rule in so short a time period in order to help prevent additional train accidents caused by the failure of joints in CWR in the very near term. Allowing time for full notice and comment procedure would frustrate this intent and could potentially result in train accidents that would otherwise be avoided by adherence to the new requirements in this rule. The public interest clearly supports issuance of this IFR in order to avoid such consequences.

FRA requests comment on this IFR, and as required by § 20103(e) of the Federal Railroad Safety Act, as codified (49 U.S.C. 20101 *et seq.*), will provide an opportunity for oral comment if it is requested prior to the expiration of the comment period.

FRA has made this rule effective 30 days after the date of publication. Although FRA has considered making this rule effective immediately, FRA believes that railroads need time to prepare amendments to their CWR plans, to put administrative systems in order supporting this IFR, and to disseminate necessary information to their personnel effected by this rule. Making the rule effective within 30 days will expedite resolution of any petitions for reconsideration and hasten implementation of the rule. See 49 CFR 211.29. Note that the compliance date for placing the revised CWR plan in place is 60 days following the publication of this rule, allowing time for resolution of any petitions for reconsideration, including any necessary technical corrections pointed out by any such petition, while ensuring prompt implementation. The interval between the effective date and the compliance date also provides an opportunity for official review of any alternative implementations.

■ For the reasons discussed in the preamble, the Federal Railroad Administration amends part 213 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. Section 213.119 is amended by revising the introductory language and paragraph (g) through (i) and by adding a new paragraph (j) to read as follows:

§ 213.119 Continuous welded rail (CWR); general

Each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address: the installation, adjustment, maintenance and inspection of CWR; inspection of joints in CWR; and a training program for the application of those procedures. The plan shall be submitted to the Federal Railroad Administration by March 22, 1999. FRA reviews each plan for compliance with the following—

* * * * *

(g) Procedures which prescribe the scheduling and conduct of physical track inspections to detect cracks and other indications of incipient failures in joints in CWR. This paragraph is effective January 3, 2006.

(1) At a minimum, these procedures shall address periodic and special on-foot inspection of joints and of the track adjacent to joints, in order to identify—

(i) Joint bars with visible or otherwise detectable cracks;

(ii) Loose, bent, or missing joint bolts;

(iii) Rail end batter or mismatch that contributes to impact loads and instability of the joint; and

(iv) Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors.

(2) In formulating the procedures under paragraph (g)(1) of this section, the track owner shall—

(i) Implement a system for identifying each joint by its location in track with sufficient precision that personnel can return to the joint and identify it without ambiguity;

(ii) List each joint in an inventory that will enable personnel to identify joints due for periodic inspection;

(iii) Specify the conditions of potential joint failure for which personnel must inspect, including, at a minimum, the items listed in paragraph (g)(1) of this section;

(iv) Specify the appropriate remedial actions, consistent with this part, that should be taken when personnel find conditions of potential joint failure; and

(v) Specify the timing of the inspections, which should be based on the configuration and condition of the joint. At a minimum, track owners must specify that all joints in CWR in track classes 4 and higher must be inspected before October 31, 2006 and within 190 days of the previous inspection hereafter; and all joints in CWR in track classes 3, and class 2 track on which passenger trains operate, must be inspected before April 30, 2007 and within 370 days of the previous inspection thereafter.

(3) In lieu of the requirements for the inspection of rail joints contained in paragraphs (g)(1) and (2) of this section, a track owner may seek approval from FRA to use alternate procedures.

(i) The track owner shall submit the alternate procedures and a supporting statement of justification to the Associate Administrator for Safety (Associate Administrator).

(ii) If the Associate Administrator finds that the alternate procedures

provide an equivalent or higher level of safety than the requirements in paragraphs (g)(1) and (g)(2) of this section, the Associate Administrator will approve the alternate procedures by notifying the track owner in writing. The Associate Administrator will specify in the written notification the date on which the procedures will become effective, and after that date, the track owner shall comply with the procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing, and the track owner shall continue to comply with the requirements in paragraphs (g)(1) and (2) of this section.

(iii) While a determination is pending with the Associate Administrator on a request submitted pursuant to paragraph (g)(3) of this section, the track owner shall continue to comply with the requirements contained in paragraphs (g)(1) and (2) of this section.

(h) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic re-training, for those individuals designated under § 213.7 as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(i) The track owner shall prescribe recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location and date of CWR installations. This record shall be retained for at least one year;

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures;

(3) Information on inspection of rail joints.

(i) After the initial inspection of each joint in accordance with paragraph (g) of this section, the track owner must include in the record:

(A) The location of each joint in CWR with such precision that the joint can be located and identified in the field with no ambiguity;

(B) The results of the inspection of each joint; and

(C) Any remedial action required under the track owner's CWR plan.

(ii) Track owners shall maintain records required by paragraph (i)(3)(i) in accordance with § 213.241.

(j) As used in this section—

(1) *Adjusting/De-stressing* means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

(2) *Buckling Incident* means the formation of a lateral mis-alinement sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

(3) *Continuous Welded Rail (CWR)* means rail that has been welded together into lengths exceeding 400 feet.

(4) *Desired Rail Installation Temperature Range* means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

(5) *Disturbed Track* means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

(6) *Mechanical Stabilization* means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

(7) *Rail Anchors* means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

(8) *Rail Temperature* means the temperature of the rail, measured with a rail thermometer.

(9) *Tight/Kinky Rail* means CWR which exhibits minute alinement irregularities which indicate that the rail is in a considerable amount of compression.

(10) *Train-induced Forces* means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential.

(11) *Track Lateral Resistance* means the resistance provided by the rail/crosstie structure against lateral displacement.

(12) *Track Longitudinal Resistance* means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

■ 3. Section 213.241(b) is revised to read as follows:

§ 213.241 Inspection records.

* * * * *

(b) Each record of an inspection under §§ 213.4, 213.119, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed by the person making the inspection. Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The owner shall also designate one location, within 100 miles of each state in which they conduct operations, where copies of records which apply to those operations are either maintained or can be viewed following 10 days notice by the Federal Railroad Administration.

■ 4. Section 213.343 is amended by adding a new paragraph (j) to read as follows:

§ 213.343 Continuous welded rail (CWR).

* * * * *

(j) Track owners shall revise their CWR plans to include provisions for the inspection of joint bars in accordance with §§ 213.119(g) and (i)(3).

■ 5. Appendix B to part 213 is amended by revising the entry for § 213.119 to read as follows:

Appendix B to Part 213—Schedule of Civil Penalties

Section	Violation	Willful violation
* * * * * * *		
§ 213.119 Continuous welded rail		
(a) through (i)	5,000	7,500
* * * * * * *		

Issued in Washington, DC, on October 26, 2006.

Joseph H. Boardman,

Federal Railroad Administrator.

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