

Issued in Washington, DC on June 24, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03-21222 Filed 8-18-03; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 229

[Docket No. FRA-2003-14217; Notice No. 1]

RIN 2130-AB58

#### Railroad Locomotive Safety Standards: Clarifying Amendments; Headlights and Auxiliary Lights

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This rulemaking action makes a technical clarification to certain locomotive headlight and auxiliary light provisions. The purpose of this modification is to codify FRA's longstanding acceptance of lamps used in locomotive headlights and auxiliary lights. FRA believes that the clarifications being made in this document are consistent with both FRA's intent when issuing the requirements related to locomotive headlights and auxiliary lights and FRA's enforcement policies related to those provisions. FRA also believes that the clarifications contained in this document further FRA's goal of facilitating the use of advanced technologies and enhance FRA's safety enforcement program by recognizing specific types of lamps it considers acceptable for use in headlights and auxiliary lights.

**DATES:** This interim final rule is effective August 19, 2003; written comments must be received on or before September 18, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** *Comments:* Any comments or petitions for reconsideration related to Docket No. FRA-2003-14217, may be submitted 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. Please see the General Information heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Public Hearing:* Due to the extremely limited scope of this interim final rule, FRA does not believe that a public hearing is necessary at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed as noted above by the deadline for written comments.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to 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:** Charles L. Bielitz, Mechanical Engineer, FRA Office of Safety, RRS-14, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590 (telephone: 202-493-6314), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Stop 10, Washington, DC 20590 (telephone: 202-493-6036).

#### SUPPLEMENTARY INFORMATION:

##### Background

Based on new technologies and designs related to the lamps utilized in road locomotive headlights and auxiliary lights over the last decade, FRA believes the federal regulations governing these components need to be modified to be consistent with FRA's intent when it issued those regulations and to incorporate FRA's enforcement policies developed over the intervening years. Currently, there are two types of lamps primarily utilized in locomotive

headlight and auxiliary light fixtures. These include a Parabolic Allumination Reflection (PAR)-56, 200-watt, 30-volt lamp (200-watt lamp) and a PAR-56, 350-watt, 75-volt lamp (350-watt lamp).

Prior to the mid-1990s, the primary lamp used in road locomotive headlights throughout the industry was the 200-watt lamp, which produces a mean luminous intensity that is well in excess of 200,000 candela at the center of its beam, with all production samples having a minimum luminous intensity of 200,000 candela. In the early to mid-1990s, with the advent of auxiliary lights, the industry began using the 350-watt lamp in both headlight and auxiliary light fixtures. Controlled testing of auxiliary lights performed for FRA by the Volpe National Transportation Systems Center (Volpe) in 1995 used regular production 350-watt lamps. A single 350-watt lamp tested by the U.S. Coast Guard for the Volpe test, as well as data supplied by the lamp vendor, showed a center beam luminous intensity well in excess of 250,000 candela, but it has since been determined that this data was not representative of typical lamp production. At present, most new locomotives are equipped with the 350-watt lamps in both the headlight and auxiliary light fixture. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production (2001 through mid-2003) of the 350-watt lamps is centered at approximately 160,000 candela. Although most 350-watt lamps do not meet the 200,000 candela requirements related to headlights and auxiliary lights contained in 49 CFR 229.125(a) and (d), FRA has accepted and will continue to accept their use in both headlight and auxiliary light fixtures for the reasons discussed below. Hence forth, reference to a section or numbered part are to sections and numbered parts in title 49 of the CFR. In order to clarify FRA's continued acceptance of the use of these lamps and to incorporate existing enforcement guidance, FRA is amending the regulatory provisions contained in part 229 to specifically address the use of these types of lamps in both headlight and auxiliary light locations.

#### Section Analysis

##### A. Headlights: § 229.125(a)

The regulatory provisions related to locomotive headlights are contained at § 229.125(a) through (c). These requirements were included in the regulations when part 229 was added to the Code of Federal Regulations in 1980.

See 45 FR 21109 (March 31, 1980). Part 229 was added in order to modernize the federal regulations previously contained in part 230 related to all types of locomotives by separating and amending the requirements related to diesel and electric locomotives from those related to steam locomotives. The provisions contained in § 229.125(a)–(c) were intended to be a modified and condensed version of the requirements previously contained in § 230.231 prior to 1980. See 44 FR 29618 (May 21, 1979).

In the 1979 Notice of Proposed Rulemaking (NPRM) and the 1980 final rule, FRA explained that the approach contained in § 230.231 for determining intensity was imprecise and unscientific. Section 230.231 used a vague performance standard to describe the intensity which read as follows:

A headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight. \* \* \*

See § 230.231 in pre-1980 CFR. In order to make this vague performance standard more precise and scientific, FRA specified that a locomotive headlight must produce a luminous intensity of at least 200,000 candela. See 44 FR 29618 and 45 FR 21109. In the preamble to the final rule, FRA stated that the more scientific 200,000-candela standard could be met by the headlights used in the existing locomotive fleet and that the use of the more modern standard should not be viewed as a change in FRA's enforcement approach. *Id.* At the time the final rule was issued, virtually all locomotive headlights were equipped with the 200-watt lamps which are capable of producing in excess of 200,000 candela. Thus, FRA was merely attempting to describe, in scientific terms, the type of lamps being used by the industry in locomotive headlight fixtures at that time.

Subsequent to the issuance of the final rule, FRA developed informal enforcement guidance for its field inspectors related to when a locomotive's headlight should be considered inoperative. The guidance was eventually included in FRA's Motive Power and Equipment (MP&E) Enforcement Manual distributed in July of 1992. See MP&E Enforcement Manual at 8–79. This guidance instructed FRA inspectors to consider a locomotive's headlight to be operative when the

locomotive is equipped with a sealed two-beam (two-lamp) headlight fixture and only one of the lamps is illuminated. The rationale for this guidance was based on the fact that virtually all locomotives were equipped with a dual-lamp headlight fixture and prior to the early 1990s the lamps used in these fixtures were the 200-watt lamps, each independently capable of producing at least 200,000 candela. Because the regulation only requires the headlight to produce 200,000 candela, FRA determined that it would not consider a dual-lamp headlight inoperative if it is equipped with at least one operative lamp capable of producing 200,000 candela. *Id.*

As noted above, in the early to mid-1990s, the industry began widespread use of the 350-watt lamps in both headlight and auxiliary light fixtures. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production of the 350-watt lamps is centered at approximately 160,000 candela. Furthermore, data provided to FRA do not definitively establish that an individual 350-watt lamp meets the underlying performance standard, discussed above, on which the 200,000-candela requirement was based. Moreover, FRA is not comfortable applying an old and somewhat subjective performance standard in place of the more precise and scientific standard that was adopted several decades ago. Therefore, because most 350-watt lamps do not individually produce the luminous intensity specified in the existing regulation, FRA believes it is necessary to clarify its existing enforcement guidance and specifically modify the regulation to reflect its position regarding the use of 350-watt lamps in locomotive headlight fixtures.

Consistent with FRA's existing enforcement guidance related to the headlight provisions contained in § 229.125(a), FRA will continue to interpret the term "headlight," as used in this provision, to mean the entire headlight fixture whether it is comprised of either one or more lamps. Thus, the requirement contained in this provision to produce 200,000 candela is to be determined by the luminous intensity of the entire headlight fixture. Although a single 350-watt lamp, as described above, generally does not produce 200,000 candela, data clearly establish that the beams of two 350-watt lamps in a dual-lamp headlight easily produce well in excess of 200,000 candela once the two beams overlap

sufficiently, which occurs within a few feet in front of the fixture.

In light of the above, FRA will consider a locomotive with a dual-lamp headlight fixture that is equipped with two PAR-56, 350-watt, 75-volt lamps to meet the 200,000-candela requirement contained in § 229.125(a), provided both lamps are operative. If either lamp in such a configuration becomes inoperative, the locomotive is to be handled in accordance with the movement-for-repair provisions contained in § 229.9. Similarly, FRA will continue to consider a headlight fixture equipped with a single operative PAR-56, 200-watt, 30-volt lamp to meet the candela requirements of § 229.125(a) as such lamps are capable of individually producing 200,000 candela. FRA is amending the regulatory language contained in § 229.125(a) to specifically include the interpretation and clarification discussed above. It should be noted that FRA expects railroads to have some method or procedure in place which notifies the operating crew and mechanical employees of the type of lamps being utilized in the locomotive headlight fixture in order that the locomotive can be properly handled for repairs, if necessary.

#### *B. Auxiliary Lights: § 229.125(d)(2)*

The regulatory provisions related to locomotive auxiliary lights are found at § 229.125(d) through (h) and § 229.133. These requirements were added to the regulations between 1993 and 1996 and were established through a rulemaking that began with a 1993 interim final rule, containing interim provision related to auxiliary lights, and then proceeded to a 1995 NPRM proposing many of the auxiliary light provisions that were ultimately issued in the 1996 final rule. See 58 FR 6899 (February 3, 1993), 60 FR 44457 (August 28, 1995), and 61 FR 8881 (March 6, 1996). At this time, the provisions relating to auxiliary lights contained in § 229.133 are for the most part superseded by similar provisions contained at § 229.125, except to the extent that certain types of auxiliary lights were "super-grandfathered" as meeting the requirements of § 229.125. See 61 FR 8885–86 and § 229.133(c). Although these documents require that each prescribed auxiliary light produce 200,000 candela, none of them directly discusses FRA's rationale for including the specified luminous intensity. It can be assumed that the 200,000-candela requirement was based on the headlight provision discussed above. Moreover, at the time the auxiliary light provisions were added to the regulations, both the

200-watt and 350-watt lamps were believed to be capable of producing 200,000 candela. Consequently, when FRA incorporated the 200,000-candela requirement into the auxiliary light provisions, it is clear that FRA was merely attempting to describe the locomotive lamps being used by the industry at that time.

As part of the auxiliary light rulemaking, FRA's Office of Research and Development, through the Volpe National Transportation Systems Center (Volpe), studied the impact of auxiliary lights as alerting devices to improve locomotive conspicuity. The final report on this study was issued in July of 1995 under Report Number DOT/FRA/ORD-95-13 (Volpe report). The report is part of FRA Docket Number RSGC-2 and is available online at: [www.fra.dot.gov/rdv30/reports/index.htm](http://www.fra.dot.gov/rdv30/reports/index.htm). As part of this study, FRA evaluated various lighting systems. Four alerting light systems were evaluated for compliance with FRA's interim advisory standards, for costs, and for reliability. Field tests were also conducted on these lighting systems to determine their ability to increase an approaching train's visibility. These four alerting light systems included: standard locomotive headlights, crossing, ditch, and strobe lights. FRA utilized the data developed in this study as the basis for the auxiliary light provisions currently contained in § 229.125(d) through (h). See 60 FR 44457; and 61 FR 8881.

Based on FRA's review of the Volpe Report and its supporting data and in light of data subsequently provided by General Electric Company (GE), FRA believes that use of either a 350-watt lamp or a 200-watt lamp in locomotive auxiliary lights meets FRA's intent when issuing the regulations pertaining to such fixtures. A review of the Volpe Report establishes that the lamps tested in the headlight, ditch light, and crossing light systems were all PAR-56, 350-watt, 75-volt lamps. See Volpe Report at Appendix D-4. Although the report notes that two 350-watt lamps sampled for luminous intensity produced peak intensity reading in excess of 200,000 candela, there is no indication in the report that those specific lamps were ever used in any of the subsequent testing. One of these measurements was on an isocandela plot supplied to Volpe by Quest Corporation, the lamp vendor, based on data supplied by General Electric Company (GE), the lamp manufacturer, and the second was from a test conducted by the U.S. Coast Guard for the Volpe Center. See Volpe Report at Table 4-5 and Appendix C. Based on information recently provided by GE,

FRA believes that the intensity readings on these two lamps were an anomaly in terms of peak intensity for 350-watt lamps. The data supplied by GE shows that only one of 93 samples of the 350-watt lamp tested from 1994 to present produced a maximum beam candle power above 250,000 candela. This leads FRA to suspect that the lamp data supplied by Quest Corporation and the lamp tested by the Coast Guard in relation with the Volpe Report was potentially the same lamp, which was not representative of the lamps actually used in the Volpe tests. In fact, the lamps used in the Volpe field tests (which validated the benefits of using auxiliary lights) were 350 watt lamps. A large proportion of the lamps used in the tests in all probability did not meet the luminous intensity requirement because they were from normal production runs which included a high proportion of lamps with a peak luminous intensity below 200,000 candela.

In addition to the fact that the 350-watt lamp was used in the Volpe tests, FRA also believes that the 350-watt lamp currently being used in the industry provides equal, if not greater, benefits when used in auxiliary light fixtures than a 200-watt lamp capable of producing 200,000 candela. The primary purpose of locomotive auxiliary lights is to enhance the visibility of the front-end locomotive of a train from the perspective of a driver of a motor vehicle approaching a grade crossing. See 61 FR 8881. With this purpose in mind, FRA believes that, due to the design of 350-watt lamps, they provide equal, if not greater, visibility to motorists approaching grade crossings. Although FRA used peak candela to describe the type of lamps to be used in auxiliary light fixtures, FRA believes that a more appropriate measure is the intensity of the light at an angle from the head of the locomotive. The Volpe Report indicates that the point of first detection of a train's auxiliary lights for a motorist approaching a grade crossing (205 feet from centerline of the tracks) occurred at approximately 1,550 feet, a point that is 7.5 degrees from the centerline of the locomotive. See Volpe Report at Section 5. The Volpe Report also indicates that the point at which the separation of the lamps in the headlight and auxiliary lights became detectable to an approaching motorist was at a distance of approximately 570 feet, a point that is 20 degrees from the centerline of the locomotive. *Id.* Based on this information, it is evident that the key intensity figure for an auxiliary light is the intensity of the light at angles of

between 7.5 degrees and 20 degrees from the centerline of the locomotive.

Although a 350-watt lamp does not generally produce a maximum beam candle power (MBCP) in excess of 200,000 candela, these lamps do produce a greater luminous intensity over a broader angle off of the beam centerline than the traditional 200-watt lamp capable of producing a MBCP in excess of 200,000 candela. In fact, the available data clearly establish that the currently produced 350-watt lamp has a higher light intensity at any angle greater than 3.5 degrees off the centerline when compared to the more traditional 200-watt lamp used on older locomotives. Thus, the 350-watt lamps are particularly well suited for use in auxiliary light locations, which are primarily intended to be seen by motorists well away from an approaching grade crossing. Consequently, FRA believes that available data support a determination that the 350-watt lamp currently being produced and which has been permitted to be used in most newer locomotive auxiliary light fixtures since the mid-1990s actually enhances the ability of a motorist to detect an on-coming train.

In addition to the supporting data, FRA also notes that it has accepted the use of both 200-watt and 350-watt lamps since they began being used in auxiliary light fixtures beginning in the early to mid-1990s. It should also be noted that grade crossing accidents, deaths, and injuries have dropped sharply since the introduction of the 350-watt auxiliary lights in the mid-1990s. Furthermore, FRA is not aware of any complaints by operating crews or any deficiencies being noted by its field inspectors related to the luminous intensity produced by the 350-watt lamps since they began being used in locomotives. Moreover, FRA is not aware of any private litigation where the intensity of the light produced by a locomotive's auxiliary lights was brought into question.

In order to reflect FRA's intent when issuing the regulations related to auxiliary lights and to incorporate FRA's existing enforcement posture with regard to the use of 350-watt lamps, FRA is amending the auxiliary light provisions currently contained at § 229.125(d)(2) to specifically permit the continued use of 350-watt lamps. FRA believes this modification is necessary to ensure that there is no misunderstanding by either the regulated community or its field inspectors with regard to FRA's position. The modification makes clear that FRA will accept the use of either a lamp capable of producing 200,000

candela (a PAR-56, 200-watt, 30-volt lamp) or a lamp capable of producing 3,000 candela at 7.5 degrees and 400 candela at 20 degrees from the centerline of the locomotive when the lamp is aimed parallel to the tracks (either a PAR-56, 200-watt, 30-volt lamp or a PAR-56, 350-watt, 75-volt lamp). The light intensities being specified in the regulation are based on the luminous intensity produced at those angles by a PAR-56, 200-watt, 30-volt lamp (according to data supplied by GE) when such a lamp is aimed parallel to the tracks. FRA believes this is the most appropriate measure because the agency has interpreted the regulations as permitting this light intensity since their inception. Thus, acceptance of a lamp that produces an equivalent or greater intensity at these critical angles is consistent with the intent and purpose of the auxiliary light provisions when originally prescribed and is consistent with FRA's goal of promoting and facilitating new technologies. In furtherance of this goal, FRA also notes that although the modification being made to the regulation identifies specific lamps as meeting the specified criteria, the modification also acknowledges that lamps of equivalent design and capable of producing equivalent light intensities would be considered acceptable by FRA.

#### Related Provisions

Although there are provisions contained in §§ 229.133 and 238.443 that reference the use of lamps producing 200,000 candela, FRA does not intend to change any of the language contained in those provisions at this time. Section 229.133 contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. *See* 58 FR 6899; 60 FR 44457; and 61 FR 8881. Although locomotives equipped with one of the specified conspicuity measures were grandfathered as being compliant with the auxiliary light provisions included in § 229.125, that grandfathering expired as of March 6, 2000. *See* 61 FR 8885 and § 229.125(d). When issuing the final rule related to locomotive auxiliary lights in 1996, FRA did "super-grandfather" certain locomotives if equipped with some of the auxiliary conspicuity measures specified in § 229.133, which included: oscillating lights; strobe lights; and auxiliary lights if spaced at least 44 inches apart. *See* 61 FR 8885 and § 229.133(c). Of the three types of measures "super-grandfathered," only the provision related to oscillating lights specifies the use of a lamp capable of

producing 200,000 candela. *See* § 229.133(c)(1) through (c)(3). As there are very few locomotives currently being operated that are equipped with oscillating lights and because FRA has no data related to the impact of utilizing 350-watt lamps in single-lamp oscillating light fixtures, FRA is not in a position to accept the use of such lamps in these devices at this time. However, FRA will continue to accept the use of 350-watt lamps in those circumstances where an oscillating light is used in conjunction with the auxiliary lights described in § 229.125, and in circumstances where an oscillating light under § 229.133(b)(4)(i)(A) consists of a dual-lamp fixture equipped with two operative 350-watt lamps.

The requirements related to Tier II passenger equipment also contain a requirement that Tier II power cars be equipped with headlights that produce at least 200,000 candela. *See* § 238.443. However, contrary to the headlight provisions in part 229, which require that a locomotive be equipped with a single headlight, the provision in § 238.443 requires each Tier II power car to be equipped with at least two headlights and that each headlight produce no less than 200,000 candela. *Id.* Moreover, the present design of the headlights on Tier II power cars utilizes a single lamp in each of the two required headlight fixtures. Thus, the preceding discussion related to FRA's acceptance of the use of 350-watt lamps in traditional locomotives covered under the provisions of § 229.125(a), is not applicable to the headlights on Tier II power cars which are separately addressed in part 238.

#### General Information

As the modifications contained in this document are intended to merely clarify FRA's intent when issuing the final rule related to auxiliary lights and incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights, FRA is issuing this document as an interim final rule with a request for comments. Moreover, this document addresses FRA's continued acceptance of locomotive lamps which have been used throughout the industry for nearly a decade. Thus, FRA views the amendments contained in this document as technical clarifications of the existing regulations. Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA believes that good cause exists for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA is requesting written comments on the content of this interim final rule and, if

any are received, FRA will address them when issuing the final rule.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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 in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

#### Regulatory Impact

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This interim final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this interim final rule are not considered significant because they are intended merely to clarify FRA's intent when issuing the final rule related to auxiliary lights and to incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights. The economic impact of the modifications and clarifications contained in this interim final rule will not generally affect the cost of compliance with the existing regulations.

##### *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. FRA certifies that this interim final rule does not have a significant impact on a substantial number of small entities. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

##### *Paperwork Reduction Act*

This interim final rule does not change any of the information collection requirements contained in the original regulatory provisions being amended.

##### *Environmental Impact*

FRA has evaluated this interim final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental

statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

#### *Federalism Implications*

FRA believes it is in compliance with Executive Order 13132. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document 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. This interim final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

#### *Unfunded Mandates 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 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. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document 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.

#### *Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) 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 interim final rule in accordance with Executive Order 13211. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

#### **List of Subjects in 49 CFR Part 229**

Auxiliary lights, Headlights, Locomotives, Railroad safety.

#### **Adoption of the Amendment**

■ In consideration of the foregoing, Part 229 of Chapter II of Title 49 of the Code of Federal Regulations is amended to read as follows:

#### **PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS**

■ 1. The authority citation for Part 229 continues to read as follows:

**Authority:** 49 U.S.C. 20102-03, 20107, 20133, 20137-38, 20143, 20701-03, 21301-02, 21304; 49 CFR 1.49(c), (m).

■ 2. Section 229.125 is amended by revising paragraphs (a) and (d)(2) to read as follows:

#### **§ 229.125 Headlights and auxiliary lights.**

(a) Each lead locomotive used in road service shall have a headlight that produces a peak intensity of at least 200,000 candela. If a locomotive or locomotive consist in road service is regularly required to run backward for

any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that produces at least 200,000 candela. Each headlight shall be arranged to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela. The following meet the standard set forth in this paragraph (a)(1): a single PAR-56, 200-watt, 30-volt lamp; or a lamp of equivalent design and intensity.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of 200,000 candela shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following meet the standard set forth in this paragraph (a)(2): a single PAR-56, 200-watt, 30-volt lamp; two operative PAR-56, 350-watt, 75-volt lamps; or a lamp(s) of equivalent design and intensity.

\* \* \* \* \*

(d) \* \* \*

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following meet the standard set forth in this paragraph (d)(2): a PAR-56, 200-watt, 30-volt lamp; a PAR-56, 350-watt, 75-volt lamp; or a lamp of equivalent design and intensity.

\* \* \* \* \*

Issued in Washington, DC on August 12, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 03-21136 Filed 8-18-03; 8:45 am]

**BILLING CODE 4910-06-P**