

event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) \* \* \*

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, such notices shall be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available.

\* \* \* \* \*

[FR Doc. 2010-1878 Filed 1-28-10; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 213

[Docket No. FRA-2008-0036]

RIN 2130-AB90

#### Track Safety Standards; Continuous Welded Rail (CWR)

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

**ACTION:** Final rule; response to petition for reconsideration.

**SUMMARY:** This document responds to a petition for reconsideration of FRA's final rule published on August 25, 2009, which revised the Track Safety Standards. FRA received one petition questioning the definitions of "adjusting/de-stressing" and "buckling-prone condition" as they are used with regard to continuous welded rail (CWR).

**DATES:** *Effective Date:* This final rule is effective on March 30, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493-6236); or Sarah Grimmer Yurasko, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (*telephone:* (202) 493-6390).

#### SUPPLEMENTARY INFORMATION:

##### Background

Pursuant to (SAFETEA-LU), FRA published a final rule revising the Track Safety Standards on August 25, 2009 (74 FR 42988). FRA published a correcting amendment on October 21, 2009, which added compliance dates for railroads that had been inadvertently omitted from the final rule's compliance schedule. On September 25, 2009, FRA received a petition for reconsideration from the Association of American Railroads (AAR). This publication announces amendments to the final rule in response to the concerns expressed by the petitioner.

##### "Buckling-Prone Condition" Definition

In the petition, AAR stated that the definition of "buckling prone condition" included in the final rule at § 213.119(l) was not proposed by FRA in the notice of proposed rulemaking. As such, the petitioner did not have an opportunity until the review of the final rule to address the definition. The final rule provides that a "buckling-prone condition" exists "when the actual rail temperature is above the actual rail neutral temperature. This varies given the geographical composition of the track." Section 213.119(g)(2)(ii) requires remedial action to be taken whenever a buckling prone condition exists. AAR argues that, literally interpreted, the final rule requires remedial action whenever the rail neutral temperature is exceeded. AAR states that this is not what FRA intended, as the neutral temperature is supposed to be between the maximum and minimum temperatures the rail is subject to and thus the neutral temperature will commonly be exceeded. AAR suggested that "buckling-prone condition" be defined as follows:

*Buckling-prone condition* means when track conditions may be insufficient to restrain the track laterally at the rail temperatures actually experienced at that location.

FRA reviewed the definition of "buckling-prone condition" and consulted with the Volpe Center to more narrowly define what is intended by this term. In the railroad industry, "track buckling" refers to the sudden lateral movement of the track due to thermally-generated longitudinal rail forces. As the temperature rises above the actual rail neutral temperature, longitudinal expansion in rail can occur once a critical rail temperature is reached that can cause lateral misalignment of the track. Therefore, FRA concluded that CWR cannot always be considered in a "buckling-prone condition" if the rail

temperature is only above the rail neutral temperature, without reaching the critical temperature that can cause track misalignment. As a result, FRA has determined that the definition in the final rule could be misleading by stating "when the actual rail temperature is above the actual rail neutral temperature."

After consideration, FRA has determined that "buckling-prone condition" means a condition that can result in the track being laterally displaced due to high compressive forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

##### "Adjusting/De-Stressing" Definition

The petition also noted an error in the definition of "adjusting/de-stressing." The final rule defines "adjusting/de-stressing" as a "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." AAR points out that it is not the temperature of the rail that is adjusted, but rather the rail neutral temperature that is adjusted. AAR suggested that FRA replace "a rail's temperature" with "the rail neutral temperature" in the definition for "adjusting/de-stressing" in § 213.119(l). FRA has also noted this unintended omission in the definition and is amending the first sentence of the definition of "adjusting/de-stressing" to mean "a procedure by which a rail's neutral temperature is re-adjusted to the desired value."

#### Regulatory Impact and Notices

##### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, Feb. 26, 1979). The original final rule was determined to be non-significant. Furthermore, the amendments contained in this action are not considered significant because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments, additions, and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.

### *B. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA certifies that this action is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272. Because the amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations resulting from this action.

### *C. Paperwork Reduction Act*

This action does not change the information collection requirements contained in the original final rule.

### *D. Federalism Implications*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999). As discussed earlier in the preamble, these amendments to the final rule clarify definitions for compliance with the final rule governing CWR.

Executive Order 13132 requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects 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." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local

officials in the process of developing the regulation.

FRA has determined that this action would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this action would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule has preemptive effect. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to Section 20106. The intent of Section 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). Thus, subject to a limited exception for essentially local safety or security hazards, this final rule establishes a uniform Federal safety standard that must be met, and State requirements covering the same subject matter would be displaced, whether those State requirements are in the form of a State law, including common law, regulation, or order. Part 213 establishes Federal standards of care that preempt State standards of care, but this part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, including a plan or program required by this part. Provisions of a plan or program that exceed the requirements of this part are not included in the Federal standard of care.

In sum, FRA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this action has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under Section 20106 whenever FRA issues a rule or order. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this action is not required.

### *E. Environmental Impact*

FRA has evaluated this action 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 action 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)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with sections 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this action is not a major Federal action significantly affecting the quality of the human environment.

### *F. Unfunded Mandates 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) currently \$141,300,000 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 action would not result in the expenditure, in the aggregate, of \$141,300,000 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." 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 this action in accordance with Executive Order 13211. FRA has determined that this action is not likely to 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.

#### 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://DocketsInfo.dot.gov>.

#### List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

■ Accordingly, 49 CFR part 213 is amended by making the following correcting amendments:

#### PART 213—TRACK SAFETY STANDARDS

■ 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. In § 213.119(l), revise the definitions for “adjusting/de-stressing” and “buckling-prone condition” to read as follows:

#### § 213.119 Continuous welded rail (CWR); plan contents.

\* \* \* \* \*

(l) \* \* \*

*Adjusting/de-stressing* means a procedure by which a rail’s neutral 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.

\* \* \* \* \*

*Buckling-prone condition* means a track condition that can result in the track being laterally displaced due to high compression forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

\* \* \* \* \*

Issued in Washington, DC, on January 25, 2010.

**Joseph C. Szabo,**  
*Administrator.*

[FR Doc. 2010–1873 Filed 1–28–10; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XU12

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS closes the commercial fishery for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

**DATES:** The closure is effective 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of

Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils’ recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(1)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1,040,625 lb (472,000 kg) for Gulf group king mackerel in the Florida east coast subzone will be reached on February 4, 2010. Accordingly, the commercial fishery for king mackerel in the Florida east coast subzone is closed at 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4’ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25’ N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures