

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 231

[Docket No. FRA-2008-0116]

RIN 2130-AB97

#### Railroad Safety Appliance Standards, Miscellaneous Revisions

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA is proposing to amend the regulations related to safety appliance arrangements on rail equipment in a manner that is expected to promote the safe placement and securement of safety appliances on modern rail equipment by establishing a process for the review and approval of existing industry standards. This process will permit railroad industry representatives to submit requests for the approval of existing industry standards relating to the safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or similar vehicles in lieu of the specific provisions currently contained in part 231. It is anticipated that the proposed special approval process will further railroad safety. It will allow FRA to consider technological advancements and ergonomic design standards for new car construction and ensure that modern rail equipment complies with the applicable statutory and safety-critical regulatory requirements related to safety appliances while providing the flexibility to efficiently address safety appliance requirements on new designs in the future for railroad cars, locomotives, tenders, or similar vehicles.

**DATES:** (1) Written comments must be received by August 31, 2010. Comments received after that date will be considered to the extent possible

without incurring additional delay or expense.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 31, 2010 one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** You may submit comments identified by the docket number FRA-2008-0116 by any one of the following methods:

- *Fax:* 1-202-493-2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal.* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Carullo, Railroad Safety Specialist, Office of Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202-493-6480), [stephen.carullo@dot.gov](mailto:stephen.carullo@dot.gov) or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue,

SE., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6001), [stephen.n.gordon@dot.gov](mailto:stephen.n.gordon@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General

The Association of American Railroads (AAR) submitted a petition to amend 49 CFR part 231 on March 28, 2006. The AAR petition requested that FRA adopt new Railroad Safety Appliance Standards to incorporate changes in railcar design that have occurred since the safety appliance regulations were promulgated in their current form. FRA proposes to act on AAR's request by amending 49 CFR part 231 to add sections 231.33 and 231.35 to the existing regulatory language. These new sections will create a special approval process similar to what is found in parts 232 and 238. The proposed special approval process will enable the railroad industry to submit new rail equipment designs to FRA for approval with respect to the placement and securement of safety appliances on the designs. FRA anticipates that the proposed sections will have multiple benefits, including allowing for greater flexibility within the railroad industry and increasing rail safety by incorporating modern ergonomic design standards and technological advancements in construction.

##### II. Statutory and Regulatory History

The Railroad Safety Appliance Standards set forth in 49 CFR part 231 arose out of an extended legislative and regulatory effort, beginning in the 19th century, to improve the safety of railroad employees and the public. As railroads rapidly began to grow and develop following the Civil War, it became increasingly apparent that new measures were needed to protect train service employees who were directly involved in the movement of trains. Most vehicles did not have adequate safety mechanisms and many of the practices and procedures used by train service employees were not safe. Employees regularly controlled the speed of (and sometimes stopped) trains by using the handbrakes. In many cases, this required train service employees to perch themselves on top of freight cars while the cars were moving at high rates of speed over rough track. Additionally, use of the "link and pin" coupler, which was the standard method for coupling

railcars, required employees to go between the ends of railcars to operate or adjust the coupler. These practices and others of like type led to excessive numbers of deaths and injuries among train service employees during the expansion of the railroad system following the Civil War. Indeed, during the eight (8) years prior to the passage of the first Safety Appliance Act in 1893, the number of employees killed or injured was equal to the total number of people employed by the railroad in a single year.

The rate at which railroad employees were killed or injured during this time frame spurred efforts to increase workplace safety in at least two areas related to appliances on railroad cars, locomotives, tenders, and other vehicles. New technologies such as power brakes and automatic couplers were pursued, but also there were increased calls for regulation. Between 1890 and 1892, Congress responded with the introduction of seventeen (17) bills designed to promote the safety of employees and travelers on the railroad. Ultimately, the first Safety Appliance Act was passed by Congress and signed into law on March 2, 1893. Among other things, the first Safety Appliance Act required the use of power brakes on all trains engaged in interstate commerce as well as requiring all railcars engaged in interstate commerce to be equipped with automatic couplers, drawbars, and handholds. In 1903, Congress passed the second Safety Appliance Act, which extended the requirements of the first Act to any rail equipment operated by a railroad engaged in interstate commerce. Finally, in 1910 the third Safety Appliance Act was passed requiring that all vehicles be equipped with hand brakes, sill steps, and, where appropriate, running boards, ladders, and roof handholds. The third Safety Appliance Act also directed the Interstate Commerce Commission (ICC) to designate the number, dimensions, locations, and manner of application of the various safety appliances identified in the Act.

The ICC complied with this mandate by issuing its order of March 13, 1911. The March 13, 1911 order established the initial Railroad Safety Appliance Standards. This order, as amended, designated the number, dimensions, location, and manner of application for safety appliances on box cars, hopper cars, gondola cars, tank cars, flat cars, cabooses, and locomotives. It also contained a catch-all section for "cars of special construction" that were not specifically covered in the order. In many ways, the March 13, 1911 order continues to serve as the basis for the

present day regulations found in part 231. Indeed, although FRA supplanted the ICC as the agency responsible for promulgating and enforcing railroad safety programs in 1966, *see* Department of Transportation Act of 1966, 49 U.S.C. 103, the general framework established by the order of March 13, 1911 is still in existence today.

### III. FRA's Approach to the Railroad Safety Appliance Standards in This NPRM

The Railroad Safety Appliance Standards encompassed in part 231 serve the purpose of increasing railroad safety by identifying the applicable safety appliance requirements for various individual car types. *See, e.g.*, 49 CFR 231.1, box and other house cars built or placed into service before October 1, 1966. While these regulations continue to serve their purpose, FRA recognizes the railroad industry has evolved over time. The industry has created and continues to create new railcar types to satisfy the demands for transporting freight as well as passengers on the present-day railroad. Many of the modern railcar types that are presently being built to handle railroad traffic do not fit neatly within any of the specific car body types identified in the existing regulations and ambiguities sometimes arise regarding the placement of safety appliances on these car types.

Because modern designs often cannot be considered a car type that is explicitly listed in part 231, they are typically treated as cars of special construction. *See* 49 CFR 231.18. The "cars of special construction" provision does not identify specific guidelines that can be used by the railroad industry to assist it in the construction and maintenance of the safety appliances on modern railcar designs. Instead, § 231.18 directs the industry to use the requirements, as nearly as possible, of the nearest approximate car type. Problems arise because modern designs are often combinations of multiple car types, and the design of any particular car may appear to be one type or another depending on the position of the individual viewing the car. As an example, a bulkhead flat car appears to be a box car when viewed from the A-end or B-end of the car, but appears to be a flat car when viewed from either side. As a result, the industry is forced to use bits and pieces from multiple sections of part 231 in an effort to ensure compliance with the Railroad Safety Appliance Standards on bulkhead flatcars and other modern rail equipment.

Another problem for modern railcar designs is that part 231 defines the location of many safety appliances by reference to the side or end of the car. While this worked well for the car types that were in existence when the ICC issued its March 13, 1911 order, it often is difficult to define exactly what parts on modern railcars constitute the side or end. This results in ambiguity regarding what is the appropriate location for certain safety appliances, such as handholds and sill steps.

Together these factors can make compliance with the Railroad Safety Appliance Standards difficult and inefficient when dealing with modern railcar designs. In addition the current regulations do not contemplate advancements in the design of such vehicles. This means the current regulations can operate to preclude the application of technological innovations and modern ergonomic design principles that would increase the safety of persons who work on and around rail equipment and use safety appliances on a regular basis.

The AAR Safety Appliance Task Force (Task Force) consists of representatives from the Class I railroads, labor unions, car builders, and government (FRA and Transport Canada participate as non-voting members), as well as ergonomics experts. The Task Force is developing new industry standards for safety appliance arrangements on new car construction. At this time, the Task Force has developed a base safety appliance standard as well as industry safety appliance standards for modern boxcars, covered hopper cars, and bulkhead flat cars, which FRA expects to serve as the core safety appliance criteria that can be used to guide the safety appliance arrangements on railcars that are more specialized in design. The Task Force's new standards incorporate ergonomic design principles that increase the safety and comfort for persons working on and around safety appliance apparatuses. For example, the Task Force standards establish minimum foot clearance guidelines for end platforms that allow for wider and stiffer sill steps to support a person's weight.

The AAR petition to amend part 231 requested that FRA adopt these new industry standards and amend its regulations to recognize changes in railcar design since the safety appliance regulations were promulgated in their current form. Because the standards submitted by AAR in connection with its petition require some modification before they can be approved and adopted by FRA, FRA is not proposing to incorporate the standards into part

231 at this time. FRA prefers to utilize the process being proposed in this NPRM to fully evaluate and assess the industry standards developed by the Task Force to ensure that they are complete and enforceable. Thus, FRA proposes to act on AAR's petition for rulemaking by establishing a special approval process similar to that currently contained in 49 CFR parts 232 and 238.

Existing § 232.17 allows railroads to adopt an alternative standard for single car air brake tests and use new brake system technology where the alternative standard or new technology is shown to provide at least the equivalent level of safety. Similarly, § 238.21 allows railroads to adopt alternative standards related to passenger equipment safety in a wide range of areas such as performance criteria for flammability and smoke emission characteristics, fuel tank design and positioning, single car air brake testing, and suspension system design, where the alternative standards or new technologies are demonstrated to provide at least the equivalent level of safety. Section 238.230 borrows the process set out in § 238.21. It allows a recognized representative of the railroads to request special approval of industry-wide alternative standards relating to the safety appliance arrangements on any passenger car type considered to be a car of special construction.

The special approval process being proposed for part 231 establishes a process for submitting, reviewing, and approving the use of new standards as they are developed by the industry. It would also allow for an industry representative to submit modifications of industry-approved safety appliance standards for FRA's review and approval. The proposed regulation closely follows the processes set forth in §§ 232.17, 238.21, and 238.230. FRA anticipates that the proposed amendment to part 231 will benefit railroad safety by: (1) Allowing FRA to take into account technological advancements and ergonomic design standards for new car construction, (2) ensuring that modern railcar designs comply with applicable statutory and safety-critical regulatory requirements related to safety appliances, and (3) providing flexibility to efficiently address safety appliance requirements on new railcar and locomotive designs in the future.

#### IV. Section-by-Section Analysis

##### *Section 231.33 Procedure for Special Approval of Existing Industry Safety Appliance Standards*

This proposed section establishes a process through which a representative of the railroad industry may petition FRA for special approval of an existing industry safety appliance standard. FRA anticipates that this special approval process will minimize uncertainty in vehicle design and maintenance by allowing the industry, through its AAR Task Force, to create clear industry standards that identify the appropriate safety appliance arrangements on railroad cars, locomotives, tenders, or similar vehicles. This should lessen the extensive reliance on § 231.18, cars of special construction, under which much of the modern rail equipment presently is built. While AAR's petition for rulemaking requests that FRA adopt new Railroad Safety Appliance Standards incorporating changes based on modern railcar design, FRA expects that the proposed special approval process will better serve the goal of adapting to changes in modern railcar design while also facilitating compliance with statutory and safety-critical regulatory requirements.

FRA recognizes that a necessary adjunct to developing industry standards for new car types that would otherwise fall under § 231.18 is to update the standards for cars that are already covered under part 231. The core criteria in these standard car types can then be used as guidelines for other types of cars with more specialized designs. It is FRA's understanding that the industry standards developed by the AAR Task Force include a new base industry safety appliance standard as well as standards for modern boxcars and covered hopper cars, each of which is specifically covered in part 231. It is anticipated that AAR will petition through the proposed special approval process to have the industry standards for these car types approved by FRA since such standards must be approved by FRA prior to going into effect. The use of industry standards for new car construction related to these car types will ensure consistency in the application of FRA-approved industry standards when applied to other types of rail equipment while also serving as the building blocks towards recognizing safer, more efficient designs.

The regulatory relief contemplated by this proposed section will allow FRA to review existing industry safety appliance standards created by the railroad industry to ensure that the standards will provide at least an

equivalent level of safety as the existing FRA standards. The public will be given notice of and opportunity to comment on any changes to existing regulations that are contained in a special approval petition before FRA acts on the petition in accordance with the Administrative Procedure Act. *See* 5 U.S.C. 553(b). Where FRA determines that a petition complies with the requirements of this section and the existing industry safety appliance standard provides an equivalent level of safety to existing FRA standards, FRA may grant approval to the industry standard for use in new car construction. FRA expects that the special approval process will allow the rail industry to incorporate new railcar designs as well as technological and ergonomic advancements with greater speed and efficiency.

Proposed paragraph (b) establishes the process for submission of a petition for special approval of an existing industry standard for new car construction. Petitions will only be accepted from an industry representative and must contain standard(s) that will be enforced industry-wide. Each petition for special approval must include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition.

Proposed paragraph (b)(2) sets forth the minimum requirements of the petition for special approval of an existing industry safety appliance standard. The petition must identify the type(s) of car to which the standard would be applicable as well as the section or sections within the safety appliance regulations that the existing industry standard would act as an alternative to for new car construction. The standard contained in the petition must, as nearly as possible, based upon the design of the equipment, provide for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in part 231.

Because the Railroad Safety Appliance Standards encompassed in part 231 were promulgated to enforce specific statutory provisions, proposed paragraph (b)(2) requires that the industry standard comply with the requirements contained at 49 U.S.C. 20301 and 20302. The specific number, dimension, location, and manner of application of each safety appliance also must be contained in the industry standard in the petition. Any such industry standard must provide at least the equivalent level of safety as would otherwise be provided under FRA's current regulations.

Under proposed paragraph (b)(2), the industry representative submitting the petition also must include sufficient information through data or analysis, or both, for FRA to consider in making its determination of whether the existing industry standard will provide the requisite level of safety. This would include identifying where the industry standard deviates from the existing FRA regulation and providing an explanation for any such deviation. Additionally, drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances must be included in the petition to assist FRA in its decision making process.

Finally, proposed paragraph (b)(2) requires a demonstration of the ergonomic suitability of the proposed arrangements in normal use. Given that the AAR Task Force regularly includes at least one ergonomic expert, FRA expects that such factors will be considered during the development process of the industry standards that are being submitted for approval.

FRA requests comments concerning the information required in proposed paragraph (b)(2). Specifically, FRA requests comments about whether the information required in this paragraph is necessary and sufficient to allow FRA to make an informed decision regarding a petition for approval.

Proposed paragraph (b)(3) requires that the petitioner include a statement affirming that a copy of the petition has been served on the designated labor representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under part 231. The statement must include a list of the names and addresses of each person served.

Proposed paragraph (c) sets up the service requirements for the petition for special approval of an existing industry standard for new car construction. The petitioner is required to submit the petition to FRA's Docket Clerk. The petitioner is also required to serve a copy of the petition on the appropriate labor representatives and the organizations or bodies to which the special approval pertains or that issued the industry standard that is proposed in the petition. The petitioner also must serve any other person who at least 30 days, but not more than 5 years prior to the filing of the petition, has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of part 231. Any such statement of interest shall reference the specific section(s) of part

231 in which the person has an interest. FRA will post any such statement of interest that complies with the regulation in the docket to ensure that each statement is accessible to the public.

Proposed paragraph (d) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for special approval an existing industry standard for new car construction.

Proposed paragraph (e) establishes a 60-day comment period from the date of publication of the notice in the **Federal Register** concerning a petition. Due to the nature of the special approval process and the fact that the industry standards, if approved, will have an industry-wide effect, FRA seeks to provide sufficient time for all interested parties to comment prior to making its decision disposing of a petition. All comments must set forth the specific basis upon which the comments are made and contain a concise statement of the interest of the commenter in the proceeding.

Proposed paragraph (f) sets up the process for disposing of petitions for special approval. Under this paragraph, FRA may grant the petition, deny the petition, or return it for additional consideration. Normally, FRA will act on a petition within 90 days of the close of the comment period related to the petition; however, if the petition is neither granted nor denied within the 90-day period, then it will remain pending unless withdrawn by the petitioner.

Proposed paragraph (f)(3) sets forth that a petition may be granted where FRA determines that the petition complies with the requirements of § 231.33 and that the existing industry safety appliance standard provides at least an equivalent level of safety to existing FRA standards. Alternatively, a petition will be denied where FRA determines that it does not comply with the requirements of § 231.33 or that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standard.

In instances where FRA determines that further information is required or that the petition may be amended in a reasonable manner to comply with the requirements of § 231.33 or to ensure that the existing industry standard provides an equivalent level of safety to existing FRA standards; the petition may be returned to the petitioner. In such circumstances, FRA will provide written notice to the petitioner of the item(s) requiring additional consideration. The petitioner is

provided with 60 days from the date of FRA's written notice of return for additional consideration to reply. The petitioner's reply must address the item(s) identified by FRA in the written notice of the return of the petition for additional consideration as well as complying with the submission requirements of § 231.33(b) and the service requirements in § 231.33(c). If petitioner fails to submit a response within the prescribed time period, the petition will be deemed withdrawn, unless good cause is shown.

Proposed paragraph (f)(5) provides that when a petition is granted, it will go into effect on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. For example, if FRA were to approve a petition on July 1, 2010, the industry standard would become effective on January 1, 2012, for regulatory enforcement purposes. This will allow the industry appropriate time to incorporate the standard, train employees, and fit facilities to meet the new requirements. Also, a copy of the approved industry safety appliance standard will be placed in the related public docket by FRA where it can be accessed by all interested parties.

Proposed paragraph (f)(6) establishes the standard for reopening a granted petition for special approval. A granted petition may be re-opened only where there is a showing of good cause. Good cause requires the submission of subsequent evidence that was not previously considered. The subsequent evidence must demonstrate that a granted petition fails to comply with the requirements of § 231.33; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type; or that further information is required to make such a determination.

Proposed paragraph (g) provides that any industry standard approved pursuant to § 231.33 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties associated with the failure to follow an approved industry safety appliance standard will be assessed under part 231 by using the applicable defect code contained in Appendix A.

#### *Section 231.35 Procedure for Modification of an Approved Industry Safety Appliance Standard*

This proposed section contains the proposed procedural requirements for

modifying industry safety appliance standards that previously have been approved by FRA. As in proposed § 231.33, FRA believes that notice to the public and an opportunity to comment is necessary under the Administrative Procedure Act. If the petition for modification is minor and there is no objection to the petition for modification by FRA or any other interested party, the modified industry safety appliance standard will automatically become effective fifteen (15) days after the close of the comment period. In those circumstances where FRA or any other interested party objects to the modification petition FRA proposes disposing of the petition through the process laid out in proposed § 231.33(f). FRA expects that using the framework in proposed § 231.33(f) will allow for a more thorough review by the agency to ensure that the proposed modification provides at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s) prior to disposing of the petition for modification.

Proposed paragraph (a) provides that an industry representative may seek modification of an existing industry safety appliance standard for new car construction after it has been approved under § 231.33. Any such petition for modification must include each of the elements identified in § 231.33(b).

Proposed paragraph (b) covers service of petitions for modification. The procedures for service of petitions for modification is the same as proposed in § 231.33(c).

Proposed paragraph (c) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for modification received under § 231.35(a).

Proposed paragraph (d) provides for the same 60-day comment period as proposed in § 231.33(e).

Proposed paragraph (e) establishes the process for FRA review of petitions for modification. It is expected that FRA will review the petition for modification during the 60-day comment period. In instances where FRA has an objection to the requested modification, it will provide written notification to the party requesting the modification detailing FRA's objection.

Proposed paragraph (f) sets up the procedure for FRA's disposition of petitions for modification. A modification proposed in a petition for modification will become effective fifteen (15) days after the close of the 60-day comment period if FRA does not receive any comments objecting to the requested modification or if FRA does not issue a written objection to the

requested modification. If an objection to the requested modification is raised by either an interested party or FRA, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and disposition of the petition will fall under the procedures provided in § 231.33(f). Similarly, a petition for modification that has been granted may be re-opened where good cause is shown, as discussed above.

Proposed paragraph (g) provides that any modification of an industry standard approved by FRA under § 231.35 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. As with § 231.33, civil penalties will be assessed using the applicable defect code contained in appendix A to part 231.

## V. Regulatory Impact

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

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866, 58 FR 51735 (September 30, 1993), and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (February 26, 1979). It merely seeks to add an alternative method of compliance into the existing regulatory requirements contained in 49 CFR part 231. The alternative method of compliance is expected to be in the form of a special approval process that will allow FRA to accept new railcar designs incorporating ergonomic design standards and technological advancements. FRA anticipates that the implementation of the special approval process in the railroad industry will generate a beneficial effect on the National economy and will not have an economically adverse impact of over \$100 million per annum, as adjusted for inflation.

### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, and Executive Order 13272, 67 FR 53461 (August 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity

impact of this proposed rule, and certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC-10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA-2008-0116.

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 that is 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 that formally establishes "small entities" as railroads which 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 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.

There are approximately 700 small railroads that could be affected by the proposed regulation. Consequently, this regulation could affect a substantial number of small entities. However, FRA does not anticipate that this regulation would impose a significant economic impact on such entities.

The proposed rule would also apply to governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small for purposes of the SBA (i.e., no entity serves a locality with a population less

than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation would also be subject to this rule, but they are not small entities and likewise receive Federal transportation funds.

The proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as there are no direct costs to small entities. Small entities will not be responsible for preparing the petitions for special approval. Furthermore, FRA does not believe there will not be any significant costs to implementing any approved industry standard as any such standard will likely be a repositioning of existing safety appliances and will only be applicable to newly manufactured units. FRA believes that these construction costs, if any, will be negligible. Moreover, few small entities purchase newly manufactured equipment; generally, these operators acquire used equipment from larger railroads. Accordingly, FRA does not consider this impact of this proposal to be significant for small entities.

FRA invites comments from all interested parties on this Certification. FRA particularly encourages small entities that could potentially be impacted by the proposed amendment to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official U.S. Department of Transportation (DOT) docket. A draft of the proposed rule has not been submitted to the Small Business Administration (SBA) for formal review. However, FRA will consider any comments submitted by the SBA in developing the final rule.

**C. Federalism**

Executive Order 13132, 64 FR 43255 (August 10, 1999), 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.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Safety Appliance Acts (former SAA), repealed and recodified at 49 U.S.C. 20301–20304, 20306. See Public Law 103–272 (July 5, 1994). The former FRSA 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 hazard” exception to section 20106. Moreover, the former SAA has been interpreted by the Supreme Court as totally preempting the field “of equipping cars with appliances intended for the protection of employees.” See *Southern Ry. Co. v. R.R. Commission of Indiana*, 236 U.S. 439, 446, 35 S.Ct. 304, 305 (1915).

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under the former FRSA and the former SAA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

**D. International Trade Impact Assessment**

The Trade Agreement Act of 1979, Public Law 96–39 (July 26, 1979), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

**E. Paperwork Reduction Act**

The information collection requirements in this proposed rule 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 sections that contain the new information collection requirements, and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
231.33—Special Approval Petitions of an Existing Industry Safety Appliance Standard for New Car Construction.	AAR .....	5 petitions .....	160 hours .....	800
—Statement Affirming Copy of Special Approval Petition Has Been Served on RR Employee Representatives.	AAR .....	5 statements .....	30 minutes .....	3

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Special Approval Petition Copies to RR Employee Representative/Other Parties.	AAR .....	565 copies .....	2 hours .....	1,130
—Statements of Interest to FRA .....	5 Labor Groups/Public ..	15 statements .....	7 hours .....	105
—Comments on Special Approval Petitions .....	728 Railroads/5 Labor Groups/Public.	25 comments .....	6 hours .....	150
—Disposition of Petitions: Hearings .....	AAR/5 Labor Groups/Public.	1 hearing .....	8 hours .....	8
—Disposition of Petitions: Further Information Needed.	AAR .....	1 document .....	3 hours .....	3
231.35—Petitions for Modification of an Approved Existing Industry Safety Appliance Standard for New Car Construction.	AAR .....	5 petitions .....	160 hours .....	800
—Statement Affirming Copy of Modification Petition Has Been Served on RR Employee Representatives.	AAR .....	5 statements .....	30 minutes .....	3
—Modification Petition Copies to RR Employee Representative/Other Parties.	AAR .....	565 copies .....	2 hours .....	1,130
—Statements of Interest to FRA .....	5 Labor Groups/Public ..	15 statements .....	7 hours .....	105
—Comments on Modification Approval Petitions	728 Railroads/5 Labor Groups/Public.	25 comments .....	6 hours .....	150
—Disposition of Petitions: Further Information Needed.	AAR .....	1 document .....	3 hours .....	3

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 functions 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 Mr. Robert Brogan, FRA Office of Safety, Information Clearance Officer, at 202-493-6292, or Ms. Kimberly Toone, FRA Office of Administration, Information Clearance Officer, at 202-493-6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following addresses: *robert.brogan@dot.gov*; *kimberly.toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule 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 final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to 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 the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

*F. Compliance With the Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (March 22, 1995), 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 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their

designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of \$100 million (adjusted annually for inflation) (currently \$140.8 million) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The proposed amendment does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

*G. Environmental Assessment*

FRA has evaluated this proposed 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 proposed rule 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. See 64 FR 28547 (May 26, 1999). Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.

\* \* \* \* \*

The following classes of FRA actions are categorically excluded:

\* \* \* \* \*

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 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 proposed rule is not a major Federal action significantly affecting the quality of the human environment.

#### H. 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 NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

#### I. Privacy Act

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, 65 FR 19477-78, or you may visit <http://www.regulations.gov/search/footer/privacyanduse.jsp>.

#### List of Subjects in 49 CFR Part 231

Penalties, Railroad safety, Railroad safety appliances, Special approval process.

#### Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 231 of subtitle B, chapter II of title 49 of the Code of Federal Regulations as follows:

#### PART 231—[AMENDED]

1. The authority citation for part 231 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Add §§ 231.33 and 231.35 to read as follows:

#### § 231.33 Procedure for special approval of existing industry safety appliance standards.

(a) *General.* The following procedures govern the submission, consideration and handling of any petition for special approval of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or similar vehicles.

(b) *Submission.* An industry representative may submit a petition for special approval of an existing industry safety appliance standard for new construction. A petition for special approval of an industry standard for safety appliances shall include the following:

(1) The name, title, address, and telephone number of the primary individual to be contacted with regard to review of the petition.

(2) An existing industry-wide standard that, at a minimum:

(i) Identifies the type(s) of equipment to which the standard would be applicable and the section or sections within the safety appliance regulations that the existing industry standard would operate as an alternative to for new car construction;

(ii) Ensures, as nearly as possible, based upon the design of the equipment, that the standard provides for the same complement of handholds, sill steps,

ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in this part;

(iii) Complies with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302;

(iv) Addresses the specific number, dimension, location, and manner of application of each safety appliance contained in the industry standard;

(v) Provides appropriate data or analysis, or both, for FRA to consider in determining whether the existing industry standard will provide at least an equivalent level of safety;

(vi) Includes drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances; and

(vii) Demonstrates the ergonomic suitability of the proposed arrangements in normal use.

(3) A statement affirming that the petitioner has served a copy of the petition on designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served.

#### (c) Service.

(1) Each petition for special approval under paragraph (b) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for special approval of an existing industry safety appliance standard under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard to which the special approval pertains or issued the industry standard that is proposed in the petition; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590, and shall reference the specific section(s) of this part in which the person has an interest.

A statement of interest that properly references the specific section(s) in which the person has an interest will be posted in the docket to ensure that each statement is accessible to the public.

(d) **Federal Register notice.** FRA will publish a notice in the **Federal Register** announcing the receipt of each petition received under paragraph (b) of this section. The notice will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the website or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.-5 p.m.).

(e) *Comment.* Not later than 60 days from the date of publication of the notice in the **Federal Register** concerning a petition received pursuant to paragraph (b) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding; and  
 (2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(f) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter, if necessary.

(2) FRA will normally act on a petition within 90 days of the close of the comment period related to the petition. If the petition is neither granted nor denied within that timeframe, the petition will remain pending unless withdrawn by the petitioner.

(3) A petition may be:

(i) Granted where it is determined that the petition complies with the requirements of this section and that the existing industry safety appliance

standard provides at least an equivalent level of safety as the existing FRA standards;

(ii) Denied where it is determined that the petition does not comply with the requirements of this section or that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standards; or

(iii) Returned to the petitioner for additional consideration where it is determined that further information is required or that the petition may be amended in a reasonable manner to comply with the requirements of this section or to ensure that the existing industry standard provides at least an equivalent level of safety as the existing FRA standards. Where the petition is returned to the petitioner, FRA will provide written notice to the petitioner of the item(s) identified by FRA as requiring additional consideration. Petitioner shall reply within 60 days from the date of FRA's written notice of return for additional consideration or the petition will be deemed withdrawn, unless good cause is shown. Petitioner's reply shall:

(A) Address the item(s) raised by FRA in the written notice of the return of the petition for additional consideration;

(B) Comply with the submission requirements of paragraph (b) of this section; and

(C) Comply with the service requirements in paragraph (c) of this section.

(4) When FRA grants or denies a petition, or returns a petition for additional consideration, written notice will be sent to the petitioner and other interested parties.

(5) If a petition is granted, it shall go into effect on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. FRA will place a copy of the approved industry safety appliance standard in the related public docket where it can be accessed by all interested parties.

(6) A petition, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

**§ 231.35 Procedure for modification of an approved industry safety appliance standard for new car construction.**

(a) *Petitions for modification of an approved industry safety appliance standard.* An industry representative may seek modification of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or similar vehicles after the petition for special approval has been approved pursuant to § 231.33. The petition for modification shall include each of the elements identified in § 231.33(b).

(b) *Service.*

(1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

(c) **Federal Register** document. Upon receipt of a petition for modification, FRA will publish a notice in the **Federal Register** announcing the receipt of each petition received under paragraph (a) of this section. The notice will identify the public docket number in the Federal eRulemaking Portal (FeP) where the

contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(d) *Comment.* Not later than 60 days from the date of publication of the notice in the **Federal Register** concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(e) *FRA Review.* During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

(f) *Disposition of petitions for modification.*

(1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in § 231.33(f).

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any modification of an industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

Issued in Washington, DC, on June 29, 2010.

**Joseph C. Szabo,**  
*Administrator, Federal Railroad Administration.*

[FR Doc. 2010-16153 Filed 7-1-10; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2009-0072]  
[92210-1117-0000-B4]

RIN 1018-AW23

#### Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for Santa Ana Sucker

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are reopening the comment period on our December 9, 2009, proposed revised designation of critical habitat for Santa Ana sucker (*Catostomus santaanae*) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed revised critical habitat designation, the draft economic analysis (DEA) associated with the proposed critical habitat designation, proposed

revisions to one subunit, and the amended Required Determinations section of the preamble. We are also announcing the location and time of a public hearing to receive public comments on the proposal. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

**DATES:** *Written comments:* You may submit comments by one of the following methods: We will consider comments that we receive on or before August 2, 2010.

*Public hearing:* We will hold a public hearing on this proposed rule on July 21, 2010, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m.

**ADDRESSES:** *Written comments:* You may submit comments by one of the following methods:

• Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R8-ES-2009-0072.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2009-0072; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

*Public hearing:* We will hold a public hearing at Ayres Suites Corona West, 1900 W Frontage Road, Corona, CA 92882.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431-9440; facsimile (760) 431-5901. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, and other interested parties during this reopened comment period on the proposed rule to revise critical habitat