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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 222

[Docket No. FRA-2007-27285, Notice No. 1]
RIN 2130-AB86

Use of Locomotive Horns at Highway-Rail Grade Crossings;
Technical Amendments to Appendix D

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

ACTION: Direct final rule.

SUMMARY: This direct final rule makes technical amendments to appendix D of part 222 of the Code of Federal Regulations to update information contained in the appendix and direct the public to the most recent value of the Nationwide Significant Risk Threshold (NSRT). The amendments are intended to eliminate confusion regarding the data and calculations that will be used to determine the NSRT on an annual basis. Interested parties may submit written adverse comments or request an oral hearing on these amendments during the thirty (30) day period following publication of this direct final rule.

DATES: Effective Date: Unless FRA receives written adverse comment or a request for an oral hearing on this direct final rule, the effective date will be October 9, 2007.

Written Comments: Comments or a request for an oral hearing must be received by September 10, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FRA-2007-27285 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: (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: Room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and 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://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading later in this document for more information.

Docket: For access to the docket to read comments received, go to <http://dms.dot.gov> at any time or go to Room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Ries, Office of Safety, Mail Stop 25, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: (202) 493-6299); or Kathryn Shelton, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: (202) 493-6038).

SUPPLEMENTARY INFORMATION:

Background

Appendix D of part 222 of title 49 of the Code of Federal Regulations was included in the interim final rule (68 FR 70586) in order to provide additional information about the calculations underlying various risk calculations discussed within the part. Even though a minor modification was made to appendix D when the final rule was issued (70 FR 21844, April 27, 2005), the appendix was not revised to reflect necessary variations in the data that would be used in future risk index calculations.

Changes to Appendix D

FRA has determined that appendix D needs to be revised in order to eliminate confusion about the data that will be used in certain risk index calculations. As currently written, portions of appendix D contain specific numbers and dates that are required to be revised on an annual basis, in order to properly calculate the NSRT. For example, in paragraph (e) under the section titled ``Risk Index'', a specific value is listed for the total number of collisions identified over a five-year period. However, each year that the NSRT is recalculated, this number and the date range will need to change. Otherwise, the NSRT value will not accurately reflect current risk levels at gated crossings nationwide where train horns are routinely sounded. Therefore, FRA is revising appendix D by removing references to specific numbers and dates that will change from year to year and simply leaving the relevant formulas. (Actual numbers will be provided in annual Federal Register notices announcing FRA's recalculation of the NSRT value.) FRA believes these technical amendments will avoid any misunderstanding or confusion over how the NSRT is calculated.

Notice and Comment Procedures

FRA has determined that these technical amendments to appendix D are nonsubstantive clarifications that will make the appendix more accurate, without changing the actual risk index calculations that were contained in the final rule. While FRA does not anticipate any adverse comment, interested parties may submit written adverse comments or request an oral hearing on these amendments during the thirty (30) day period immediately following publication of this direct final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034 (Feb. 26, 1979)).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), FRA has issued a final policy that formally establishes ``small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. Id.

FRA certifies that this direct final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will not be significant.

Paperwork Reduction Act

There are no new information collection requirements associated with this direct final rule. Therefore, no estimate of a public reporting burden is required.

Federalism Implications

Executive Order 13132, entitled, ``Federalism,'' issued on August 4, 1999, requires that each agency ``in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met * * *.''' This rulemaking action has been analyzed in accordance with the principles and criteria contained in

Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined that this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Environmental Impact

FRA has evaluated this regulation 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 regulation 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 28545, 28547, May 26, 1999. 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 regulation is not a major Federal action significantly affecting the quality of the human environment.

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 [\$120,800,000 or more (as adjusted 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. The direct final rule will not result in the expenditure, in the aggregate, of \$120,800,000 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: That (1)(i) 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 direct final rule in accordance with Executive Order 13211. FRA has determined that this direct final rule 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.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our 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 in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

List of Subjects in 49 CFR Part 222

Use of locomotive horns, Railroad safety.

The Rule

- In consideration of the foregoing, FRA amends part 222 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 222--[AMENDED]

- 1. The authority citation for part 222 continues to read as follows:

Authority: 28 U.S.C. 2461, note; 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 49 CFR 1.49.

- 2. Appendix D to Part 222 is amended by revising paragraphs (b) through (e) in the section titled ``RISK INDEX'' to read as follows:

Appendix D to Part 222--Determining Risk Levels

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Risk Index

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- (b) The average number of fatalities observed in fatal

collisions and the average number of injuries in collisions involving injuries are calculated by FRA as described in paragraphs (c) through (e).

(c) FRA will match the highway-rail incident files for the past five years against a data file containing the list of grade crossings where the train horn was not routinely sounded over that five-year period to identify two types of collisions involving trains and motor vehicles: (1) Those that occurred at crossings where the train horn was not routinely sounded during the period, and (2) those that occurred at crossings equipped with automatic gates where the train horn was routinely sounded. Certain records will be excluded, including records pertaining to incidents where the driver was not in the motor vehicle or where the motor vehicle struck the train beyond the fourth locomotive or rail car that entered the crossing. FRA believes that sounding the train horn would not be very effective at preventing such incidents.\1\

\1\ The data used to make these exclusions is contained in blocks 18--Position of Car Unit in Train; 19--Circumstance: Rail Equipment Struck/Struck by Highway User; 28--Number of Locomotive Units; and 29--Number of Cars on the current FRA Form 6180-57 Highway-Rail Grade Crossing Accident/Incident Report.

(d) Collisions in the group containing the gated crossings nationwide where horns were routinely sounded will then be identified as fatal, injury only or no casualty. Collisions will be identified as fatal if one or more deaths occurred, regardless of whether injuries were also sustained. Collisions will be identified as injury only when injuries, but no fatalities, resulted.

(e) The collisions (incidents) will be summarized by year for the five-year period preceding the year in which the risk index is being updated. The fatality rate for each year will be calculated by dividing the number of fatalities by the number of fatal incidents. The injury rate will be calculated by dividing the number of injuries in injury only incidents by the number of injury only incidents. FRA will publish updated fatality and injury rates on an annual basis in the Federal Register.

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- 3. Appendix D to Part 222 is amended by revising the section titled, ``Nationwide Significant Risk Threshold'' to read as follows:

Appendix D to Part 222--Determining Risk Levels

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Nationwide Significant Risk Threshold

The Nationwide Significant Risk Threshold is simply an average of the risk indexes for all of the gated public crossings nationwide where train horns are routinely sounded. This value will be recalculated annually and published in a notice in the Federal Register. For the most recent value of the Nationwide Significant

Risk Threshold, please visit FRA's public Web site at
<http://www.fra.dot.gov>

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- 4. Appendix D to Part 222 is amended by revising the section titled, ``Crossing Corridor Risk Index'' to read as follows:

Appendix D to Part 222--Determining Risk Levels

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Crossing Corridor Risk Index

The Crossing Corridor Risk Index is the average of the risk indexes of all the public crossings in a defined rail corridor.

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Issued in Washington, DC on August 2, 2007.
Clifford C. Eby,
Federal Railroad Deputy Administrator.
[FR Doc. 07-3871 Filed 8-8-07; 8:45 am]

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