



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 210

[Docket No. FRA-2017-0038]

RIN 2130-AC69

Railroad Noise Emission Compliance Regulations

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to eliminate the requirement that certain locomotives display a badge or tag to demonstrate the railroad has certified the locomotives comply with noise emission standards. This proposed rule would reduce economic burdens on the rail industry by removing the badge or tag requirement.

DATES: (1) Written comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after that date will be considered to the extent practicable.

(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 **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, one will be scheduled and FRA will publish a supplemental document in

the *Federal Register* to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA-2017-0038 may be submitted by any of the following methods:

- Web Site: Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, W12-140, Washington, DC 20590.
- Hand Delivery: Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE, W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the Ground level of the West Building, 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: Michael Watson, Industrial Hygienist, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue, SE, W38-224, Washington, DC 20590 (telephone 202-493-1388), or Sam Gilbert, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE, W31-228, Washington, DC 20590 (telephone 202-493-0270).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On January 30, 2017, the President issued Executive Order 13771, which requires, when an agency proposes a new significant regulation, it must identify at least two existing regulations to be repealed. FRA reviewed the Railroad Noise Emission Compliance Regulations in 49 CFR part 210¹ (“part 210”) and identified for potential elimination the requirement that railroads display a permanent badge or tag in the cabs of their locomotives certifying the locomotives comply with FRA’s noise emission standards. FRA believes eliminating this requirement would reduce economic burdens on the rail industry without adversely impacting compliance with part 210. Therefore, in this NPRM, FRA proposes to eliminate the badge or tag requirement.

FRA estimates there would be no cost burden associated with this proposed rule. In fact, the elimination of the requirement to install a badge in locomotives would save most railroads both the labor to install the badge, and the cost of the badge itself. Over a 20-year period, FRA estimates \$1,858,859 in cost savings would accrue—a present, discounted value of \$1,053,564 (7% discount).

¹ Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

II. Background and Overview of the Proposal

FRA regulations in part 210 limit the noise emitted by railroad locomotives, cars, and other equipment. FRA originally developed these regulations in consultation with the Environmental Protection Agency under the Noise Control Act of 1972 (86 Stat. 1234, Pub. L. 92-574) and FRA's general enforcement and inspection authority under the railroad safety statutes. See 41 FR 49183, 49183–84 (Nov. 8, 1976).

Part 210 requires railroads to certify that locomotives built after December 31, 1979, comply with FRA's noise emission standards. Under section 210.27(d), railroads must attach a permanent badge or tag in the cab of the locomotive displaying the results of the certification test (including the method, date and location of the test, and the sound level reading obtained during the test).

In 2014, the Association of American Railroads (AAR) requested FRA eliminate the requirement to display the certification of compliance with noise emission standards in the locomotive, in its comments on a separate proposed rule concerning stenciling requirements for window glazing. AAR Comment, November 25, 2014, Docket No. FRA-2012-0103. AAR noted that when FRA added section 210.27(d) in 1983, few locomotives had been tested and certified to comply with FRA's noise emission standards. AAR contended that instead of testing individual locomotives for compliance with the noise emission standards, railroads currently test locomotives by model. Documentation of that testing is maintained by the railroads as a usual and customary practice, and may be consulted if FRA has a doubt about whether a locomotive has been tested for compliance with part 210.

FRA declined to eliminate the display requirement for noise certification at that time because it was beyond the scope of the window-glazing rulemaking. However, FRA said it would consider the merits of AAR's request and evaluate how to address the issue in the future. 81 FR 6775, 6778 (Feb. 9, 2016).

FRA continually reviews and revises its regulations to ensure the regulatory burden on the rail industry is not excessive, clarify the application of existing requirements and remove requirements no longer necessary, and keep pace with emerging technology, changing operational realities and safety concerns. In addition, on January 30, 2017, the President issued Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs). Executive Order 13771 requires agencies to identify at least two existing regulations to repeal when they propose a new significant regulation. Because the badge or tag requirement is unnecessary for purposes of FRA enforcement of the noise testing requirements, FRA determined repealing section 210.27(d) would reduce the burden on the rail industry without adversely impacting FRA's ability to ensure compliance with part 210. Accordingly, FRA proposes to eliminate the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards.

III. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM.

Section 210.27 New locomotive certification.

Section 210.27 requires railroads certify their locomotives comply with FRA's noise emission standards. Paragraph (a) requires railroads certify that locomotives built

after December 31, 1979, comply with the noise emission standards. Paragraph (b) provides railroads must determine certification for each locomotive model by load cell testing or passby testing. Paragraph (c) states if railroads use passby testing, they should conduct the test with the locomotive operating at maximum rated horsepower output. Under paragraph (d), railroads must attach a permanent badge or tag in the cab of the locomotive to display the results of the certification test.

FRA determined this badge or tag is no longer necessary, and the proposed rule would remove paragraph (d) in its entirety. Although railroads would no longer need to display a badge or tag in the locomotive cab, they would still need to test their locomotives and certify they comply with the noise emission standards, as required under section 210.27(a) through (c).

IV. Regulatory Impact and Notices

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this proposed rule consistent with existing policies and procedures, and determined it to be non-significant under both Executive Orders 12866 and 13563 as well as DOT policies and procedures (44 FR 11034 (February 26, 1979)). The proposed rule is also consistent with Executive Order 13563, which emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Finally, this proposed rule is expected to be an EO 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

FRA proposes to eliminate the requirement that locomotives display a permanent

badge or tag to demonstrate they have been certified to comply with noise emission standards. (The permanent badge or tag will hereafter be referred to as a “badge” in this analysis.) A badge is typically a metal plate installed inside the cab of the locomotive. Most railroads would benefit from this proposed rule because a badge is currently required in all locomotives. Any railroad purchasing new locomotives would not be required to display a badge, therefore saving it money. Also, badges would no longer need to be replaced when locomotives are overhauled.

FRA estimates there would be no cost burden associated with this proposed rule. The elimination of the requirement to install a badge in locomotives would save most railroads both the labor to install the badge, and the cost of the badge itself. Over a 20-year period, this analysis finds \$1,858,859 in cost savings would accrue through the elimination of this requirement. The present, discounted value of these cost savings is \$1,053,564 (7% discount). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. FRA requests comments on all aspects of the regulatory evaluation and its conclusions.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (RFA) (94 Stat. 1164, Pub. L. 96-354), as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), require agency review of proposed and final rules to assess their impact on “small entities” for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies a rule is not expected to have a significant economic impact on a substantial

number of small entities. FRA expects this proposed rule would not have a significant economic impact on a substantial number of small entities.

Federal agencies may adopt their own size standards for small entities, in consultation with the Small Business Administration and in conjunction with public comment. FRA published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers with the revenue of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at 49 CFR part 209, Appendix C. FRA is using this definition for this rulemaking.

FRA estimates there are 704 Class III railroads, most of which would be affected by this proposed rule. Most Class III railroads do not purchase new locomotives; rather, they purchase used locomotives from Class I and Class II railroads. Therefore, any badges required would have already been installed by the larger railroad. If a small railroad did indeed purchase a new locomotive, however, they would save money because the badge would no longer be required. Small railroads would at all events benefit since they would not need to replace badges as they age or when locomotives are overhauled. Therefore, any impact on small railroads by this proposed regulation would likely be small and entirely beneficial.

FRA invites comments from all interested parties concerning the potential economic impact on small entities resulting from this proposed rule. FRA will consider

the comments and data it receives in determining the small entity impact for the final rule.

Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The sections that contain the current 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
210.27(a) – New Locomotive Certification – Request to Manufacturer for Certification	4 Manufacturers	4 requests	30 minutes	2 hours
210.27(d) – New Locomotive Certification – Identification of Certified Locomotive by Badge Plate (Proposed Rescission of Provision)	4 Manufacturers	790 badges	30 minutes	minus 395 hours (Previously Approved Burden by OMB)
210.31- Recorded Measurements of Locomotive Noise Emission Test	4 Manufacturers	745 forms/ records	3 hours	2,235 hours

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, Information Collection Clearance Officer, Office of Railroad Safety, Federal Railroad Administration, at 202-493-6292, or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Railroad Administration, Federal Railroad Administration, at 202-493-6139.

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 at Robert.Brogan@dot.gov, or to Ms. Toone at Kim.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 current OMB control number for this information collection is OMB No. 2130-0527.

Federalism Implications

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 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 (Federalism), agencies 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, or the agency consults with State and local government officials early in the process of developing the regulation.

This proposed rule has been analyzed consistent with the principles and criteria 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 substantial direct 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 under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–03. 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 U.S. Supreme Court has held the former LIA preempts the field concerning locomotive safety. See Napier v. Atl. Coast Line R.R., 272 U.S. 605 (1926) and Kurns v. R.R. Friction Prods. Corp., 565 U.S. 625 (2012). Therefore, if this proposed rule were adopted, it is possible States would be preempted from requiring that locomotives display a permanent badge or tag certifying the locomotive complies with FRA’s noise emission standards.

Environmental Impact

FRA has evaluated this proposed regulation consistent 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 this proposed 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 28547–48.

Under section 4(c) and (e) of FRA's Procedures, the agency has further concluded no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. Consequently, FRA finds this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 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 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 promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State,

local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year (adjusted annually for inflation), and thus preparation of such a statement is not required.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 210

Noise control.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 210 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

1. The authority citation for part 210 is revised to read as follows:

Authority: Sec. 17, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4916); 49 CFR 1.89.

§ 210.27 [AMENDED]

2. Amend § 210.27 by removing paragraph (d).

Issued in Washington, DC.

Ronald Louis Batory,

Administrator

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