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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 210**

**[Docket No. FRA-2017-0038, Notice No. 2]**

**RIN 2130-AC69**

**Railroad Noise Emission Compliance Regulations**

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

**ACTION:** Final rule.

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**SUMMARY:** In this final rule, FRA is eliminating the requirement that certain locomotives display a badge or tag to demonstrate the railroad has certified the locomotives comply with noise emission standards. This final rule reduces economic burdens on the rail industry by removing this badge or tag requirement.

**DATES:** This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** 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, 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 repeal. FRA reviewed the Railroad Noise Emission Compliance Regulations in 49 CFR part 210<sup>1</sup> (“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 locomotive noise emission standards. Eliminating this requirement will reduce economic burdens on the rail industry without adversely impacting compliance with the standards. Therefore, in this final rule, FRA eliminates the badge or tag requirement. FRA is making this rule effective upon its publication, as this rule relieves a regulatory burden, consistent with 5 U.S.C. 553(d)(1).

FRA estimates there will be no cost burden associated with this final rule. In fact, the elimination of the requirement to install a badge or tag in locomotives will save railroads the cost of labor to install the badge or tag, and the cost of the badge or tag itself. Over a 20-year period, FRA estimates railroads will accrue a net present value of \$1 million using a 7 percent discount rate.

### **II. Background and History**

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<sup>1</sup> Unless otherwise specified, all references to CFR sections and parts in this document refer to title 49 of the CFR.

Pursuant to the Noise Control Act of 1972 (86 Stat. 1234, Pub. L. 92-574), the Environmental Protection Agency (EPA) promulgated standards in 40 CFR part 201 to limit the noise emitted by railroad locomotives, cars, and other equipment. In consultation with EPA, FRA developed regulations in 49 CFR part 210 to ensure compliance with the noise emission standards. See 41 FR 49183, 49183-84 (Nov. 8, 1976).

Part 210 requires railroads to certify that locomotives built after December 31, 1979, comply with locomotive noise emission standards. Under § 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 locomotive noise emission regulations 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 § 210.27(d) in 1983, few locomotives had been tested and certified to comply with the noise emission standards. AAR contended that instead of testing individual locomotives for compliance with the noise emission standards, railroads currently test locomotives by model. Locomotives are built to the manufacturer's written specifications and those written specifications detail the technical features of a locomotive's particular model, including its certification under § 210.27. 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 locomotive noise emission regulations.

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), which 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 FRA enforcement of the noise testing requirements, FRA determined repealing § 210.27(d) would reduce the burden on the rail industry without adversely impacting FRA's ability to ensure compliance with locomotive noise emission regulations. Accordingly, on July 16, 2018 (83 FR 32826), FRA published a notice of proposed rulemaking (NPRM) proposing to eliminate the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards.

### **III. Discussion of Comments**

The NPRM solicited written comments from the public under the Administrative Procedure Act (5 U.S.C. 553). By the close of the comment period on September 14, 2018, FRA received one comment, a joint comment from AAR and the American Short Line and Regional Railroad Association (ASLRRA).

In the comment, AAR and ASLRRA stated railroads have been advocating for the removal of the certification display requirement since 2011. AAR and ASLRRA explained the certification display requirement is no longer necessary because the overwhelming majority of locomotives have already been tested by the manufacturers on a model-by-model basis. Accordingly, AAR and ASLRRA supported the NPRM's proposal to eliminate the certification display requirement.

FRA received no public comments conveying a need to change the scope or substance of the proposed rule. Therefore, in this final rule FRA eliminates the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards.

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

##### **Section 210.27 New Locomotive Certification**

Section 210.27 requires railroads to certify that their locomotives comply with noise emission standards. Specifically, paragraph (a) requires railroads to 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 permanent badge or tag is no longer necessary, and this final rule removes paragraph (d) in its entirety. FRA notes although railroads no longer need to display a badge or tag in the locomotive cab, the locomotives still need to be tested and certified to comply with the noise emission standards, as required under paragraphs (a) through (c) of this section.

## **V. Regulatory Impact and Notices**

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

FRA evaluated this final rule consistent with existing policies and procedures, and determined it to be non-significant under Executive Order 12866 as well as DOT policies and procedures (44 FR 11034 (February 26, 1979)). This final rule is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of the rule can be found in the rule's economic analysis.

FRA is eliminating 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. Railroads will benefit from this final rule because a badge had been required in all locomotives. Any railroad purchasing new locomotives will not be required to display a badge, therefore saving it money. Also, badges will no longer need to be replaced when locomotives are overhauled.

FRA estimates there will be no cost burden associated with this final rule. The elimination of the requirement to install a badge in locomotives will save railroads the cost of labor to install the badge, and the cost of the badge itself. Over a 20-year period, this analysis finds \$1 million in present value cost savings, estimated using a 7 percent discount rate. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this rule.

#### 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 has determined this final rule will 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 designates “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 will be affected by this final 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 will have already been installed when obtained from the larger railroad. If a small railroad did purchase a new locomotive, however, they would save money because the badge would no longer be required. Small railroads will also benefit since they will not need to replace badges as they age or when locomotives are overhauled. Therefore, any impact on small railroads by this final regulation will likely be small and entirely beneficial. Thus, pursuant to the RFA, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements in this final rule are being submitted 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
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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 ( <b>Rescission of Provision</b> )	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
TOTAL	4 Manufacturers	749 responses	2.987 hours	2,237 hours

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, FRA, at 202-493-6292, or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Information Technology, FRA, 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, 3<sup>rd</sup> Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov), or to Ms. Toone at [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this final 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.

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.

FRA analyzed this final rule consistent with the principles and criteria in Executive Order 13132. FRA determined the final rule will not have substantial direct effects on States, on the relationship between the national government and States, or on

the distribution of power and responsibilities among the various levels of government. In addition, FRA determined this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule 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, it is possible States could be preempted from requiring that locomotives display a permanent badge or tag certifying the locomotive complies with noise emission standards.

#### Environmental Impact

FRA has evaluated this final rule 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 final 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. 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 final rule 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. This final rule will 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.

**List of Subjects in 49 CFR Part 210**

Noise control.

**The Rule**

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

**PART 210—RAILROAD NOISE EMISSION COMPLIANCE REGULATIONS**

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 L. Batory,**  
Administrator.

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