

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 213**

[Docket No. FRA-2008-0036]

RIN 2130-AB90

Track Safety Standards; Continuous Welded Rail (CWR)

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend the Federal Track Safety Standards to promote the safety of railroad operations over continuous welded rail (CWR). In particular, FRA is proposing specific requirements for the qualification of persons designated to inspect CWR track, or supervise the installation, adjustment, or maintenance of CWR track. FRA is also proposing to clarify the procedures associated with the submission of CWR plans to FRA by track owners. FRA proposes that these plans focus on inspecting CWR for pull-apart prone conditions, and focus more specifically on CWR joint installation and maintenance procedures. This proposed rule would also make other changes to the requirements governing CWR.

DATES: (1) Written comments must be received by January 15, 2009. 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 December 31, 2008 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: Comments: Comments related to this Docket No. FRA-2008-0036 may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to www.Regulations.gov. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground

floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* 202-493-2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Please note that all comments received will be posted without change to www.Regulations.gov, including any personal information provided. Please see the discussion under the Privacy Act heading in the Supplementary Information section of this document.

Docket: For access to the docket to read background documents or comments received, go to www.Regulations.gov at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

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Background**I. Continuous Welded Rail (CWR)***A. General*

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is normally one continuous rail, there can be joints¹ in it for one or more reasons: The need for insulated joints that electrically separate track segments for signaling purposes, the need to terminate CWR installations at a segment of jointed rail, or the need to remove and replace a section of defective rail.

B. Statutory and Regulatory History for CWR

FRA issued the first Federal Track Safety Standards in 1971. See 36 FR 20336 (October 20, 1971). At that time, FRA addressed CWR in a rather general manner, stating, in 49 CFR 213.119, that railroads must install CWR at a rail temperature that prevents lateral displacement of track or pull-aparts of rail ends and that CWR should not be disturbed at rail temperatures higher than the installation or adjusted installation temperature.

In 1982, FRA removed § 213.119 because FRA believed it was so general in nature that it provided little guidance to railroads and it was difficult to enforce. See 47 FR 7275 (February 18, 1982) and 47 FR 39398 (September 7, 1982). FRA stated: "While the importance of controlling thermal stresses within continuous welded rail has long been recognized, research has not advanced to the point where specific safety requirements can be established." 47 FR 7279. FRA explained that continuing research might produce reliable data in this area in the future.

Congressional interest in CWR developed. With passage of the Rail Safety Enforcement and Review Act of 1992 (Pub. L. 102-365, September 3, 1992), Congress required the Secretary

¹ Rail joints commonly consist of two joint bars that are bolted to the sides of two abutting ends of rail and contact the rail at the bottom surface of the rail head and the top surface of the rail base.

of Transportation to evaluate procedures for installing and maintaining CWR and its attendant structure. In 1994, Congress further directed the Secretary to specifically evaluate cold weather installation procedures for CWR with passage of the Federal Railroad Safety Reauthorization Act of 1994 (Pub. L. 103-440, November 2, 1994), codified at 49 U.S.C. 20142. As delegated by the Secretary, *see* 49 CFR 1.49(m), FRA evaluated those procedures in connection with information gathered from the industry and FRA's own research and development activities. FRA then addressed CWR procedures by adding § 213.119 during its 1998 revision of the Track Safety Standards (49 CFR part 213). *See* 63 FR 33992 (June 22, 1998).

Section 213.119, as added in 1998, requires railroads to develop and submit to the Federal Railroad Administration, written CWR plans containing procedures that, at a minimum, provide for the installation, adjustment, maintenance, and inspection of CWR, as well as a training program and minimal recordkeeping requirements. Section 213.119 does not dictate which procedures a railroad must use in its CWR plan; however, it states that each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address the installation, adjustment, maintenance, and inspection of CWR, the inspection of CWR joints, and a training program for the application of those procedures. It allows each railroad to develop and implement its individual CWR plan based on procedures which have proven effective for it over the years. The operative assumption was that geophysical conditions vary so widely among U.S. railroads that, in light of what was then known about CWR, CWR plans should vary to take account of them. Accordingly, procedures can vary from railroad to railroad.

On August 10, 2005, President Bush signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59). Section 9005(a) of SAFETEA-LU amended 49 U.S.C. 20142 by adding a new subsection (e). This new subsection required that within 90 days after its enactment, FRA require (1) each track owner using CWR track to include procedures (in its procedures filed with FRA pursuant to § 213.119) to improve the identification of cracks in rail joint bars; (2) instruct FRA track inspectors to obtain copies of the most recent CWR programs of each railroad within the inspectors' areas of responsibility and require that

inspectors use those programs when conducting track inspections; and (3) establish a program to review CWR joint bar inspection data from railroads and FRA track inspectors periodically. This new subsection also provided that whenever FRA determines that it is necessary or appropriate, FRA may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in CWR.

Pursuant to this mandate, on November 2, 2005, FRA revised the Track Safety Standards by publishing an Interim Final Rule (IFR), 70 FR 66288, which addresses the inspection of rail joints in CWR. FRA requested comment on the IFR and provided the Railroad Safety Advisory Committee (RSAC) with an opportunity to review the comments on the IFR. To facilitate this review, on February 22, 2006, RSAC established the Track Safety Standards Working Group (Working Group). The Working Group was given two tasks: (1) To resolve the comments on the IFR, and (2) to make recommendations regarding FRA's role in oversight of CWR programs, including analyzing the data to determine effective management of CWR safety by the railroads. The first task, referred to as "Phase I" of the CWR review, included analyzing the IFR on the inspection of joint bars in CWR territory, reviewing the comments on the IFR, and developing recommendations for the final rule. With guidance from the Working Group, FRA published a final rule on October 11, 2006, 71 FR 59677, which addressed the comments on the IFR, adopted a portion of the IFR, and made changes to other portions. The final rule became effective October 31, 2006, and is codified at 49 CFR part 213. The Working Group then turned to the second task, referred to as "Phase II" of RSAC's referral, which involves an examination of all the requirements of § 213.119 concerning CWR—not focused only on those concerning joints in CWR. As discussed below, the Working Group reported its findings and recommendations to RSAC at its February 20, 2008 meeting. RSAC approved the recommended consensus regulatory text proposed by the Working Group, which accounts for the majority of this NPRM.

II. Railroad Safety Advisory Committee (RSAC) Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemaking and other safety program issues. The RSAC includes representation from all

of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway & Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petrochemical Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums (ARM);
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA)*;
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement (LCLAA)*;
- League of Railway Industry Women*;
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women*;
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association;
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB)*;
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte*;
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association Inc.;
- Transport Canada*;
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA); and

United Transportation Union (UTU).
* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

III. RSAC Track Safety Standards Working Group

As noted above, RSAC established the Track Safety Standards Working Group on February 22, 2006. To address Phase I of RSAC's referral, the Working Group convened on April 3–4, 2006; April 26–28, 2006; May 24–25, 2006; and July 19–20, 2006. The results of the Working Group's efforts were incorporated into the final rule that was published on October 11, 2006. To address Phase II of RSAC's referral, the Working Group convened on January 30–31, 2007; April 10–11, 2007; June 27–28, 2007; August 15–16, 2007; October 23–24, 2007; and

January 8–9, 2008. The Working Group's finding and recommendations were then presented to the full RSAC on February 20, 2008, as noted above.

The members of the Working Group, in addition to FRA, include the following:

AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSX), Kansas City Southern Railway Company (KCS), Norfolk Southern Railway Company (NS), and Union Pacific Railroad Company (UP);

Amtrak;

APTA, including members from Port Authority Trans-Hudson Corporation (PATH), LTK Engineering Services, Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Peninsula Corridor Joint Powers Board (Caltrain);

ASLRRA (representing Class III/ smaller railroads);

ASRSM (represented by staff from the California Public Utilities Commission (CPUC));

BLET;

BMWED;

BRS;

Kandrew, Inc.;

Transportation Technology Center, Inc. (TTCI); and

UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. In addition, NSTB staff attended all of the meetings and contributed to the discussions as well.

FRA has worked closely with the RSAC in developing its recommendations and believes that the RSAC has effectively addressed concerns with regard to FRA's management of CWR and rail carriers' effective implementation of their CWR plans. FRA has greatly benefitted from the open, informed exchange of information during the meetings. There is a general consensus among the railroads, rail labor organizations, State safety managers, and FRA concerning the primary principles FRA sets forth in this NPRM. The Working Group has also benefitted in particular from participation of NTSB staff. FRA believes that the expertise possessed by the RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this proposed rule.

The Working Group was unable to reach consensus on one item that FRA

has elected to include in this NPRM. The Working Group did not reach consensus with regard to the proposed change to 49 CFR 213.119(c), which describes the joint installation and maintenance procedures that track owners must include in their CWR plans. The FRA representatives to the Working Group felt strongly that the text is necessary to include in the NPRM, as the failure of CWR joints was the principal basis for the 2006 final rule. The FRA members believed that the integrity of CWR joints could not be definitively maintained without requiring that the specific installation and maintenance procedures delineated in proposed § 213.119(c) be included in the track owner's CWR plan. On the other hand, the rail carrier representatives maintained that such specific requirements would interfere with their freedom to modify installation and maintenance procedures as they saw fit. Nevertheless, it is FRA's position that the text is necessary to prevent the failure of CWR joints and has included this singular, non-consensus item into the rule text of this NPRM.

IV. FRA's Approach to CWR in This NPRM

As opposed to the more narrow approach taken by FRA when publishing the final rule on inspections of joints in CWR (Oct. 11, 2006; 71 FR 59677), FRA broadly reviewed all of § 213.119 for purposes of this NPRM. In collaboration with the Working Group, FRA examined compliance with § 213.119 in general and concerns brought forward by the industry. At the end of the first Working Group meeting, FRA decided to focus the review on the following issues: The training/re-training of individuals qualified to maintain and inspect CWR; the submission of CWR plans to FRA; the availability of a carrier's plan at CWR work sites; special inspections of CWR; the definition of CWR; ballast; and anchoring requirements.

A. Qualifications and Training of Individuals on CWR

During the rulemaking on inspections of joints in CWR, the BMWED suggested that there should be annual re-training of track inspectors on joint bar inspections in CWR. FRA understood this comment as pertaining to CWR training in general and resolved to address this concern as part of the Phase II task of broadly reviewing § 213.119. In carrying out this task, and because of the concern raised by the BMWED, the Working Group decided that it would be beneficial to review accident data from

Class I and shortline railroads to determine whether accidents on CWR could be attributed to training deficiencies of track inspectors. The Working Group established the Accident Review Task Force (AR Task Force) to facilitate this review and analysis, and it was comprised of FRA and the following Working Group members:

AAR, including BNSF, CSX, CP, NS, UP;

Amtrak;

APTA, including Metra;

ASLRRA;

BMWED; and

BRS.

Staff from the Volpe Center and NTSB also participated in this effort, which focused on researching and analyzing accident data from the years 2000 to 2007 for major causal factors of accidents on CWR. The AR Task Force initially reviewed over 1100 accident/incident report forms from January 2000 to August 2007. After taking into consideration the location of the most severe accidents/incidents, the AR Task Force narrowed its review to exclude accidents/incidents on Class 1 and excepted track, as defined in 49 CFR part 213. The final review included over 200 reports that met the objectives and criteria for study.

The AR Task Force determined that a high volume of accidents was due to misalignment of track, caused by sunkinks or buckling of the track. The AR Task Force also discovered that each incident studied occurred after track work had been performed recently, and, surprisingly, that the carriers' CWR engineering standards were not being followed in conducting various types of track-work. In particular, the research disclosed failure to adequately de-stress the track following a previous derailment; failure to maintain the neutral temperature of the rail and to record the amount of rail added or removed during installation; failure to adjust or replace deficient anchors; and failure to place the proper speed restrictions and/or maintain a sufficient length of time and/or tonnage on disturbed track. Moreover, upon review of the railroads' CWR program plans, FRA noted that the railroads were not providing comprehensive guidelines for the training/retraining of their employees in the application of CWR procedures.

Given the concerns raised, the Working Group decided that it was necessary to ensure that individuals are properly qualified and trained to install, adjust, maintain, and inspect CWR track. Section § 213.7 currently delineates how a railroad must

designate (1) qualified persons to supervise restorations and renewals of track, (2) qualified persons to inspect track, and (3) persons who may pass trains over broken rails and pull aparts. However, the section contains no explicit provision for individuals to supervise restorations and renewals of track, or for individuals to inspect track, specific to CWR. In order to address qualification and training concerns specific to individuals qualified on CWR, the Working Group recommend adding a new paragraph (c) to § 213.7. See the Section-by-Section Analysis, below, for further discussion of the proposed changes to this section.

B. Submission of CWR Plans to FRA

The second issue that was raised at the Working Group discussions involved the submission of CWR plans to FRA. FRA representatives raised the concern that rail carriers were presenting plans to FRA's Office of Safety that were not the current plans, were unenforceable because of their vagueness, and did not contain all of the procedures in a single, comprehensive document. The Working Group therefore discussed: (1) The need to develop a mechanism for updating and submitting CWR program procedures in a timely manner to FRA's Office of Safety; (2) notification and re-submission criteria for any and all modifications to program plans; (3) the need for CWR procedures to be contained in a single document; and (4) the desirability of track owners submitting changes to CWR procedures to FRA prior to implementation, as immediate implementation can cause problems with enforcement activities and information being available to FRA personnel in the field.

The Working Group determined that there was a need to establish procedures for the submission and implementation of modified CWR plans to maintain consistency with the continued growth of the industry through developments in engineering and technology. Initially, rail carrier representatives did not agree with FRA's position on the need for changes to their CWR procedures to be sent to FRA prior to their implementation. They contended that changes in CWR procedures should be effective immediately, without having to submit the changes to FRA in advance. For example, the rail carrier representatives stated that the ability to change their plans as they wished would help them to more expeditiously incorporate recent developments based upon engineering and accident review findings. However, since FRA enforces the plan that the track owner has on file

with FRA, if track owners change their plans without first notifying FRA, the agency can not properly enforce their plans. The rail carrier representatives acknowledged this issue and agreed to FRA's proposal that any change to a CWR plan be submitted to FRA 30 days prior to its implementation.

Nevertheless, FRA makes clear that a track owner is allowed to immediately implement more restrictive measures than provided for in the plan on-file with FRA. The track owner can, of course, do more than the minimum measures provided for in its plan, such as to address an immediate safety concern. However, the track owner would not be able to do less than the minimum measures provided for in its plan without first following the proposed procedures for changing the plan.

The rail carrier representatives stated that they would like to know when FRA has received a submitted CWR plan. FRA agreed that this request was reasonable, and agreed to include a provision in the regulation stating that FRA will issue a written statement acknowledging receipt of the plan to the track owner. The Working Group also discussed that the current regulatory text was vague as to what FRA did with a plan once it was received. FRA has determined that the best course of action is to allow for the agency to review a plan and, if it is disapproved, to state the reasons for the disapproval. This is intended to allow the track owner to better understand and remedy the deficiencies that FRA identifies with its plan. The proposed regulatory text also provides a process by which the track owner could appeal an initial rejection of its CWR plan by FRA. This process is further discussed in the Section-by-Section Analysis, below.

C. Availability of CWR Written Procedures at CWR Work Sites

With the passage of SAFETEA-LU in 2005, Congress mandated that FRA instruct its track inspectors to obtain the most recent copies of rail carriers' CWR plans and to use these plans when conducting track inspections. In response, FRA posted the CWR plans received by the Office of Safety on FRA's Intranet site, where they are available to all Federal and State inspectors, and has instructed all of its inspectors to use these plans when conducting track inspections.

The Working Group discussed the desirability of having copies of the carrier's written CWR procedures at every work site. FRA and labor representatives maintained that updated revisions and modifications to the CWR

plans should be made available to the carrier personnel responsible for the installation, adjustment, maintenance, and inspection of CWR; railroads should maintain/retain these procedures and guidelines within their engineering manuals. FRA proposed to the Working Group that the railroads provide a copy of their CWR program plans to be maintained on-site during the performance of duties either with the employee in charge or the qualified employee conducting the work. This type of practice would ensure that personnel understand the track owner's CWR policies and procedures.

The Working Group reached consensus that the track owner should make available, in one comprehensive manual, a copy of the track owner's CWR plan, including all revisions, appendices, updates, and referenced materials, at every job site where personnel are assigned to install, inspect, and maintain CWR.

D. Special Inspections

During Phase I of the Working Group's assignment, it was determined that the issue of special inspections of CWR be tabled until Phase II. During preliminary Phase II discussions, the Working Group recognized that this issue would be better resolved by enlisting additional resources for further technical engineering research and analysis. The Working Group therefore formed the Technical Issues Task Force (TI Task Force), which was principally comprised of members from the Volpe Center and Kandrew, Inc., an independent engineering contractor engaged to represent the interests of the AAR. Technical concerns discussed by the TI Task Force included: speed restrictions for track work following mechanized stabilization (*i.e.*, how slow orders are lifted); maintaining the desired rail installation temperature range; inspecting for curve movement; the relationship between ambient and rail temperature; special inspections (severe weather effects on rail); and rail anchoring requirements. The TI Task Force reported to the Working Group that all of these issues should be handled either individually or jointly in special CWR inspections. These issues are further discussed, below, in the section on Specific Technical Issues Addressed by the Working Group.

E. Definition of CWR

CWR refers to the way in which rail is joined together to form track. In CWR, rails are welded together to form one continuous rail that may be several miles long. Although CWR is nominally one continuous rail, rail joints may exist

for many different reasons. CWR is currently defined as rail that has been welded together into lengths exceeding 400 feet. Labor representatives questioned whether the railroads would consider CWR into which a joint has been installed (to repair a rail break or remove a detected defect, for example) to be jointed rail and no longer subject to the railroad's CWR maintenance policy. FRA's position is that rail designated as CWR when installed should remain CWR irrespective of whether it contains a joint or joints.

F. Ballast

In its ongoing review of CWR plans, FRA noted that some track owners included a definition of what constitutes "sufficient ballast" in their plans. Some plans cited specific measurements prescribing the amount of ballast appropriate for various track locations. During the Working Group meetings, labor representatives proposed that FRA adopt a definition of minimum sufficient ballast. The labor representatives also requested additional information from the Volpe Center to address concerns about how track ballast affects track strength. The ensuing discussion highlighted the fact that the track owners' CWR plans (which are submitted to FRA) are supplemented in practice by additional railroad-specific policies and procedures ("best practices") which are often more restrictive. Rail carrier representatives were reluctant to have explicit ballast requirements in their CWR plans, due to the concern that ballast conditions may not always be maintained to the presumably more stringent internal standards.

The Track Safety Standards currently define ballast in § 213.103 as material which will transmit and distribute the load of the track and railroad rolling equipment to the subgrade; restrain the track laterally, longitudinally, and vertically under dynamic loads imposed by railroad rolling equipment and thermal stress exerted by the rails; provide adequate drainage for the track; and maintain proper track crosslevel, surface, and alinement. It is FRA's position that § 213.103 appropriately defines the term "ballast" for use by the regulated industry.

G. Anchoring

The Working Group discussed rail anchoring specifically in terms of controlling longitudinal force near joints installed at the end of CWR strings and near joints within CWR strings. A CWR string is understood to be a length of CWR rail set aside by the railroad for installation in the track. Of concern is

the relative effectiveness of anchoring patterns—every tie versus every other tie in conventional, wood tie construction. Railroads typically do not change anchoring patterns when installing joints within CWR strings, and generally have policies to remove the joint when practical. At the end of CWR strings some railroads under certain circumstances box-anchor every tie for a prescribed distance to help control the longitudinal forces at the transition. This is not a universally accepted practice. The primary effect of this practice is to reduce the longitudinal force carried by the joint when the rail is in tension. As the force carried by the joint increases, the predicted life of the joint shortens.

The Group also focused on when the joint would be removed, and proposed time limits for certain actions based on the performance of the joint in practice. One of the concerns is that as the joint fails the existing stress-free temperature of the rail may significantly be reduced, and, hence, require subsequent adjustment. Although the technical aspects of this issue were agreed upon by the Working Group, consensus was not reached on including specific requirements in the regulatory text. Please see the Section-by-Section Analysis for further discussion on this issue.

V. Specific Technical Issues Addressed by the Working Group

In addition to technical issues already discussed above, the Working Group also addressed a number of other technical issues. Many of these issues arose out of the Working Group's review of a proposed, generic plan for the installation and maintenance of CWR, which was based on the AAR's submission of CWR plans for Class I railroads which were very similar in form and content. The Working Group analyzed each aspect of the generic plan to determine if it fulfilled all of the safety requirements of § 213.119. After discussion and analysis of the technical issues raised, as further discussed below, the Working Group revised the generic plan. In collaboration with the Working Group, FRA further revised and redacted the plan, and posted it on the FRA public Web site found at <http://safetydata.fra.dot.gov/officeofsafety/>. The plan reflects the labors of the Working Group as well as FRA's analysis, and it is not intended to be the definitive guide for a CWR plan; FRA understands that each railroad has its own specific needs and circumstances that should be taken into account in formulating its CWR plans.

The generic plan incorporates technical issues addressed by the Working Group which include: Maintaining the desired rail installation temperature range; inspecting for curve movement as a result of disturbed track; speed restrictions for maintenance/rehabilitation work on disturbed ballast; ambient temperature vs. rail temperature; anchoring; and cold weather inspections. The following describes the Working Group consensus on these topics.

A. Maintaining Desired Rail Installation Temperature

The Working Group developed the concept of the rail neutral temperature (RNT) "safe range." The lower limit of this safe range is defined as 20° F below the designated rail laying temperature (RLT) for a particular territory. Rail that has pulled apart, broken, or been cut for defect removal must be readjusted such that its neutral temperature is within the safe range. If the rail has not been so readjusted before the rail temperature exceeds a prescribed value, the railroad would either: (1) Apply a speed restriction of 25 mph, or (2) apply a speed restriction of 40 mph in conjunction with a daily inspection of the rail made during the heat of the day. The track owner must not, however, raise the speed of track in this situation to 40 mph if the track was in operation at a lower speed. Locations at which the rail neutral temperature is known to have not been adjusted to within the safe range (20° F below designated RLT) would ultimately be adjusted in 365 days. Each railroad would document its inspection procedures for slow orders and special inspections due to heat. When rail separations occur in CWR, the rail gap and rail temperature should be recorded to facilitate the estimation of the rail neutral temperature at the location of the separation.

B. Inspecting for Curve Movement Resulting From Disturbed Track

The Working Group analyzed best industry practices for inspecting for curve movement as a result of disturbed track. The Group came to the consensus that, when surfacing disturbed track with a 3° (or higher degree) curve, the curve must be staked and the curve movement monitored when the rail temperature is substantially (50 degrees) below the designated RLT. If more than 3" of curve movement occurs, then slow orders must be placed if the curve is not lined out before the rail temperature reaches the desired RLT.

C. Speed Restrictions for Maintenance/ Rehabilitation Work on Disturbed Ballast

Certain track maintenance procedures result in disturbance of the ballast which can reduce its capacity to restrain the track from unwanted lateral movement. The passage of train traffic over the track or the use of ballast stabilizers can restore this capacity by consolidating the ballast. Railroads typically apply speed restrictions following such track work until sufficient consolidation has occurred and the restraining capacity of the ballast is restored. The Working Group agreed that the equivalent of 0.1 million gross tons ("MGT") of traffic would be sufficient to allow resumption of normal speeds over the track. This degree of consolidation may be achieved through the use of properly tuned ballast stabilizers. The Working Group also agreed that the passage of 16 passenger trains or 8 freight trains (or a proportional combination thereof) would be equivalent to 0.1 MGT of traffic to allow resumption of normal speeds.

D. Ambient Temperature Versus Rail Temperature

The Working Group agreed that all references to temperature should refer to rail temperature. In hot weather, the rail temperature is generally greater than the ambient (air) temperature. For the purposes of planning or scheduling track work in the short term in hot weather, the Working Group believes it appropriate for a railroad to use the predicted ambient temperature plus 30° F to estimate the rail temperature. In cold weather, the rail temperature is essentially equal to the ambient temperature, and no such adjustment is necessary.

E. Cold Weather Inspections

The Working Group agreed that cold weather inspections would be triggered at a minimum when the rail temperature is forecast to be 100° or more below the designated RLT. Cold weather inspections are necessary in order to safely detect pulled apart rail before a train passes over damaged rail.

Again, FRA notes that these agreements on technical issues regarding the management of CWR track were intended to describe one set of CWR procedures that could be recognized as providing suitable assurance of safety. FRA intends to use the technical agreements, as reflected in the generic CWR plan, as a benchmark document for reference as actual railroad plans are received and

reviewed. Railroads remain free to deviate from this benchmark approach, but FRA would expect to receive supporting analysis explaining how the relevant safety objectives are met by the alternative means. FRA is not specifically requesting comment on these technical issues, which are discussed here as useful background information.

VI. Section-by-Section Analysis

Section 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

FRA is proposing to revise § 213.7 principally by adding a new paragraph (c), which would create a new requirement for the track owner to specifically designate individuals who are qualified to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR track in accordance with the track owner's written procedures. The new paragraph would require that the designated individual have: (1) Current qualifications under either paragraphs (a) or (b) of this section; (2) successfully completed a comprehensive training course specifically developed for the application of written CWR procedures issued by the track owner; (3) demonstrated to the track owner that he/she knows and understands the requirements of the written CWR procedures, can detect deviations from those requirements, and can prescribe appropriate remedial action(s) to correct or safely compensate for those deviations; and (4) written authorization from the track owner to prescribe remedial action(s) to correct or safely compensate for deviations from the requirements in the CWR procedures and successfully completed a recorded examination on the procedures as part of the qualification process to be made available to FRA.

FRA has determined that, as CWR track has characteristics inherently different than those of traditional jointed rail, track owners should be required to designate which individuals are specifically qualified to inspect, or supervise the installation, adjustment, and maintenance of CWR. In addition to the qualifications that an individual must have under paragraph (a) to perform track maintenance work, or the qualifications under paragraph (b) to inspect track, an individual designated under paragraph (c) would have to be well-versed in the maintenance of CWR track as detailed in the track owner's CWR plan.

For guidance, FRA originally looked to § 213.305(c), which regulates the requirements of an individual qualified

to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR in accordance with the track owner's written procedures for train operations at track classes 6 and higher. The Working Group discussed the merits of the requirement in § 213.305(c)(2), which states that an individual must have "successfully completed a training course of at least eight hours duration specifically developed for the application of written CWR procedures issued by the track owner." Carrier representatives maintained that the requirement to have an eight-hour course would interfere with current training methods. As the FRA representatives agreed that the comprehensive nature of the training course is more important than its duration, the Working Group reached consensus that the individual would have to successfully complete a comprehensive training course pursuant to proposed paragraph (c)(2), which does not specify the duration of the training.

The Working Group also discussed the merits of requiring the individual to successfully complete an examination on the track owner's CWR procedures. In § 213.305(c)(4), individuals qualified on CWR for train operations at track classes 6 and higher must successfully complete a recorded examination on the track owner's CWR procedures. The paragraph states that this examination may be written, or it may be a computer file with the results of an interactive training course. Working Group members were concerned with the proposal that the examination be in a written context. It was argued that, quite often, a supervisor can better test someone's knowledge through practical application in the field as opposed to a written test. In order to accommodate this option for testing, FRA agreed to define the required examination in proposed paragraph (c)(4) as "recorded" instead of written; therefore, track owners would have the flexibility to test an individual's knowledge how they best see fit. However, it should be noted that the results of this examination would have to be recorded so that FRA may inspect the basis for the qualification of an individual under paragraph (c).

In proposing to add new paragraph (c) to this section, FRA is proposing to redesignate current paragraphs (c) and (d) as paragraphs (d) and (e), respectively. FRA is also proposing to make conforming changes to these paragraphs to cross-reference the new paragraph (c), in the same way that the current paragraphs of this section are

cross-referenced. Although FRA is setting out the entire text of these paragraphs for clarity, the changes to the proposed, redesignated paragraphs would involve only adding the cross-reference to the introductory text of the paragraphs, and removing the superfluous reference "of this part" in redesignated paragraph (d)(4).

Section 213.119 Continuous welded rail (CWR); general.

FRA is proposing to amend § 213.119 by adding new provisions and revising existing provisions, as discussed below. In part because of the proposed addition of new paragraphs and the consequent need to redesignate existing paragraphs, FRA is setting out § 213.119 in its entirety to enable the regulated industry to more readily understand and follow its requirements, given the length of this section and the number of changes proposed.

Introductory text. During Working Group discussions, FRA representatives expressed concern that this section's current introductory text does not explicitly address certain procedural issues associated with CWR plans. The text does not explain how a track owner would revise a CWR plan that has already been submitted to FRA, or what the process would be for FRA to require a revision to a plan, including the process to appeal a revision requirement. FRA is therefore proposing to make clear that a track owner must file its CWR plan with the FRA Associate Administrator for Safety not less than 30 days before it implements its CWR plan, including submitting revisions to an existing CWR plan in order for the changes to take effect under the regulation. FRA would send a written statement to the track owner acknowledging receipt of the plan. Also, the proposed regulation provides more guidance to the track owner regarding FRA's process of reviewing submitted plans. FRA's resources do not permit it to review each plan prior to its implementation, however, FRA will review plans subsequent to implementation as circumstances require or resources permit. If the review indicates that revisions to the plan are needed to bring the plan into compliance with the requirements of the rule, FRA would give notice of the revision requirement in writing to the track owner, including the basis of the revision requirement. The track owner would have 30 days either to implement FRA's required plan revisions, or to respond and provide evidence in support of the original plan. FRA would then render a final decision with regard to the plan, and the track owner would have 30 days from receipt of FRA's final

decision to amend the plan and resubmit it in accordance with FRA's decision. The amended plan would become effective upon its submission to FRA.

Paragraphs (a) and (b). Paragraphs (a) and (b) would be republished in their entirety with no changes.

Paragraph (c). FRA is proposing to redesignate current paragraph (c) as paragraph (d), and add a new paragraph (c) in its place. New paragraph (c) would revise the requirements for CWR joint installation and maintenance procedures to be included in a track owner's CWR plan. The new paragraph proposes to require that rail joints be installed per the requirement in § 213.121(e), which states, "In the case of continuous welded rail track, each rail shall be bolted with at least two bolts at each joint." The proposed paragraph further states that, in the case of a bolted joint installed during CWR installation after the publication date of the final rule, within 60 days the track owner must either: (1) Weld the joint; (2) install a joint with six bolts²; or (3) anchor every tie 195 feet in both directions of the joint. Finally, the proposed paragraph states that, in the case of a bolted joint in CWR experiencing service failure or a failed bar with a rail gap present, the track owner must either: (1) Weld the joint; (2) remediate joint conditions, replace the broken bolts, and weld the joint within 30 days; (3) replace the broken bar, replace the broken bolts, install two additional bolts, and adjust the anchors; (4) replace the broken bar, replace the broken bolts, and anchor every tie 195 feet in both directions from the CWR joint; or (5) add rail with provisions for later adjustment pursuant to (d)(2) of this section.

FRA noted during Working Group discussions that this section currently lacks an explicit reference to how a rail joint in CWR shall be bolted. As this requirement appears in § 213.121(e), FRA decided that it would be prudent to also state this requirement in § 213.119 so as to include all requirements for CWR in one section. This requirement would be stated in § 213.119(c) and would serve as a reminder to track owners that they cannot create their own joint bolt requirements in their CWR plans that are less restrictive than those specified in the regulation.

As previously mentioned, the Working Group was not able to reach

² See 49 CFR § 213.121(e), stating that, in the case of CWR, each rail shall be bolted with at least two bolts at each joint. This is a total of four bolts required at each joint.

consensus on this proposed paragraph (c). However, virtually identical text was included and discussed in the generic CWR plan generated by the rail carrier representatives, as discussed above. The rail carrier representatives were not in favor of including this paragraph, contending that its inclusion would constitute "regulatory creep." These representatives did not believe it was necessary to incorporate the text into the rule if FRA knew that they had already proposed to add the text to their individual CWR plans. Nevertheless, FRA strongly feels that inclusion of the paragraph is necessary. With the history of high-profile derailments on CWR due to joint bar failure, as discussed in the October 11, 2006 final rule (71 FR 59677), FRA stresses the importance for CWR track owners to follow the installation and maintenance procedures proposed in this paragraph. FRA also notes that the maintenance procedures proposed were analyzed and discussed at length by the Working Group and found to represent sound industry guidance to avoid a derailment on CWR track due to poor joint installation or maintenance.

Paragraph (d). FRA is proposing to redesignate current paragraph (c) as paragraph (d). No substantive change to this paragraph's requirements is intended.

Paragraph (e). FRA is proposing to redesignate current paragraph (d) as paragraph (e). No substantive change to this paragraph's requirements is intended.

Paragraph (f). FRA is proposing to redesignate current paragraph (e) as paragraph (f). FRA is also proposing to revise paragraph (f)'s format to more clearly identify its requirements and add a new paragraph (f)(1)(ii) which would require the track owner to have procedures in the CWR plan that govern train speed when the difference between the average rail temperature and the rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location. "Rail temperature" is currently defined as "the temperature of the rail, measured with a rail thermometer," and, as discussed in proposed, redesignated paragraph (l), below, FRA is proposing to add a definition for "rail neutral temperature" (RNT) as "the temperature at which the rail is neither in compression nor in tension." When maintaining the integrity of CWR track, the track owner needs to be concerned not only with the actual rail temperature, but also with the rail neutral temperature. FRA notes that the track owner would also have the responsibility to quantify the rail

neutral temperature at a specific location.

As previously stated, FRA notes that there has been a significant number of derailments caused by buckled track. Because of this safety concern, FRA is proposing to require track owners to reduce train speed over areas where there is an increased possibility of track buckling. By reducing the train speed, FRA anticipates that track owners will be able to reduce the probability of a catastrophic derailment caused by track buckling.

Paragraph (g). FRA is proposing to redesignate current paragraph (f) as paragraph (g). FRA is also proposing to revise the requirements of this paragraph by specifying that track owners must have in their CWR plans procedures which prescribe when physical track inspections are to be performed to detect not only buckling-prone conditions, but also pull-apart prone conditions.

This paragraph currently is focused only on when physical track inspections are required to identify buckling-prone conditions in CWR track. The requirements for these inspections to detect buckling-prone conditions would not be changed. In paragraph (g)(1)(i), track owners would still be required to have procedures in their CWR plans that address inspecting track to identify buckling-prone conditions in CWR, which include: (A) Locations where tight or kinky rail conditions are likely to occur, and (B) locations where track work of the nature described in redesignated paragraph (f)(1)(i) of this section have recently been performed. As discussed above, redesignated paragraph (f)(1)(i) would describe maintenance work, track rehabilitation, track construction, or any other event which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track. The track owner would also continue to specify the timing of the inspection as well as the appropriate remedial actions to be taken when buckling-prone conditions are found, as provided in paragraph (g)(2), discussed further below.

Pull-apart prone conditions would be addressed with the addition of paragraph (g)(1)(ii), which would require the track owner to include procedures in its CWR plan that prescribe when physical track inspections are to be performed to identify pull-apart prone conditions in CWR track. The procedures must include locations where pull-apart or stripped-joint rail conditions are likely to occur. As provided in paragraph (g)(2), the track owner must also specify

the timing of the inspection and the appropriate remedial actions to be taken when pull-apart prone conditions are found. Paragraph (g)(2) is based on the current text of paragraph (f)(2), which addresses buckling-prone conditions, expanding it to address pull-apart prone conditions as well.

The Working Group discussed that changes in temperature can greatly affect the integrity of CWR. Typically, significant increases in rail temperature can cause buckling-prone conditions, and significant decreases in rail temperature can cause pull-apart prone conditions. FRA has chosen not to quantify the specific temperatures that would cause a buckling-prone condition or a pull-apart prone condition. The Working Group discussed that, given the varied geographical composition of each railroad entity, specifying these temperatures would be best left to the track engineering program of each track owner. Therefore, FRA has declined to specify at what temperatures a physical track inspection under paragraph (g)(1) would be required, choosing instead to propose requiring that the track owner identify the conditions and situations when a physical track inspection would need to occur due to a buckling-prone or pull-apart prone condition.

Paragraph (h). FRA is proposing to redesignate paragraph (g) as paragraph (h). FRA is not proposing any substantive change to the requirements of this paragraph. FRA is only proposing to make conforming amendments to cross-references in this paragraph to reflect the proposed redesignation of the paragraphs in the section.

Paragraph (i). FRA is proposing to redesignate paragraph (h) as paragraph (i). FRA is also proposing to revise this paragraph by requiring the track owner to have in effect a comprehensive training program for the application of its written CWR procedures with provisions for annual re-training for individuals designated under § 213.7(c) to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. Additionally, FRA is proposing that the track owner make the training program available for review by FRA upon request.

This paragraph currently requires that the track owner's training program have provisions for "periodic" re-training of qualified individuals. The Working Group discussed this requirement and advised that the term "periodic" was undesirably vague. A brief, informal survey at one of the Working Group meetings revealed that some rail carriers re-trained individuals every year, while others re-trained individuals every two

or three years. FRA identified that a leading cause of carrier non-compliance with § 213.119 is a lack of training among individuals qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The AR Task Force's study showed that a significant number of accidents/incidents could be attributed to the failure to comply with the track owner's CWR policy. In order to address this serious safety concern, FRA determined that it was necessary to more specifically state when qualified individuals must be re-trained.

Within the Working Group, FRA representatives proposed to revise this paragraph by specifying the months or days that should pass between the re-training of qualified individuals. Rail carrier representatives stated that this would not give them the flexibility to train individuals at pre-determined training classes and would add to operational costs. In order to address the concerns of the rail carrier representatives, FRA agreed that it would be sufficient to require annual re-training of individuals. FRA notes that, for purposes of this paragraph, "annual" means "calendar year," as opposed to a 365-day period.

As FRA is proposing to amend § 213.7 to include a new paragraph (c) that explicitly addresses how a track owner designates an individual as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track, FRA decided that it was necessary to include a reference to proposed § 213.7(c) in the proposed revision to this § 213.119(i).

In paragraph (i), FRA is also proposing to require that the track owner make the training program available for review by FRA upon request. Due to the unique and individual nature of training programs, FRA determined that it would not be cost-effective for the agency to examine the training program of each track owner in addition to its CWR plan any time a change is made to the plan. However, particularly in the event of non-compliance with the CWR regulations, FRA believes that it should have the option of examining how qualified individuals are trained to apply the track owner's written CWR procedures.

During the Working Group's meetings, Class I railroad representatives agreed to voluntarily make an initial submission of their CWR training programs to FRA. FRA also agreed that, in its Track Safety Standards Compliance Manual, track inspectors would be instructed not to request the training program of a

specific track owner unless under the specific direction of FRA management. Rather, FRA's headquarters staff would undertake the responsibility of obtaining and disseminating this information, as needed, to both FRA inspectors and inspectors from States participating in rail safety enforcement activities under 49 CFR part 212.

Paragraph (j). FRA is proposing to redesignate current paragraph (i) as paragraph (j). FRA is not proposing any substantive changes to the requirements of this paragraph, however. FRA is proposing only to make a conforming change to the cross-reference to another paragraph in this section, due to the proposed redesignation of the paragraphs in this section, and to correct the cross-reference so that it references "this section"-not "this part."

Paragraph (k). FRA is proposing to add a new paragraph (k) that would require the track owner to make readily available, at every job site where personnel are assigned to install, inspect or maintain CWR, a copy of the track owner's CWR procedures and all revisions, appendices, updates, and referenced materials related thereto prior to their effective date. Additionally, such CWR procedures would be required to be issued and maintained in one comprehensive engineering standards and procedures manual.

Since the implementation of the CWR regulations, FRA has noted that a number of rail carriers maintain two different sets of CWR procedures; rail carriers have been discovered to maintain the set of CWR procedures submitted to FRA pursuant to this § 213.119, as well as maintain a separate set of CWR procedures to be used by personnel in the field. While FRA takes no issue with a rail carrier instructing its personnel to maintain more restrictive CWR procedures in the field than what is on-file with FRA, FRA stresses that rail carriers are required to train their personnel on the plan on-file with FRA. While FRA would continue to enforce the CWR plan on-file with its Office of Safety, having the procedures required to be at every job site where personnel are assigned to install, inspect or maintain CWR would ensure that personnel in the field understand which set of procedures FRA will hold them responsible for compliance with pursuant to the Federal regulations.

Paragraph (l). FRA is proposing to redesignate current paragraph (j) as paragraph (l). This paragraph contains definitions to be used in connection with this section. FRA is proposing to revise two existing definitions, remove a definition, add a new definition, and

make non-substantive changes to correct the capitalization of the definitions. Specifically, FRA is proposing to change the definition of "Continuous Welded Rail (CWR)" to mean "rail that has been welded together into lengths exceeding 400 feet. Rail installed as CWR remains CWR, regardless of whether a joint or plug is installed into the rail at a later time." As a consequence of this proposed change, FRA is also proposing to change the definition of "CWR joint" to mean "any joint directly connected to CWR." ("CWR joint" is currently defined as "(a) any joint directly connected to CWR, and (b) any joint(s) in a segment of rail between CWR strings that are less than 195 feet apart, except joints located on jointed sections on bridges.")

The Working Group discussed that the current definition of CWR, which does not include a reference to a joint or plug, does not fully address the reality of CWR in the industry. When the current definition of CWR is read with the current definition of CWR joint, one could wrongly conclude that, by adding a joint or plug into a section of CWR track, the track would no longer be defined as CWR track. Indeed, it was agreed upon by the members of the Working Group that CWR track generally maintains its CWR properties whether or a not a joint or plug is added to the track at a later date. Therefore, the Working Group recommended that the definition be revised to specify that rail installed as CWR remains as CWR, regardless of whether a joint or plug is installed into the rail at a later date.

Due to the decision to revise the definition of CWR, the Working Group determined that the definition of CWR joint should also be revised. As the new definition of CWR would explain that CWR track remains as CWR, regardless of whether a joint or plug is installed into the rail at a later date, the definition of CWR joint would no longer need to specify that a CWR joint is a joint in a segment of rail between CWR strings that are less than 195 feet apart. Since rail installed as CWR remains as CWR with the new definition, FRA is revising the definition of CWR joint to simply be a "any joint connected to CWR."

FRA is proposing to remove the definition "Action items," because the term is not expressly used in this section. Currently, "Actions items" are defined as "the rail joint conditions that track owners identify in their CWR plans pursuant to paragraph (g)(3) which require the application of a corrective correction." Paragraph (g)(3) itself provides that, in formulating procedures which prescribe the scheduling and conduct of inspections

to detect cracks and other indications of potential failures in CWR joints, the track owner specify the conditions of actual or potential joint failure for which personnel must inspect. Current paragraph (g)(3) further provides that these conditions include, at a minimum, the following items: (i) Loose, bent, or missing joint bolts; (ii) rail end batter or mismatch that contributes to instability of the joint; and (iii) evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to, wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors. The term “action items” is not used in this paragraph, however. FRA is proposing to redesignate paragraph (g)(3) as paragraph (h)(3), for formatting purposes only due to the proposed addition of new paragraphs in this section. FRA makes clear that it does not intend to make any change to the substance of this paragraph, and that removing the definition of “action items” is not intended to have any effect on what items are considered defects under the provisions of the rule.

At the same time, FRA is proposing to add the new definition of “Rail neutral temperature” to mean “the temperature at which the rail is neither in compression nor tension.” This definition is necessary because FRA is proposing to add new paragraph (f)(1)(ii), which would introduce for the first time in this section the term “rail neutral temperature.” In proposed paragraph (f)(1)(ii), FRA would require track owners to have procedures that govern train speed when the difference between the average rail temperature and the rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location. When maintaining the integrity of CWR track, the track owner has to be concerned with not only the actual rail temperature of the rail, but the rail neutral temperature as well. FRA decided that it was necessary to include in the regulation a definition of rail neutral temperature to clarify what temperature the track owner should be concerned with when preventing rail buckling. While FRA has provided a definition of “rail neutral temperature,” it is the responsibility of the track owner to quantify the rail neutral temperature at specific locations.

Appendix B to Part 213—Schedule of Civil Penalties

Appendix B to part 213 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to § 213.119. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

VII. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 128566 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. As part of the regulatory impact analysis, FRA has assessed a quantitative measurement of costs and benefits expected from the implementation of this NPRM. FRA has determined that none of the provisions would have a major impact. If FRA’s main assumptions are correct, the sum of the net benefit of all provisions would be \$390,000 per year. The cost per year is estimated at \$300,000 for the first year, and \$150,000 per year for subsequent years. The total net benefit would then be \$90,000 for the first year and \$240,000 per year for subsequent years. The analysis has a range of assumptions to check sensitivity. Under the least favorable assumptions the rule would develop net societal costs, but those are apparently extreme assumptions. Under the most favorable assumptions the net benefits would be up to \$1,140,000 per year. In no event would the net benefits or costs be more than a very small portion of the total railroad expenditures on CWR rail maintenance.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to

assess their impact on small entities. 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 not 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 (STB) 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.

Approximately 200 small railroads have CWR and may be affected by the final rule resulting from this NPRM. Relatively few Class III railroads have CWR. For the minority of Class III railroads that have CWR, the portion of each such railroad made up of CWR is more likely to be small. To the extent these railroads have CWR, Class III railroads would be subject to most of the provisions proposed in this NPRM. Small railroads were consulted during the RSAC Working Group deliberations and their interests have been taken into consideration in this NPRM. FRA believes that there will be no significant impact on a substantial number of small entities.

C. 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 would contain the new information collection requirements are noted, and the estimated times to fulfill each of the requirements are as follows:

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|------------------------|-------------------------------|---------------------------|---------------------------|
| 213.4 Excepted Track: | | | | |
| —Designation of track as excepted | 200 railroads | 20 orders | 15 minutes | 5 hours. |
| —Notification to FRA about removal of excepted track. | 200 railroads | 15 notifications | 10 minutes | 3 hours. |
| 213.5—Responsibility of track owners | 718 railroads | 10 notifications | 8 hours | 80 hours. |
| 213.7 Designation of qualified persons to supervise certain renewals and inspect track: | | | | |
| —Designations | 718 railroads | 1,500 names | 10 minutes | 250 hours. |
| —Employees Trained in CWR Procedures (New). | 31 railroads | 80,000 tr. employ | 90 minutes | 120,000 hours. |
| —Written Authorizations and Recorded Exams (New). | 31 railroads | 80,000 auth. + | 10 min. + 60 min | 93,333 hours. |
| —Designations (partially qualified) under paragraph (c) of this section. | 31 railroads | 250 names | 10 minutes | 42 hours. |
| 213.17 Waivers | 718 railroads | 6 petitions | 24 hours | 144 hours. |
| 213.57 Curves, elevation and speed limitations: | | | | |
| —Request to FRA for approval | 718 railroads | 2 requests | 40 hours | 80 hours. |
| —Notification to FRA with written consent of other affected track owners. | 718 railroads | 2 notifications | 45 minutes | 2 hours. |
| —Test Plans for Higher Curving Speeds | 1 railroad | 2 test plans | 16 hours | 32 hours. |
| 213.110—Gage Restraint Measurement Systems (GRMS): | | | | |
| —Implementing GRMS—Notices & Reports. | 718 railroads | 5 notifications + 1 tech rpt. | 45 min./4 hours | 8 hours. |
| —GRMS Vehicle Output Reports | 718 railroads | 50 reports | 5 minutes | 4 hours. |
| —GRMS Vehicle Exception Reports | 718 railroads | 50 reports | 5 minutes | 4 hours. |
| —GRMS/PTLF—Procedures for Data Integrity. | 718 railroads | 4 proc. docs. | 2 hours | 8 hours. |
| —GRMS Training Programs/Sessions ... | 718 railroads | 2 prog. + 5 sessions .. | 16 hours | 112 hours. |
| —GRMS Inspection Records | 718 railroads | 50 records | 2 hours | 100 hours. |
| 213.119 Continuous welded rail (CWR), general: | | | | |
| —Plans with written procedures for CWR (Amended). | 718 railroads | 718 plans | 4 hours | 2,872 hours. |
| —Written submissions after plan disapproval (New). | 718 railroads | 20 submissions | 2 hours | 40 hours. |
| —Final FRA disapproval and Plan Amendment (New). | 718 railroads | 20 amended plans | 1 hour | 20 hours. |
| —Fracture Report for Each Broken CWR Joint Bar. | 239 railroads/ASLRRA | 12,000 reports | 10 minutes | 2,000 hours. |
| —Petition for technical conference on Fracture Rpts. | 1 RR association | 1 petition | 15 minutes | .25 hour. |
| —Training Programs re CWR Procedures (Amended). | 239 railroads/ASLRRA | 240 am. programs | 1 hour | 240 hours. |
| —Annual CWR Training of Employees (New). | 31 railroads | 80,000 tr. employ | 30 minutes | 40,000 hours. |
| —Recordkeeping | 239 railroads | 2,000 records | 10 minutes | 333 hours. |
| —Recordkeeping for CWR Rail Joints ... | 239 railroads | 360,000 records | 2 minutes | 12,000 hours. |
| —Periodic Records For CWR Rail Joints | 239 railroads | 480,000 records | 1 minute | 8,000 hours. |
| —Copy of Track Owner's CWR Procedures (New). | 718 railroads | 239 manuals | 10 minutes | 40 hours. |
| 213.233 Track inspections: | | | | |
| —Notations | 718 railroads | 12,500 notations | 1 minute | 208 hours. |
| 213.241 Inspection records | 718 railroads | 1,542,089 records | Varies | 1,672,941 hours. |
| 213.303 Responsibility for Compliance | 2 railroads | 1 petition | 8 hours | 8 hours. |
| 213.305 Designation of qualified individuals; general qualifications. | 2 railroads | 150 designations | 10 minutes | 25 hours. |
| —Designations (Partially qualified) | 2 railroads | 20 designations | 10 minutes | 3 hours. |
| 213.317—Waivers | 2 railroads | 1 petition | 80 hours | 80 hours. |
| 213.329 Curves, elevation and speed limitations: | | | | |
| —FRA approval of qualified equipment and higher curving speeds. | 2 railroads | 3 notifications | 40 hours | 120 hours. |
| —Written notification to FRA with written consent of other affected track owners. | 2 railroads | 3 notifications | 45 minutes | 2 hours. |
| 213.333 Automated Vehicle Inspection System: | | | | |
| —Track Geometry Measurement System—Reports. | 3 railroads | 18 reports | 20 hours | 360 hours. |

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---------------------|------------------------|---------------------------|---------------------------|
| —Track/Vehicle Performance Measurement System: Copies of most recent exception printouts. | 2 railroads | 13 printouts | 20 hours | 260 hours. |
| 213.341 Initial inspection of new rail and welds: | | | | |
| —Mill inspection—Copy of Manufacturer's Report. | 2 railroads | 2 reports | 16 hours | 32 hours. |
| —Welding plan inspection report | 2 railroads | 2 reports | 16 hours | 32 hours. |
| —Inspection of field welds | 2 railroads | 125 records | 20 minutes | 42 hours. |
| 213.343 Continuous welded rail (CWR): | | | | |
| —Recordkeeping | 2 railroads | 150 records | 10 minutes | 25 hours. |
| 213.345 Vehicle qualification testing: | | | | |
| —Report of Test Procedures and Results. | 1 railroad | 2 reports | 560 hours | 1,120 hours. |
| 213.347 Automotive or Railroad Crossings at Grade: | | | | |
| —Protection Plans 213.369 Inspection Records. | 1 railroad | 2 plans | 8 hours | 16 hours. |
| —Record of inspection of track | 2 railroads | 500 records | 1 minute | 8 hours. |
| —Internal defect inspections and remedial action taken. | 2 railroads | 50 records | 5 minutes | 4 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 Clearance Officer, at (202) 493-6292, or Ms. Nakia Jackson at (202) 493-6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Jackson, 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. Jackson at the following address: robert.brogan@dot.gov; nakia.jackson@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**.

D. Environmental Impact

FRA has evaluated this NPRM in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As

a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

E. 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, 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 is intended to result in a final rule that has preemptive effect. Subject to a limited exception for essentially local safety or security

hazards, the requirements of the final rule would be intended to establish a uniform Federal safety standard that must be met, and State requirements covering the same subject would be displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among various levels of government. This NPRM will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that RSAC, which endorsed and recommended the majority of this NPRM, has as permanent members two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation endorsing this proposed rule. RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government. Consequently, FRA concludes that this NPRM has no federalism implications.

F. Unfunded Mandate 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 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) [currently \$141,100,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This NPRM will not result in the expenditure, in the aggregate, of \$141,100,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355 (May 22, 2001). Under the Executive Order a "significant energy action" is defined as any action by an agency 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 the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 213 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102-20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

2. Section 213.7 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively; adding new paragraph (c); and revising newly redesignated paragraphs (d) and (e) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

* * * * *

(c) Individuals designated under paragraphs (a) or (b) of this section that inspect continuous welded rail (CWR) track or supervise the installation, adjustment, and maintenance of CWR track in accordance with the written procedures of the track owner shall have:

(1) Current qualifications under either paragraph (a) or (b) of this section;

(2) Successfully completed a comprehensive training course specifically developed for the application of written CWR procedures issued by the track owner;

(3) Demonstrated to the track owner that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations; and

(4) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successfully completed a recorded examination on those procedures as part of the qualification process.

(d) Persons not fully qualified to supervise certain renewals and inspect track as required in paragraphs (a) through (c) of this section, but with at least one year of maintenance-of-way or signal experience, may pass trains over broken rails and pull apart provided that—

(1) The track owner determines the person to be qualified and, as part of doing so, trains, examines, and re-examines the person periodically within two years after each prior examination on the following topics as they relate to the safe passage of trains over broken rails or pull aparts: rail defect identification, crosstie condition, track surface and alignment, gage restraint, rail end mismatch, joint bars, and maximum distance between rail ends over which trains may be allowed to pass. The sole purpose of the examination is to ascertain the person's ability to effectively apply these requirements and the examination may not be used to disqualify the person from other duties. A minimum of four hours training is required for initial training;

(2) The person deems it safe and train speeds are limited to a maximum of 10 m.p.h. over the broken rail or pull apart;

(3) The person shall watch all movements over the broken rail or pull apart and be prepared to stop the train if necessary; and

(4) Person(s) fully qualified under § 213.7 are notified and dispatched to the location promptly for the purpose of authorizing movements and effecting temporary or permanent repairs.

(e) With respect to designations under paragraphs (a) through (d) of this section, each track owner shall maintain written records of—

(1) Each designation in effect;

(2) The basis for each designation; and

(3) Track inspections made by each designated qualified person as required by § 213.241. These records shall be kept available for inspection or copying by the Federal Railroad Administration during regular business hours.

3. Section 213.119 is revised to read as follows:

§ 213.119 Continuous welded rail (CWR); general.

Each track owner with track constructed of CWR shall have in effect and comply with a plan that contains written procedures which address: the installation, adjustment, maintenance, and inspection of CWR; inspection of CWR joints; and a training program for the application of those procedures. The track owner shall file its CWR plan with the FRA Associate Administrator for Safety. The CWR plan must contain an implementation date, provided that such date shall not be less than 30 days after its submission. FRA will send a written statement to the track owner acknowledging receipt of the plan. FRA shall, at any time subsequent to filing, review a railroad's plan for conformity with this subpart. FRA, for cause stated,

may require revisions to the plan to bring the plan into conformity with this subpart. Notice of a revision requirement shall be made in writing and specify the basis of FRA's requirement. The track owner may, within 30 days of the revision requirement, respond and provide written submissions in support of the original plan. FRA renders a final decision in writing. Not more than 30 days following any final decision requiring revisions to a CWR plan, the track owner shall amend the plan in accordance with FRA's decision and resubmit the conforming plan. The conforming plan becomes effective upon its submission to FRA. FRA reviews each plan for compliance with the following required contents—

(a) Procedures for the installation and adjustment of CWR which include—

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) De-stressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and specifically addressing CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement associated with normally expected train-induced forces, is restricted.

(c) CWR joint installation and maintenance procedures which require that—

(1) Each rail shall be bolted with at least two bolts at each CWR joint;

(2) In the case of a bolted joint installed during CWR installation after (insert publication date of final rule), the track owner shall, within 60 days—

(i) Weld the joint;

(ii) Install a joint with six bolts; or

(iii) Anchor every tie 195 feet in both directions of the joint; and

(3) In the case of a bolted joint in CWR experiencing service failure or a failed bar with a rail gap present, the track owner shall—

(i) Weld the joint;

(ii) Remediate joint conditions, replace the broken bolts, and weld the joint within 30 days;

(iii) Replace the broken bar, replace the broken bolts, install two additional bolts, and adjust anchors;

(iv) Replace the broken bar, replace the broken bolts, and anchor every tie 195 feet in both directions from the CWR joint; or

(v) Add rail with provisions for later adjustment pursuant to paragraph (d)(2) of this section.

(d) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR, including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration existing rail temperature so that—

(1) When rail is removed, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for later adjustment.

(e) Procedures which address the monitoring of CWR in curved track for inward shifts of alinement toward the center of the curve as a result of disturbed track.

(f)(1) Procedures which govern train speed on CWR track when—

(i) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track; and

(ii) The difference between the average rail temperature and the average rail neutral temperature is in a range that causes buckling-prone conditions to be present at a specific location; and

(2) In formulating the procedures under paragraph (f)(1) of this section, the track owner shall—

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(g) Procedures which prescribe when physical track inspections are to be performed.

(1) At a minimum, these procedures shall address inspecting track to identify—

(i) Buckling-prone conditions in CWR track, including—

(A) Locations where tight or kinky rail conditions are likely to occur; and

(B) Locations where track work of the nature described in paragraph (f)(1)(i) of

this section has recently been performed; and

(ii) Pull-apart prone conditions in CWR track, including locations where pull-apart or stripped-joint rail conditions are likely to occur; and

(2) In formulating the procedures under paragraph (g)(1) of this section, the track owner shall—

(i) Specify the inspection interval; and

(ii) Specify the appropriate remedial actions to be taken when either buckling-prone or pull-apart prone conditions are found.

(h) Procedures which prescribe the scheduling and conduct of inspections to detect cracks and other indications of potential failures in CWR joints. In formulating the procedures under this paragraph (h), the track owner shall—

(1) Address the inspection of joints and the track structure at joints,

including, at a minimum, periodic on-foot inspections;

(2) Identify joint bars with visible or otherwise detectable cracks and conduct remedial action pursuant to § 213.121;

(3) Specify the conditions of actual or potential joint failure for which personnel must inspect, including, at a minimum, the following items:

(i) Loose, bent, or missing joint bolts;

(ii) Rail end batter or mismatch that contributes to instability of the joint; and

(iii) Evidence of excessive longitudinal rail movement in or near the joint, including, but not limited to: wide rail gap, defective joint bolts, disturbed ballast, surface deviations, gap between tie plates and rail, or displaced rail anchors;

(4) Specify the procedures for the inspection of CWR joints that are

imbedded in highway-rail crossings or in other structures that prevent a complete inspection of the joint, including procedures for the removal from the joint of loose material or other temporary material;

(5) Specify the appropriate corrective actions to be taken when personnel find conditions of actual or potential joint failure, including on-foot follow-up inspections to monitor conditions of potential joint failure in any period prior to completion of repairs.

(6) Specify the timing of periodic inspections, which shall be based on the configuration and condition of the joint:

(i) Except as provided in paragraphs (h)(6)(ii) through (iv) of this section, track owners must specify that all CWR joints are inspected, at a minimum, in accordance with the intervals identified in the following table—

MINIMUM NUMBER OF INSPECTIONS PER CALENDAR YEAR ¹

| | Freight trains operating over | Passenger trains | Less than 40 mgt | 40 to 60 mgt | Greater than 60 mgt Less |
|-----------------------|-------------------------------|------------------|------------------|----------------|--------------------------|
| Class 5 & above | 2 | ² 3 | ² 4 | ² 3 | ² 3 |
| Class 4 | 2 | ² 3 | ² 4 | 2 | ² 3 |
| Class 3 | 1 | 2 | 2 | 2 | 2 |
| Class 2 | 0 | 0 | 0 | 1 | 1 |
| Class 1 | 0 | 0 | 0 | 0 | 0 |
| Excepted Track | 0 | 0 | 0 | 3 | 3 |

4 = Four times per calendar year, with one inspection in each of the following periods: January to March, April to June, July to September, and October to December; and with consecutive inspections separated by at least 60 calendar days.

3 = Three times per calendar year, with one inspection in each of the following periods: January to April, May to August, and September to December; and with consecutive inspections separated by at least 90 calendar days.

2 = Twice per calendar year, with one inspection in each of the following periods: January to June and July to December; and with consecutive inspections separated by at least 120 calendar days.

1 = Once per calendar year, with consecutive inspections separated by at least 180 calendar days.

¹ Where a track owner operates both freight and passenger trains over a given segment of track, and there are two different possible inspection interval requirements, the more frequent inspection interval applies.

² When extreme weather conditions prevent a track owner from conducting an inspection of a particular territory within the required interval, the track owner may extend the interval by up to 30 calendar days from the last day that the extreme weather condition prevented the required inspection.

³ n/a.

(ii) Consistent with any limitations applied by the track owner, a passenger train conducting an unscheduled detour operation may proceed over track not normally used for passenger operations at a speed not to exceed the maximum authorized speed otherwise allowed, even though CWR joints have not been inspected in accordance with the frequency identified in paragraph (h)(6)(i) of this section, provided that:

(A) All CWR joints have been inspected consistent with requirements for freight service; and

(B) The unscheduled detour operation lasts no more than 14 consecutive calendar days. In order to continue operations beyond the 14-day period, the track owner must inspect the CWR joints in accordance with the

requirements of paragraph (h)(6)(i) of this section.

(iii) Tourist, scenic, historic, or excursion operations, if limited to the maximum authorized speed for passenger trains over the next lower class of track, need not be considered in determining the frequency of inspections under paragraph (h)(6)(i) of this section.

(iv) All CWR joints that are located in switches, turnouts, track crossings, lift rail assemblies or other transition devices on moveable bridges must be inspected on foot at least monthly, consistent with the requirements in § 213.235; and all records of those inspections must be kept in accordance with the requirements in § 213.241. A track owner may include in its § 213.235

inspections, in lieu of the joint inspections required by paragraph (h)(6)(i) of this section, CWR joints that are located in track structure that is adjacent to switches and turnouts, provided that the track owner precisely defines the parameters of that arrangement in the CWR plans.

(7) Specify the recordkeeping requirements related to joint bars in CWR, including the following:

(i) The track owner shall keep a record of each periodic and follow-up inspection required to be performed by the track owner's CWR plan, except for those inspections conducted pursuant to § 213.235 for which track owners must maintain records pursuant to § 213.241. The record shall be prepared on the day the inspection is made and signed by

the person making the inspection. The record shall include, at a minimum, the following items: the boundaries of the territory inspected; the nature and location of any deviations at the joint from the requirements of this part or of the track owner's CWR plan, with the location identified with sufficient precision that personnel could return to the joint and identify it without ambiguity; the date of the inspection; the remedial action, corrective action, or both, that has been taken or will be taken; and the name or identification number of the person who made the inspection.

(ii) The track owner shall generate a Fracture Report for every cracked or broken CWR joint bar that the track owner discovers during the course of an inspection conducted pursuant to §§ 213.119(g), 213.233, or 213.235 on track that is required under § 213.119(h)(6)(i) to be inspected.

(A) The Fracture Report shall be prepared on the day the cracked or broken joint bar is discovered. The Report shall include, at a minimum: the railroad name; the location of the joint bar as identified by milepost and subdivision; the class of track; annual million gross tons for the previous calendar year; the date of discovery of the crack or break; the rail section; the type of bar (standard, insulated, or compromise); the number of holes in the joint bar; a general description of the location of the crack or break in bar; the visible length of the crack in inches; the gap measurement between rail ends; the amount and length of rail end batter or ramp on each rail end; the amount of tread mismatch; the vertical movement of joint; and in curves or spirals, the amount of gage mismatch and the lateral movement of the joint.

(B) The track owner shall submit the information contained in the Fracture Reports to the FRA Associate Administrator for Safety (Associate Administrator) twice annually, by July 31 for the preceding six-month period from January 1 through June 30 and by January 31 for the preceding six-month period from July 1 through December 31.

(C) After February 1, 2010, any track owner may petition FRA to conduct a technical conference to review the Fracture Report data submitted through December of 2009 and assess whether there is a continued need for the collection of Fracture Report data. The track owner shall submit a written request to the Associate Administrator, requesting the technical conference and explaining the reasons for proposing to discontinue the collection of the data.

(8) In lieu of the requirements for the inspection of rail joints contained in paragraphs (h)(1) through (h)(7) of this section, a track owner may seek approval from FRA to use alternate procedures.

(i) The track owner shall submit the proposed alternate procedures and a supporting statement of justification to the Associate Administrator.

(ii) If the Associate Administrator finds that the proposed alternate procedures provide an equivalent or higher level of safety than the requirements in paragraphs (h)(1) through (h)(7) of this section, the Associate Administrator will approve the alternate procedures by notifying the track owner in writing. The Associate Administrator will specify in the written notification the date on which the procedures will become effective, and after that date, the track owner shall comply with the procedures. If the Associate Administrator determines that the alternate procedures do not provide an equivalent level of safety, the Associate Administrator will disapprove the alternate procedures in writing, and the track owner shall continue to comply with the requirements in paragraphs (h)(1) through (h)(7) of this section.

(iii) While a determination is pending with the Associate Administrator on a request submitted pursuant to paragraph (h)(8) of this section, the track owner shall continue to comply with the requirements contained in paragraphs (h)(1) through (h)(7) of this section.

(i) The track owner shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for annual re-training, for those individuals designated under § 213.7(c) as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The track owner shall make the training program available for review by FRA upon request.

(j) The track owner shall prescribe and comply with recordkeeping requirements necessary to provide an adequate history of track constructed with CWR. At a minimum, these records must include:

(1) Rail temperature, location, and date of CWR installations. Each record shall be retained for at least one year;

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record shall include the location of the rail and be maintained until the CWR is brought into conformance with such procedures; and

(3) Information on inspection of rail joints as specified in paragraph (h)(7) of this section.

(k) The track owner shall make readily available, at every job site where personnel are assigned to install, inspect or maintain CWR, a copy of the track owner's CWR procedures and all revisions, appendices, updates, and referenced materials related thereto prior to their effective date. Such CWR procedures shall be issued and maintained in one engineering standards and procedures manual.

(l) As used in this section—

Adjusting/de-stressing means the procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

Buckling incident means the formation of a lateral misalignment sufficient in magnitude to constitute a deviation from the Class 1 requirements specified in § 213.55. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

Continuous Welded Rail (CWR) means rail that has been welded together into lengths exceeding 400 feet. Rail installed as CWR remains CWR, regardless of whether a joint or plug is installed into the rail at a later time.

Corrective actions mean those actions which track owners specify in their CWR plans to address conditions of actual or potential joint failure, including, as applicable, repair, restrictions on operations, and additional on-foot inspections.

CWR joint means any joint directly connected to CWR.

Desired rail installation temperature range means the rail temperature range, within a specific geographical area, at which forces in CWR should not cause a buckling incident in extreme heat, or a pull-apart during extreme cold weather.

Disturbed track means the disturbance of the roadbed or ballast section, as a result of track maintenance or any other event, which reduces the lateral or longitudinal resistance of the track, or both.

Mechanical stabilization means a type of procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

Rail anchors means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

Rail neutral temperature is the temperature at which the rail is neither in compression nor tension.

Rail temperature means the temperature of the rail, measured with a rail thermometer.

Remedial actions mean those actions which track owners are required to take as a result of requirements of this part to address a non-compliant condition.

Tight/kinky rail means CWR which exhibits minute alignment irregularities which indicate that the rail is in a considerable amount of compression.

Tourist, scenic, historic, or excursion operations mean railroad operations that carry passengers with the conveyance of the passengers to a particular destination not being the principal purpose.

Track lateral resistance means the resistance provided by the rail/crosstie structure against lateral displacement.

Track longitudinal resistance means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

Train-induced forces means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential of the rail.

Unscheduled detour operation means a short-term, unscheduled operation where a track owner has no more than 14 calendar days' notice that the operation is going to occur.

Issued in Washington, DC, on November 24, 2008.

Joseph H. Boardman,

Federal Railroad Administrator.

[FR Doc. E8-28438 Filed 11-28-08; 8:45 am]

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