(3) Whether a protective well would be economic to drill.

(b) You must notify BLM within 60 days from the date of actual or constructive notice of:

(1) Which of the actions in § 3162.2–4 you will take; or

(2) The reasons a protective well would be uneconomic.

(c) If you do not have sufficient information to comply with § 3162.2–9(b)(1), indicate when you will provide the information.

(d) You must provide BLM with the analysis under paragraph (a) of this section within 60 days after we request it.

§ 3162.2–10 Will BLM notify me when it determines that drainage is occurring?

We will send you a demand letter by certified mail, return receipt requested, or personally serve you with notice, if we believe that drainage is occurring. However, your responsibility to take protective action arises when you first knew or had constructive notice of the drainage, even when that date precedes the BLM demand letter.

§ 3162.2–11 How soon after I know of the likelihood of drainage must I take protective action?

(a) You must take protective action within a reasonable time after the earlier of:

(1) The date you knew or had constructive notice that the potentially draining well had begun to produce oil or gas; or

(2) The date we issued a demand letter for protective action.

(b) Since the time required to drill and produce a protective well varies according to the location and conditions of the oil and gas reservoir, BLM will determine this on a case-by-case basis. When we determine whether you took protective action within a reasonable time, we will consider several factors including, but not limited to:

(1) Time required to evaluate the characteristics and performance of the draining well;

(2) Rig availability;

(3) Well depth;

(4) Required environmental analysis;

(5) Special lease stipulations which provide limited time frames in which to drill; and

(6) Weather conditions.

(c) If BLM determines that you did not take protection action timely, you will owe compensatory royalty for the period of the delay under § 3162.2–12.

§ 3162.2–12 If I hold an interest in a lease, for what period will the Department assess compensatory royalty against me?

The Department will assess compensatory royalty beginning on the first day of the month following the earliest reasonable time we determine you should have taken protective action. You must continue to pay compensatory royalty until:

(a) You drill sufficient economic protective wells and remain in continuous production;

(b) We approve a unitization or communitization agreement that includes the mineral resources being drained;

(c) The draining well stops producing; or

(d) You relinquish your interest in the Federal or Indian lease.

§ 3162.2–13 If I acquire an interest in a lease that is being drained, will the Department assess me for compensatory royalty?

If you acquire an interest in a Federal or Indian lease through an assignment of record title or transfer of operating rights under this part, you are liable for all drainage obligations accruing on and after the date we approve the assignment or transfer.

§ 3162.2–14 May I appeal BLM's decision to require drainage protective measures?

You may appeal any BLM decision requiring you take drainage protective measures. You may request BLM State Director review under 43 CFR 3165.3 and/or appeal to the Interior Board of Land Appeals under 43 CFR part 4 and subpart 1840.

§ 3162.2–15 Who has the burden of proof if I appeal BLM's drainage determination?

BLM has the burden of establishing a *prima facie* case that drainage is occurring and that you knew of such drainage. Then the burden of proof shifts to you to refute the existence of drainage or to prove there was not sufficient information to put you on notice of the need for drainage protection. You also have the burden of proving that drilling and producing from a protective well would not be economically feasible.

§ 3165.3 [Amended]

13. Amend § 3165.3 by adding the phrase ''and the lessee(s),'' after ''appropriate party'' in the first sentence of paragraph (a).

14. Amend § 3165.4 by adding a new paragraph (e)(4) to read as follows:

§ 3165.4 Appeals.

* * * * *

(e) * * *

(4) When an appeal is filed under paragraph (a) of this section from a decision to require drainage protection, BLM's drainage determination will remain in effect during the appeal, notwithstanding the provisions of 43 CFR 4.21. Compensatory royalty and interest determined under 30 CFR Part 218 will continue to accrue throughout the appeal.

* * * * *

[FR Doc. 01–446 Filed 1–9–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 9]

RIN 2130–AB32

Track Safety Standards

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

ACTION: Final rule.

SUMMARY: FRA amends the Track Safety Standards to provide procedures for track owners to use Gage Restraint Measuring Systems (GRMS) to assess the ability of their track to maintain proper gage. Under the current Track Safety Standards, track owners must evaluate a track's gage restraint capability through visual inspections conducted at frequencies and intervals specified in the standards. With this amendment, track owners may monitor gage restraint on a designated track segment using GRMS procedures. Individuals employed by the track owner to inspect track must be permitted to exercise their discretion in judging whether the track segment should also be visually inspected by a qualified track inspector.

DATES: *Effective Date:* This final rule is effective April 10, 2001.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6047).

SUPPLEMENTARY INFORMATION:

Introductory Statement

Historically, railroads assess a track's ability to maintain gage through visual inspections of crossties and rail fastening systems. The maintenance decisions which determine crosstie and rail fastener replacement within the

industry today rely heavily on those visual inspections made by maintenance personnel whose subjective knowledge is based on varying degrees of experience and training. The subjective nature of these inspections sometimes results in inconsistent determinations about the ability of individual crossties and rail fasteners to maintain adequate gage restraint.

Crossties may not always exhibit strong indications of good or bad condition. If a crosstie in questionable condition is removed from track prematurely, its maximum service life is unnecessarily shortened resulting in added maintenance costs for the railroad. Yet, crossties of questionable condition left too long in track can cause a wide-gage derailment with its inherent risk of injury to railroad personnel and passengers and damage to property. In many instances of gage failure caused by defective crossties and/or rail fasteners, the static or unloaded gage is within the limits prescribed by the Federal Track Safety Standards contained in 49 CFR part 213. However, when a train applies an abnormally high lateral load to a section of track which contains marginal crosstie or rail fastener conditions, the result is often a wide-gage derailment.

Statistics taken from the Federal Railroad Administration's (FRA's) Annual Accident/Incident Bulletins indicate that wide gage resulting from defective crossties and rail fasteners has been, and continues to be, the largest single cause of reportable track-caused derailments. In response to this problem, a long-standing joint FRA/industry research project has developed a non-destructive performance-based technology to objectively measure the gage restraint capacity of crossties and rail fasteners. The GRMS applies known lateral and vertical loads to the track structure, measures the gage deflection under those loads, and then projects what the gage would become under severe track loading conditions of 24,000 pounds lateral and 33,000 pounds vertical. From this data, a gage widening ratio is calculated as a measure of overall track strength.

In 1993, FRA granted CSX Transportation (CSXT) a waiver of compliance from portions of the Track Safety Standards so that it could conduct a test program to evaluate a GRMS performance-based standard. In lieu of implementing existing crosstie and rail fastener requirements, CSXT used FRA's research vehicle to judge track strength of nearly 500 miles of track in various segments. The experience gained from this test program has afforded FRA and the industry the opportunity to adjust the operational and conditional requirements of a GRMS program to make it a more consistent method of objectively determining crosstie and rail fastener effectiveness.

During the past several years, CSXT contracted for the design and construction of two GRMS vehicles which are in use over its system, including the waiver territory. The former Consolidated Rail Corporation used a GRMS vehicle over its system, and several other Class I railroads have expressed a serious interest in obtaining GRMS vehicles. FRA believes that the GRMS technology has now advanced to the point where railroads can use it to reliably assist in determining compliance with crosstie and rail fastener requirements contained in the Track Safety Standards.

Proceedings To Date

A. Track Working Group

On April 2, 1996, the Railroad Safety Advisory Committee (RSAC) agreed to provide advice and recommendations to FRA for revision of the Track Safety Standards. The RSAC then assigned that responsibility to a specialized working group comprised of approximately 30 representatives from labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA.

The Track Working Group met monthly from May, 1996, through October, 1996, to provide to FRA advice on the development of a draft Notice of Proposed Rulemaking (NPRM) to recommend to the RSAC. Although the Track Working Group discussed extensively the subject of GRMS, it was unable to reach consensus about how GRMS technology should be addressed in the revised Track Safety Standards. Representatives of the railroads had anticipated that the revised track standards would include a provision allowing railroads to use GRMS technology in place of inspection requirements already outlined in Part 213. Labor representatives, however, expressed strong reluctance to agree to a change that could replace some of the discretion and judgment already allowed track inspectors. They expressed fear that the judgment of track inspectors would be overruled completely by GRMS technology.

At a public meeting on October 31, 1996, the Track Working Group presented its proposed rule to the RSAC. The proposed rule did not include a provision for GRMS. The RSAC therefore appointed a small task group to evaluate the possibility of developing GRMS standards to be added to the revised Track Safety Standards at a later time.

The proposed rule, based on recommendations received from the Track Working Group, was approved by a majority consensus of the RSAC, which in turn, recommended the proposal to FRA for adoption. On July 3, 1997, FRA issued an NPRM largely based upon that proposal. *See* 62 FR 36168. FRA conducted a public hearing and received mostly favorable comments from 12 respondents. On June 22, 1998, FRA issued a final rule, based upon its NPRM and the comments it received in response. *See* 63 FR 33992. Both the NPRM and the final rule identified and discussed the relevant issues concerning GRMS.

B. GRMS Task Group

A specialized Task Group met five times from June 1997, through February 1998, to advise FRA on regulatory language which addresses the use of GRMS technology for possible inclusion into the Track Safety Standards. The Task Group was comprised of approximately 12 representatives from labor, railroads, trade associations, state government groups, the Department of Transportation's Research and Special Programs Administration, and FRA. A member of the National Transportation Safety Board also participated in an advisory capacity.

The Task Group discussed at length whether GRMS technology should replace, or merely supplement, traditional inspection methods and the requirements for crossties and rail fasteners. Representatives of labor organizations argued that the technology should be used in conjunction with traditional inspection methods and existing requirements. Representatives of railroad management argued that GRMS technology should more than supplement existing standards because the use of GRMS technology produces an objective determination of whether crossties are able to continue effectively maintaining adequate gage restraint, or are approaching the end of their service lives and must be replaced. In some cases, the traditional method of crosstie evaluation would not necessarily agree with the GRMS evaluation.

To resolve this disagreement, the Task Group agreed that a GRMS provision in the Track Safety Standards should provide for discretion of employees fully qualified under § 213.7 to use Portable Track Loading Fixtures (PTLFs) between GRMS inspections to make individual judgements about a track's ability to maintain gage. A PTLF is a hand-carried gage measuring device that

exerts a lateral force between rails to test a track's ability to maintain gage under that pressure. Although the PTLF does not exert vertical force, as does the GRMS vehicle, it nevertheless functions as a surrogate measurement of track strength between inspections with the full-sized GRMS vehicle.

This amendment to the Track Safety Standards reflects the resolution reached by the Task Group. Under this amendment, railroads may designate track segments to be evaluated regularly by GRMS technology. Employees fully qualified under § 213.7 will use the PTLF as an additional analytical tool to determine compliance with the crosstie and fastener requirements. If a location passes the PTLF criteria, but the employee is uncomfortable with the condition of the track at that location, the employee retains the discretion to take additional remedial actions, such as placing slow orders at that location. On lines designated by the railroads to be evaluated by GRMS, FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of a PTLF measurement.

This amendment provides for two levels of compliance exceptions on track designated as GRMS track. This method closely follows the current procedures in effect on the CSXT waiver territory. First level exceptions are those locations which require the railroads to immediately place a 10 mph speed restriction, followed by verification and corrective action. Second level exceptions are those locations which do not appear to require immediate attention but must be monitored to ensure that they do not become defects before the next GRMS inspection.

The amendment also requires track owners to implement a formal training program for employees who are fully qualified under § 213.7 and whose territories are subject to the operation of a GRMS vehicle. The training program should provide affected employees with the necessary information to locate and verify GRMS defects, prescribe and record the appropriate remedial action, and provide specific instructions on the use and calibration of the PTLF.

In developing recommendations for inspection frequency requirements for GRMS, the Task Group considered such factors as class of track, amount of traffic, and whether or not the line is used for passenger transportation. In consideration of these varying factors, this amendment adopts a simplified but conservative approach by requiring annual GRMS inspections, not to exceed 14 months between inspections, on all line segments where the annual tonnage exceeds two million gross tons (MGTs) or where the maximum operating speed for passenger trains is more than 30 mph. On line segments where the traffic is two MGTs or less, and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between inspections must not exceed 24 months. This longer inspection interval makes the technology more accessible to short lines which may not have the same equipment or financial resources available to the larger railroads.

Section-By-Section Analysis of § 213.110

Paragraph (a)

Paragraph (a) provides for the implementation of a GRMS, supplemented by the use of a PTLF, to determine compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. Track owners electing to implement this technology must provide the appropriate FRA Regional Office with notification that specifically identifies the line segment(s) where GRMS will be used. The appropriate FRA office is the headquarters location for the FRA region in which the GRMS designated line segment is located.

The notification must be provided to FRA at least 30 days prior to the designation of any line segment which will be subject to the requirements of this section. Track owners must also provide FRA with at least 10 days notice prior to the removal of a line segment from GRMS designation.

Paragraph (b)

This paragraph specifies what information track owners should include in their notifications to FRA about line segments designated for GRMS inspection. The information must include, at a minimum, the segment's timetable designation, milepost limits, track class, million gross tons of traffic per year, and any other identifying characteristics of the segment.

Paragraph (c)

This paragraph describes minimum design requirements for GRMS vehicles. Track owners must submit to FRA sufficient technical data so that the agency can establish whether or not the track owner is in compliance with these design requirements. The paragraph requires that gage must be measured between the heads of the rail at an interval not exceeding 16 inches. The paragraph provides for design flexibility by establishing acceptable ranges for the lateral/vertical load ratio and the resulting lateral load severity, both of which can be satisfied by various load configurations, provided that the applied vertical load is not less than 10,000 pounds per rail.

Paragraphs (d), (e), and (f)

The mathematical formulas prescribed in these paragraphs are to be used in the calculation of the Gage Widening Ratio (GWR) and the Projected Loaded Gage 24 (PLG 24). The accurate measurements of unloaded gage, GRMS loaded gage, and the lateral load applied are of critical importance because these measurements are used in the calculation of PLG 24 values and the values for GWR, values which comprise a direct measure of track strength. Therefore, to avoid any influence from adjacent loads, design requirements specify that the unloaded track gage must be measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application. Loaded track gage measured by the GRMS vehicle shall be measured at a point no more than 12 inches from the lateral load application point.

The Task Group recommended that the loaded track gage measurement be taken at the point of application of the lateral load, as is the practice on existing in-service GRMS vehicles that use displacement transducers mounted on the instrumented wheelset. This final rule provides for the use of other gage measuring technologies, such as optical and laser gage measuring systems, by allowing the measurement of loaded gage to be taken no more than 12 inches from the lateral load application point.

Paragraphs (g), (h), and (i)

GRMS vehicles must be also capable of producing strip chart traces of all the parameters specified in paragraph (l) of this section, as well as a printed exception report listing by magnitude and location all exceptions from these parameters. The exception report listing must be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233 of this part.

Paragraph (j)

The track owner is required to institute procedures that will ensure the integrity of data collected by the GRMS and PTLF systems. Track owners must maintain documented calibration procedures on each GRMS vehicle and make them available upon request from an FRA representative. FRA understands that common procedure is for GRMS systems to be calibrated at least once per day. Therefore, the rule requires that the procedures must

specify that calibration is done at least once per day. Track owners must also develop and implement the necessary PTLF inspection and maintenance procedures so that the 4,000-pound reading is accurate within plus/minus five percent.

Paragraph (k)

This paragraph recognizes the need for all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section to receive training on the implementation of GRMS technology. The track owner, therefore is required to develop a formal GRMS training program which must be made available to FRA upon request.

The training program must provide detailed instruction on the specific areas identified in this paragraph. In particular, the training must address basic GRMS operational procedures, interpretation and handling of exception reports, how to locate and verify GRMS defects in the field, remedial action requirements to be initiated when defects are verified, how to use and calibrate the PTLF, and the recordkeeping requirements associated with the implementation of GRMS technology.

Paragraph (l)

This paragraph specifies the parameters and threshold levels to be reported as a record of lateral restraint following an inspection by a GRMS vehicle. The regulation requires that two levels of exceptions are reported during the GRMS inspection. Specific remedial actions are required for each level, as identified in the Remedial Action Table in this section. First Level exceptions are required to be immediately protected by a 10 mph speed restriction until verification and corrective action can be instituted. Second Level exceptions are to be monitored and maintained within the PTLF criteria outlined in paragraph (m) of this section.

Footnote 2 in the Remedial Action Table of this section recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. Accordingly, for Class 2 and Class 3 track, the GRMS loaded track gage values are also increased by ¼ inch to a maximum of 58 inches. GRMS loaded track gage values in excess of 58 inches must always be considered First Level exceptions. This ¼ inch allowance in gage applies only to GRMS loaded gage, and does not apply to PTLF gage measurements or to measurements made by more traditional methods.

Paragraph (m)

Paragraph (m) describes the manner in which a PTLF must be used as an additional analytical tool, between GRMS inspections, to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and rail fastener requirements specified in §§ 213.109 and 213.127. At locations identified by a GRMS record of inspection, or at any other location along the track, compliance with the crosstie and rail fastener requirements will be demonstrated when a PTLF is applied and (1) the total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds, and (2) the gage of the track measured under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) of this section for the class of track involved. Gage widening in excess of the ⅝ inch must constitute a deviation from Class 1 standards.

At locations where compliance with the crosstie and rail fastener requirements have been demonstrated through the use of a PTLF, a fully qualified § 213.7 individual retains the discretionary authority to prescribe additional remedial actions, such as the placement of speed restrictions, if the individual deems it necessary. FRA inspectors will determine compliance with the crosstie and fastener requirements solely on the basis of the PTLF measurements.

When a functional PTLF is not available to a fully qualified § 213.7 individual during a scheduled inspection under § 213.233 of this part, the track owner must repair or replace the PTLF prior to the next inspection required under § 213.233, or crosstie and rail fastener compliance will be based solely on the requirements specified in §§ 213.109 and 213.127.

At locations where crosstie or rail fastening compliance is questioned and vertical loading of the track structure is necessary to restore contact with the lateral rail restraint components, the crossties must be raised until lateral restraint contact is restored and a PTLF measurement must then be made.

Paragraph (n)

The track owner must maintain a record of the two most recent GRMS inspections at locations meeting the requirements specified in § 213.241(b). The records must indicate the location and nature of each First Level exception and, the nature and date of initiated remedial action, if any, for each First Level exception. First Level exceptions are described in the Remedial Action Table in Paragraph (l).

The track owner is not required to maintain records of Second Level exceptions. However, as required in paragraph (i), reports of all exceptions, including Second Level exceptions, must be provided to the appropriate fully qualified § 213.7 individuals prior to the next inspection required under § 213.233. Second Level exceptions are also described in the Remedial Action Table in Paragraph (l).

Paragraph (o)

On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually, with no more than 14 months between inspections. The maximum interval of 14 months is intended to provide some flexibility for scheduling when it may not be possible to schedule annual inspections within the same calendar month each year.

On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections cannot exceed 24 months. This extended frequency is an attempt to make the technology more accessible to short line operators who may not have the financial or equipment resources available to larger railroads.

Paragraph (p)

This list of definitions is offered to provide explanation of terms that are essential to the implementation of GRMS technology.

Regulatory Impact: Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. The final rule amending the Track Safety Standards is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, N.W., Seventh Floor, Washington, D.C. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

Ordinarily, in conducting an analysis of the costs and benefits of a proposed or final rule, FRA gathers more extensive economic data than was made available in this proceeding. However, in light of the consensus in the GRMS Task Group, the Track Working Group, and the majority vote of the RSAC members, FRA does not believe more data is necessary. FRA has relied principally on the recommendations and experience of the railroad industry and labor representatives who, through the RSAC process, helped develop this rule. The GRMS Task Group members provided valuable non-quantitative data on their preferences. Thus, their unanimous consensus on the contents of the rule allows FRA to conclude that the rule is cost beneficial.

The main benefit of GRMS technology is that a railroad can improve safety by replacing ties that are not providing lateral restraint, and leave in service ties that may not look good but are providing adequate lateral restraint. The railroads using a GRMS will probably replace fewer ties initially, but by objectively determining through performance testing which ties need to be replaced, will be better able to ensure that existing ties will provide adequate lateral restraint. The primary reduction in costs to the railroad would result from a reduction in the number of ties replaced. In addition, the railroads would benefit from reduced accident costs and lower maintenance costs in attempting to maintain the geometry of track. The Association of American Railroads (AAR) estimates employment of a GRMS would reduce the requirement for new ties by 600,000 per year in the early years, although this benefit is likely to later shrink somewhat due to the finite life expectancy of crossties which a GRMS cannot extend. At $40 per tie, the benefit to the industry would be about $24 million in the first year. The 20-year discounted net present value would be about 10 times that amount, or $240 million, assuming some later shrinkage in the benefit and a seven percent discount rate. Assuming there are approximately 200,000 miles of track in the Nation, and each mile includes approximately 3,300 crossties, FRA believes this projection is reasonable.

A GRMS also provides a safety benefit. Wide gage derailments cost the railroad industry about $60 million per year. If GRMS can reduce the number of wide gage derailments by half, the railroad industry will save $30 million per year. The 20-year discounted benefit would be approximately 10 times that amount, or $300 million, assuming systemwide adoption of a GRMS.

This final rule provides the use of a GRMS as an option. It is not mandatory. Therefore, a railroad will not implement a GRMS unless the railroad believes that the benefit of the system will exceed its cost. A GRMS vehicle costs approximately $3 million. About 10 of them would be needed nationwide to test all of the railroads. Therefore, the cost of the vehicles to the railroad industry would be $30 million. The costs of operating a GRMS is approximately $300,000. The 20-year discounted cost therefore would be $3 million. In addition, the railroad industry would need approximately 1,000 PTLFs. At a cost of about $1,200 each, the total cost to the industry for PTLFs would be approximately $1.2 million.

In addition to the equipment costs, railroads would expend about $800 each to train track inspectors on the use of PTLFs. Assuming one track inspector per PTLF, the cost to the railroad industry for training would be $800,000. The total initial investment by the railroad industry, including equipment and training, would be $32 million.

Assuming maintenance costs about 10 percent of the initial investment, and maintenance most likely would not be needed the first year, the 20-year discounted cost of maintenance would be about nine times 10 percent, or 90 percent of $32 million: $28.8 million. Thus the total 20-year discounted cost would be about $60.8 million.

This non-mandatory provision for use of GRMS could return as much as $540 million in discounted benefits to the railroad industry, at a discounted cost of only $60.8 million, assuming GRMS procedures are adopted nationwide. The railroad industry will most likely gain financially while improving safety.

Federalism Implications

This final rule has been analyzed according to the principles of Executive Order 13132 (''Federalism''). The GRMS Task Group which developed this amendment to the Track Safety Standards included a representative of the American Association of State Highway and Transportation Officials (AASHTO). In addition, the task group included railroad and labor union representatives who operate in a number of different states. As far as FRA has been able to discern, there are no states which require, provide for, or otherwise regulate the use of GRMS procedures for inspecting and maintaining track gage. Therefore, this amendment to Part 213 does not have any federalism implications.

Regulatory Flexibility Act

This amendment to the Track Safety Standards provides for an alternative option for railroads to use in evaluating gage restraint capabilities of track. The use of a GRMS is not mandatory. Therefore, FRA concludes that this amendment will have no measurable impact on small units of government, businesses, or other organizations. FRA certifies that this amendment does not impose a significant economic impact on a substantial number of small entities. Therefore, the preparation of a Regulatory Flexibility Analysis is not required in accordance with 5 U.S.C. 605(b).

Small Business Regulatory Enforcement Fairness Act of 1996

Because an analysis under the Regulatory Flexibility Act is not required for this amendment to the Track Safety Standards, FRA is likewise not required to issue a Small Entity Compliance Guide to summarize the requirements of this rule, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this amendment have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements of the new section, which will be added to those of the Track Safety Standards (49 CFR Part 213), and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
213.110—GRMS Technical Data 1—Compliance with Minimum Design Requirements.	685	40 notifications	45 minutes	46	$1,140
—GRMS Vehicle Output Reports	685	150 reports	5 minutes	13	494

CFR section	Respondent universe (railroads)	Total annual responses	Average time per response	Total annual burden hours (hours)	Total annual burden cost
—GRMS Vehicle Exception Reports	685	150 reports	5 minutes	13	494
—GRMS Documented Calibration Procedures	685	10 documents	2 hours	20	760
—GRMS Training Programs + Training Sessions	685	10 programs + 25 sessions.	16 hours	560	21,280
—GRMS Inspection Records	685	200 records	2 hours	400	15,200

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), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function 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. Information or a copy of the paperwork package submitted to OMB may be obtained by contacting Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than March 12, 2001. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, Office of Safety Analysis, Mail Stop 17, 1120 Vermont Ave., NW., Washington, DC 20590.

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.

FRA cannot impose a penalty for violating information collection requirements on persons who 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 a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this amendment to the Track Safety Standards in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and related directives. This amendment meets the criteria that establish it as a non-major action for environmental purposes.

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Railroads, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends part 213, title 49, Code of Federal Regulations as follows:

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; and 49 CFR 1.49(m).

2. Section 213.110 is added to read as follows:

§ 213.110 Gage restraint measurement systems.

(a) A track owner may elect to implement a Gage Restraint Measurement System (GRMS), supplemented by the use of a Portable Track Loading Fixture (PTLF), to determine compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(1) The track owner notifies the appropriate FRA Regional office at least 30 days prior to the designation of any line segment on which GRMS technology will be implemented; and

(2) The track owner notifies the appropriate FRA Regional office at least 10 days prior to the removal of any line segment from GRMS designation.

(b) Initial notification under paragraph (a)(1) of this section shall include—

(1) Identification of the line segment(s) by timetable designation, milepost limits, class of track, or other identifying criteria; and

(2) The most recent record of million gross tons of traffic per year over the identified segment(s).

(c) The track owner shall also provide to FRA sufficient technical data to establish compliance with the minimum design requirements of a GRMS vehicle which specify that—

(1) Gage restraint shall be measured between the heads of rail —

(A) At an interval not exceeding 16 inches;

(B) Under an applied vertical load of no less than 10,000 pounds per rail; and

(C) Under an applied lateral load which provides for a lateral/vertical load ratio between 0.5 and 1.25, and a load severity greater than 3,000 pounds but less than 8,000 pounds.

(d) Load severity is defined by the formula—$S=L-cV$

Where—

S=Load severity, defined as the lateral load applied to the fastener system (pounds).

L=Actual lateral load applied (pounds).

c=Coefficient of friction between rail/tie which is assigned a nominal value of (0.4).

V=Actual vertical load applied (pounds).

(e) The measured gage values shall be converted to a Projected Loaded Gage 24 (PLG 24) as follows—

$$PLG\ 24 = UTG + A \times (LTG - UTG)$$

Where—

UTG=Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG=Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

A=The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

For all track—

$$A = \frac{13.513}{(.001 \times L - .000258 \times V) - .009 \times (.001 \times L - .000258 \times V)^2}$$

Note: The A factor shall not exceed (3.184) under any valid loading configuration.

where—

L=Actual lateral load applied (pounds).

V=Actual vertical load applied (pounds).

(f) The measured gage value shall be converted to a Gage Widening Ratio (GWR) as follows —

$$GWR = \frac{(LTG - UTG)}{L} \times 16{,}000$$

(g) The GRMS vehicle shall be capable of producing output reports that provide a trace, on a constant-distance scale, of all parameters specified in paragraph (l) of this section.

(h) The GRMS vehicle shall be capable of providing an exception report containing a systematic listing of all exceptions, by magnitude and location, to all the parameters specified in paragraph (l) of this section.

(i) The exception reports required by this section shall be provided to the appropriate person designated as fully qualified under § 213.7 prior to the next inspection required under § 213.233.

(j) The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the GRMS and PTLF systems. At a minimum, the track owner shall—

(1) Maintain and make available to the Federal Railroad Administration documented calibration procedures on each GRMS vehicle which, at a minimum, shall specify a daily instrument verification procedure; and

(2) Maintain each PTLF used for determining compliance with the requirements of this section such that the 4,000-pound reading is accurate to within five percent of that reading.

(k) The track owner shall provide training in GRMS technology to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of this section. The training program shall be made available to the Federal Railroad Administration upon request. At a minimum, the training program shall address—

(1) Basic GRMS procedures;

(2) Interpretation and handling of exception reports generated by the GRMS vehicle;

(3) Locating and verifying defects in the field;

(4) Remedial action requirements;

(5) Use and calibration of the PTLF; and

(6) Recordkeeping requirements.

(l) The GRMS record of lateral restraint shall identify two exception levels. At a minimum, the track owner shall initiate the required remedial action at each exception level as defined in the following table—

GRMS parameter [1]	If measurement value exceeds	Remedial action required
First Level Exception		
UTG	58 inches	(1) Immediately protect the exception location with a 10 mph speed restriction; then verify location; and (2) Restore lateral restraint and maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
LTG	58 inches	
PLG24	59 inches	
GWR	1.0 inches	
Second Level Exception		
LTG	57¾ inches on Class 4 and 5 track [2].	[2] Limit operating speed to no more than the maximum allowable under § 213.9 for Class 3 track; then verify location; and (1) Maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (2) Maintain compliance with § 213.53(b) of this part as measured with the PTLF.
PLG24	58 inches	
GWR	0.75 inches	

[1] Definitions for the GRMS parameters referenced in this table are found in paragraph (p) of this section.

[2] This note recognizes that typical good track will increase in total gage by as much as ¼ inch due to outward rail rotation under GRMS loading conditions. For Class 2 & 3 track, the GRMS LTG values are also increased by ¼ inch to a maximum of 58 inches. However, for any Class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial actions must be taken by the track owner. This ¼-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) will apply.

(m) Between GRMS inspections, the PTLF shall be used as an additional analytical tool to assist fully qualified § 213.7 individuals in determining compliance with the crosstie and fastener requirements of §§ 213.109 and 213.127 subject to the following criteria—

(1) At any location along the track that the PTLF is applied, that location will be deemed in compliance with the crosstie and fastener requirements specified in §§ 213.109 and 213.127 provided that—

(i) The total gage widening at that location does not exceed ⅝ inch when increasing the applied force from 0 to 4,000 pounds; and

(ii) The gage of the track under 4,000 pounds of applied force does not exceed the allowable gage prescribed in § 213.53(b) for the class of track.

(2) Gage widening in excess of ⅝ inch shall constitute a deviation from Class 1 standards.

(3) A person designated as fully qualified under § 213.7 retains the discretionary authority to prescribe additional remedial actions for those locations which comply with the requirements of paragraph (m)(1)(i) and (ii) of this section.

(4) When a functional PTLF is not available to a fully qualified person designated under § 213.7, the criteria for determining crosstie and fastener compliance shall be based solely on the requirements specified in §§ 213.109 and 213.127.

(5) If the PTLF becomes non-functional or is missing, the track owner will replace or repair it before the next inspection required under § 213.233.

(6) Where vertical loading of the track is necessary for contact with the lateral rail restraint components, a PTLF test will not be considered valid until contact with these components is restored under static loading conditions.

(n) The track owner shall maintain a record of the two most recent GRMS inspections at locations which meet the requirements specified in § 213.241(b). At a minimum, records shall indicate the following—

(1) Location and nature of each First Level exception; and

(2) Nature and date of remedial action, if any, for each exception identified in paragraph (n)(1) of this section.

(o) The inspection interval for designated GRMS line segments shall be such that—

(1) On line segments where the annual tonnage exceeds two million gross tons, or where the maximum operating speeds for passenger trains exceeds 30 mph, GRMS inspections must be performed annually at an interval not to exceed 14 months; or

(2) On line segments where the annual tonnage is two million gross tons or less and the maximum operating speed for passenger trains does not exceed 30 mph, the interval between GRMS inspections must not exceed 24 months.

(p) As used in this section—

(1) *Gage Restraint Measurement System (GRMS)* means a track loading vehicle meeting the minimum design requirements specified in this section.

(2) *Gage Widening Ratio (GWR)* means the measured difference between loaded and unloaded gage measurements, linearly normalized to 16,000 pounds of applied lateral load.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25. GRMS vehicles using load combinations developing L/V ratios which exceed 0.8 must be operated with caution to protect against the risk of wheel climb by the test wheelset.

(4) *Load severity* means the amount of lateral load applied to the fastener system after friction between rail and tie is overcome by any applied gage-widening lateral load.

(5) *Loaded Track Gage (LTG)* means the gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

(6) *Portable Track Loading Fixture (PTLF)* means a portable track loading device capable of applying an increasing lateral force from 0 to 4,000 pounds on the web/base fillet of each rail simultaneously.

(7) *Projected Loaded Gage (PLG)* means an extrapolated value for loaded gage calculated from actual measured loads and deflections. PLG 24 means the extrapolated value for loaded gage under a 24,000 pound lateral load and a 33,000 pound vertical load.

(8) *Unloaded Track Gage (UTG)* means the gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load.

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John V. Wells,

Acting Federal Railroad Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH72

Import of Polar Bear Trophies From Canada: Change in the Finding for the M'Clintock Channel Population and Revision of Regulations in 50 CFR 18.30

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency interim rule with request for comments.

SUMMARY: We, the Fish and Wildlife Service, are amending our regulations, under the Marine Mammal Protection Act (MMPA), on the import of polar bears (*Ursus maritimus*) taken by U.S. hunters in sport hunts from M'Clintock Channel, Nunavut Territory, Canada. We have reviewed new information submitted by the Department of Environment Canada (Canadian Wildlife Service) which indicates that this population is severely depleted and current harvest quotas are unsustainable. We find that the M'Clintock Channel population no longer meets the import requirements of the MMPA and are amending our regulations to reflect that bears sport hunted in this population after the 1999/2000 Canadian hunting season will no longer be eligible for import under the 1997 finding which approved this population for multiple harvest seasons. Due to the dramatic change in population status, we are using this emergency interim rule to make the changes to our regulations effective immediately. In addition, we are updating our regulations to reflect the new territory of Nunavut and to notify the public on the lifting by Canada of the harvest moratorium in the Viscount Melville Sound polar bear population.