Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the below-listed addresses, according to geographic region of the employing agency or as required by section 1201.4(e).

Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, 1365 Peachtree Street, NE., Suite 500, Atlanta, Georgia 30309–2366 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina)
2. Boston Regional Office, 150 Causeway Street, Room 1122, Boston, Massachusetts 02114–1390 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)
4. Dallas Regional Office, 1100 Commerce Street, Room 6F20, Dallas, Texas 75242–1001 (Arkansas, Louisiana, Oklahoma, Texas, Swan Island)
5. Denver Regional Office, 730 Simms Street, Room 301, Golden, Colorado 80401–4720 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming)
6. New York Regional Office, 26 Federal Plaza, Room 2339, New York, New York 10278–0022 (New Jersey, New York, Puerto Rico, Virgin Islands)
7. Philadelphia Regional Office, U.S. Customhouse, Room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904 (Camden County (New Jersey), Delaware, Maryland, Pennsylvania, Virginia, West Virginia)
8. St. Louis Regional Office, 1520 Market Street, Room 1740, St. Louis, Missouri 63103–2692 (Iowa, Kentucky, Missouri, Tennessee)
9. San Francisco Regional Office, 525 Market Street, Room 2800, San Francisco, California 94105–2708 (California)
10. Seattle Regional Office, 915 Second Street, Room 1840, Seattle, Washington 98174–1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas)
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3401 (Washington, DC Metropolitan Area, all overseas areas not otherwise covered).

Appendix III to Part 1201—Approved Hearing Locations

Atlanta Region

Atlanta, Georgia
Augusta, Georgia
Macon, Georgia
Savannah, Georgia
Birmingham, Alabama
Huntsville, Alabama
Montgomery, Alabama
Jacksonville, Florida
Miami, Florida
Orlando, Florida
Pensacola, Florida
Tampa/St. Petersburg, Florida
Jackson, Mississippi
Asheville, North Carolina
Jacksonville, North Carolina
Raleigh, North Carolina
Columbia, South Carolina
Charleston, South Carolina

Boston Region

Boston, Massachusetts
Hartford, Connecticut
New Haven, Connecticut
Bangor, Maine
Portland, Maine
Manchester, New Hampshire
Portsmouth, New Hampshire
Providence, Rhode Island
Burlington, Vermont

Chicago Region

Chicago, Illinois
Davenport, Iowa/Rock Island, Illinois
Indianapolis, Indiana
Detroit, Michigan
Minneapolis/St. Paul, Minnesota
Cleveland, Ohio
Cincinnati, Ohio
Columbus, Ohio
Dayton, Ohio
Milwaukee, Wisconsin

Dallas Region

Dallas, Texas
Corpus Christi, Texas
El Paso, Texas
Houston, Texas
San Antonio, Texas
Temple, Texas
Texarkana, Texas
Little Rock, Arkansas
Alexandria, Louisiana
New Orleans, Louisiana
Oklahoma City, Oklahoma
Tulsa, Oklahoma

Denver Region

Denver, Colorado
Pueblo, Colorado
Phoenix, Arizona
Tucson, Arizona
Wichita, Kansas
Billings, Montana
Great Falls, Montana
Missoula, Montana
Omaha, Nebraska
Las Vegas, Nevada
Reno, Nevada
Albuquerque, New Mexico
Bismarck, North Dakota
Rapid City, South Dakota
Sioux Falls, South Dakota
Salt Lake City, Utah
Casper, Wyoming

New York Region

Albany, New York
New York, New York
Buffalo, New York
Syracuse, New York
Newark, New Jersey

Philadelphia Region

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Dover, Delaware
Baltimore, Maryland
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

San Francisco Region

San Francisco, California
Fresno, California
Los Angeles, California
Sacramento, California
San Diego, California

Seattle Region

Seattle, Washington
Spokane, Washington
Richland, Kennewick and Pasco, Washington
Anchorage, Alaska
Honolulu, Hawaii
Boise, Idaho
Pocatello, Idaho
Medford, Oregon
Portland, Oregon

St. Louis Region

St. Louis, Missouri
Kansas City, Missouri
Springfield, Missouri
Des Moines, Iowa
Lexington, Kentucky
Louisville, Kentucky
Knoxville, Tennessee
Memphis, Tennessee
Nashville, Tennessee

Washington Region

Bailey's Crossroads, Virginia
Washington, DC

Dated: June 24, 1986.

Maria L. Johnson,

Acting Chairman.

[FR Doc. 86–15280 Filed 7–9–86; 8:45 am]

BILLING CODE 7400–01–M

federal register

Thursday
July 10, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 45 and 91

Aircraft Identification and Retention of Fuel System Modification Records; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 45 and 91

[Docket No. 25033; Notice No. 86-9]

Aircraft Indentification and Retention of Fuel System Modification Records

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Customs Service (Customs) of the Department of Treasury has expressed an urgent need to increase the effectiveness of their drug interdiction programs in order to stop the flow of illegal drugs into the United States by air. Potentially high-risk aircraft operations are often used to bypass drug interdiction efforts. Because of difficulties in identifying these aircraft involved in drug trafficking, Customs has requested the FAA to consider amending certain regulations. To assist in identifying aircraft suspected of being used in these potentially high-risk operations, the FAA proposes to require: (1) That 12-inch high nationality and registration marks (N-numbers) be displayed on aircraft that penetrate an Air Defense Identification Zone (ADIZ) or a Defense Early Warning Identification Zone (DEWIZ); (2) that a civil aircraft identification data (I.D.) plate be displayed so that it is legible to a person on the ground, and must be either adjacent to the right rear-most entrance door or on the fuselage surface near the tail surfaces; and (3) that a copy of the FAA Form 337 for extended-range fuel tanks installed within the passenger or a baggage compartment be obtained and kept in the aircraft by the owner or operator. Customs contends that these actions are necessary to help stop the use of aircraft in illegal activities in view of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand effectiveness of narcotic interdiction.

DATE: Comments must be received on or before September 9, 1986.

ADDRESS: Comments on the proposal are to be marked "Docket No. 25033" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25033, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be inspected in Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph J. Gwiazdowski, Aircraft Manufacturing Division (AWS-200), Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8361.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25033." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8056. Requests must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

While the FAA does not enforce the anti-drug smuggling and related criminal statutes, the agency is concerned with hazards to air commerce in the United States arising from the use of aircraft to escape detection in importing illegal, contraband substances (narcotic drugs, marijuana, and depressant or stimulant drugs) into the United States. The hazards to air commerce have increased consistent with the growing number of pilots who are willing to risk the carriage of these illegal goods despite escalating law enforcement activities. The means for detection of these aircraft include low altitude radar, law enforcement pursuit aircraft, and advanced police techniques. Pilots committed to evading detection in order to avoid severe penalties may be expected to engage in extremely dangerous flight techniques to avoid pursuit aircraft. These techniques include: very low flight to avoid radar; landing and taking off from unprepared landing areas; operation without lights; and operating in weather conditions beyond the capability or qualifications of the aircraft or pilot. These flight techniques create a safety hazard for all other aircraft in the area and for persons and property on the surface. Further, many of the aircraft used for such operations have been equipped with extended-range fuel tanks which are not installed in accordance with the Federal Aviation Regulations (FAR), posing an additional safety problem. Thus, while other agencies are responsible for criminal law enforcement concerning illegal substances (narcotic drugs, marijuana, and depressant or stimulant drugs), the hazardous aeronautical activities of pilots smuggling these substances into the U.S. pose a direct threat to air commerce. This threat was a basis for the FAA adopting FAR § 91.12, which provides that no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs are carried in the aircraft; unless authorized under Federal or State law. Customs reports that the vast majority of drug trafficking by air into the United States passes through an ADIZ or DEWIZ and is conducted in small, twin-engine aircraft.

As part of a coordinated effort to develop more effective means to curb these hazardous flight operations, several meetings were held involving FAA and Customs representatives. The meetings focused on specific drug enforcement problems related to FAA

responsibilities. On July 11, 1985 the Assistant Secretary of the Department of Treasury sent a letter to the FAA outlining and explaining the specific regulatory changes which Customs considers to be necessary to assist it in curbing use of aircraft to carry illegal substances, and identifying those aircraft which may be used for drug smuggling. A copy of that letter has been placed in the public docket. The request is based on the increase in illegal drug importation and on the value to law enforcement officials of positive identification of those aircraft which may be involved in such activities. Customs believes that the amendments, if adopted, would represent a significant step toward curbing the use of aircraft for drug trafficking. This rulemaking proposal addresses the following three problems identified by Customs:

(1) Aircraft displaying 3-inch high N-numbers while operating in the ADIZ or DEWIZ hinder positive identification because the 3-inch numbers are too difficult to see and read;

(2) Aircraft affixed with I.D. plates which cannot readily be seen hamper the prompt identification of stolen or falsely numbered aircraft; and

(3) Aircraft modified with unauthorized fuel tanks in the passenger compartment or a baggage compartment that cannot be idenfified readily, since the records for authorizing aircraft modifications are not required to be kept aboard the aircraft.

Registration Numbers

As part of their duties to combat the illegal importation of drugs into this country, the Customs Service and other law enforcement and military groups frequently must attempt to identify, from a high-performance aircraft, a small low-performance aircraft suspected of being used in the illegal activity. Many of these suspected aircraft have small, 3-inch registration numbers which are difficult to see and read when attempting air-to-air identification. This requires maneuvering relatively close to the suspect aircraft so that the small registration number (N-number) can be read. The use of larger registration marks would make identification easier and would result in safer operation by maintaining a larger separation between the aircraft.

Prior to 1977, 12-inch N-numbers were required on the sides of fixed-wing aircraft. From 1977 to 1981, 3-inch registration marks were required on small fixed-wing aircraft with speeds not greater than 180 knots. However, the FAA received complaints from private citizens, law enforcement agencies, the U.S. Customs Service, and the Department of Defense. Identification for safety and law enforcement purposes, including apprehending smugglers, was far more difficult or was impossible with 3-inch marks. Prior to 1983, helicopters were required to have only 2-inch marks on the sides of the fuselage, and were required to have 20-inch marks on the bottom surface.

The FAA adopted Amendments 45–13 (46 FR 48600; October 1, 1981) and 45–15 (48 FR 11392; March 17, 1983) to reinstate 12-inch N-numbers on fixed-wing aircraft and rotorcraft to improve positive identification of those aircraft previously allowed to display small N-numbers. The amendments were adopted to resolve various problems involved with aircraft identification, including the concerns for law enforcement. Also, the display of 12-inch N-numbers on the sides of aircraft has been advocated by the U.S. Air Force as a means of permitting greater aircraft separation during air-to-air identification of aircraft. However, to avoid the undue cost of compliance to owners of the affected aircraft, when 12-inch N-numbers were reinstated the display of small N-numbers was "grandfathered" until the aircraft were repainted or the N-numbers were restored, repainted, or changed.

The Customs Service has found that many aircraft flying into the United States display the small, 3-inch marks, making it difficult to identify suspect aircraft. The vast majority of the suspected aircraft pass through an ADIZ or DEWIZ prior to entering the United States. It is in an ADIZ or DEWIZ in which Customs or another law enforcement or military organization is likely to attempt air-to-air identification of the aircraft.

Indentification Plates

The Customs Service indicates that, when investigating aircraft suspected of being used for smuggling, it is difficult to determine whether the registration number on the aircraft is false. False numbers may be used, for instance, on stolen aircraft, which frequently are used for smuggling. Cross-checking the N-number with the I.D. plate for the aircraft assists in determining whether the N-number is false. The I.D. plates for many aircraft, however, are located such that they cannot be read from the exterior of the aircraft, making it difficult for investigators to make an on-the-spot check of a suspected aircraft. Customs contends that the repositioning of existing I.D. plates, or placement of another I.D. plate on the exterior of the aircraft near the main entrance, would enable investigators to compare quickly the serial number with the N-number to help determine whether suspect aircraft have been stolen or the N-numbers falsified.

The FAA has adopted several related amendments concerning I.D. plates based on the needs and comments of the aviation community. Section 45.11 of the FAR was changed by Amendment 45–3 (52 FR 187; January 10, 1967) to require the I.D. plate to be in an accessible location "near an entrance," not necessarily an *external* location, to allow for maximum I.D. plate protection and to facilitate normal aircraft inspection. Also, based on information presented by small aircraft manufacturers, the FAA again changed § 45.11 of the FAR by adopting Amendment 45–7 (33 FR 14402; September 25, 1968) to provide an optional location for an aircraft I.D. plate. Under this option, the I.D. plate may be affixed on the exterior of the fuselage near the tail surfaces, if it is legible to an observer on the ground. Additionally, FAA Advisory Circular AC 45–2, Identification and Registration Markings, which provides guidance and information concerning the identification and marking requirements for aircraft, includes a provision that, if under certain conditions the I.D. plate has to be covered or enclosed in any manner, its accessibility is considered acceptable if it can be revealed without the use of tools.

Fuel Tanks

Customs reports that often aircraft used to smuggle drugs are modified with fuel tanks which are installed in the passenger or a baggage compartment and which are not authorized by the FAA. These fuel tanks are installed to permit the aircraft to make long flights, such as from South America to the United States. These unauthorized fuel tanks create a safety hazard because there is no assurance that they meet the safety standards established by the FAA. In addition, these aircraft may have extraordinarily long range, which adds to the difficulty in pursuing suspected aircraft.

One problem with attempting to identify the unauthorized, extended-range fuel tanks, however, is that it is difficult to check on the spot, whether the tanks have been installed in accordance with FAA requirements. The FAR type certification procedures require FAA approval for changes to type design of any U.S. civil aircraft modified with extended-range fuel tanks. Evidence of such approval varies depending on the airworthiness certificate issued for the aircraft and purpose of operation.

One way that approval can be evidenced is for an authorized person performing the work to execute an FAA Form 337 in accordance with Appendix B of Part 43 of the FAR. However, there is currently no requirement for records of such authorization to be on board the aircraft. Customs contends that a regulation requiring an FAA Form 337 to be aboard the aircraft when extended-range fuel tanks are installed within the passenger or baggage compartment would assist Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have such installations. Customs' investigators could make an on-the-spot check of the suspected aircraft's Form 337. In addition, this action would assist the FAA in identifying aircraft with unauthorized fuel tanks, which are potentially hazardous to the aviation community and the public.

Discussion of the Proposals

A. Improve Identification of Aircraft Penetrating the ADIZ and DEWIZ

Section 45.21 and 45.29

This proposal would require that all aircraft operating in the ADIZ or DEWIZ display 12-inch markings. However, if any surface authorized to be marked is not large enough for full-size marks, marks as large as practicable would have to be placed on the largest of the authorized surfaces in accordance with § 45.29(f).

To ease the burden on owners of affected aircraft while operating in an ADIZ or DEWIZ zone under the provision of § 45.21(d), this proposal would permit 12-inch markings to be temporary on those "grandfathered" aircraft which are currently authorized to operate with 3-inch markings as specified in § 45.29(b). Hence, aircraft that display marks smaller than 12 inches, as provided in Part 45, would be permitted to continue to display those marks except for aircraft operations conducted in the ADIZ or DEWIZ.

Thus, this proposal would accomplish a prime objective, which is to improve air-to-air identification of aircraft operating in an ADIZ or DEWIZ, without imposing an additional burden on the majority of the aviation community. This would also enhance safety by permitting greater separation between the unidentified aircraft and the investigating aircraft during air-to-air identification.

B. Change I.D. Plate Location

Section 45.11

This proposal would require all aircraft to display an I.D. plate, as specified by § 45.11(a), on the aircraft fuselage exterior, in a location legible to an observer on the ground, adjacent to the right rear-most entrance door, or on the exterior surface of the tail, provided the I.D. plate would be legible to an observer on the ground.

This proposal would require the aircraft I.D. plate in an easily accessible area, legible to an observer on the ground, to facilitate verification of aircraft identification by FAA inspectors, Customs investigators, and other law enforcement officials. This would provide access to the I.D. plate data without having to enter the aircraft. It would make the I.D. plate information and N-number available simultaneously to allow a cross reference, to help determine whether the aircraft may have been stolen or to determine if the registration number has been falsified. It would also facilitate FAA inspectors' identification of aircraft for maintenance purposes.

This portion of the proposal would not be retroactive since this could result in a major change which would pose an undue burden on many aircraft owners. For example, if the I.D. plates currently affixed to aircraft, as required, were to be removed from the existing locations, this could result in damage to the aircraft and I.D. plate, and might require burdensome engineering and manufacturing changes such as structural, interior or exterior repair, or repainting.

Accordingly, this notice proposes to require that those aircraft in service prior to 90 days after the effective date of this amendment display the model designation and builder's serial number on the fuselage exterior, adjacent to the right rear-most entrance in addition to the permanently affixed I.D. plate. The model designation and serial number would be required to be affixed in such a manner that it would not likely be defaced or removed during normal service. Unlike the regular identification plate, this "supplemental" identification would not have to be affixed in a manner such that it is not likely to be lost or destroyed in an accident. Thus, it could be applied in a relatively low-cost manner, such as by painting the numbers on the fuselage.

In addition, § 45.11(a) would be clarified by adding a comma, which was inadvertently omitted when this section was last amended.

C. Illegal Fuel Tank Installations

Part 43, Appendix B (a) and (d); § 91.27(c); and § 91.173 (a) and (d)

This proposal would require that all aircraft modified to incorporate an extended-range fuel system by the installation of additional fuel tanks in the passenger or baggage compartment, under Part 43 of the FAR, physically have on board the aircraft a copy of the FAA Form 337. This would include aircraft previously not required to have an FAA Form 337 for fuel tank installations when operating with a special flight permit for the purpose of delivery or export. This proposal would also make clear that the owner or operator of an aircraft with such fuel tanks would be required to present this Form 337 for inspection by any law enforcement officer.

This proposal would provide one means for FAA, Customs, and other investigators to quickly obtain evidence as to whether the fuel system modification in the aircraft is authorized or possibly illegally installed. Enforcement action could then be taken by the FAA against persons operating such aircraft, and action could be taken to prevent the aircraft from being flown. This proposal would assist Customs in concentrating interdiction efforts on those aircraft modified with unauthorized fuel tank installations and which are possibly being used for illegal drug trafficking. By limiting this proposed rule to aircraft modified with fuel tanks in the passenger or baggage compartments, operators of aircraft with FAA-approved extended-range fuel tanks located elsewhere in the aircraft, e.g., wing tip tanks, would not be required to keep that authorization on board the aircraft.

Regulatory Evaluation

The regulatory evaluation prepared for this notice examines the benefit and cost aspects of the establishment of identification, registration marking and recording of major repair requirements that would impact general aviation aircraft. The notice proposes amendments to Parts 43, 45, and 91 of the FAR, and it would require the following:

1. That 12-inch high nationality and registration marks (N-numbers) be displayed on aircraft that penetrate an ADIZ or a DEWIZ.

2. That either a civil aircraft identification (I.D.) plate or its information be displayed in a legible area on the exterior of an aircraft near the right rear-most entrance.

3. That a copy of the FAA Form 337 for fuel tanks installed within the passenger compartment or a baggage compartment, under Part 43 of the FAR, be kept in the aircraft by the owner or operator.

The proposed amendments are the result of several meetings between officials at the FAA and the U.S. Customs Service of the Department of Treasury. Customs contends that this action is necessary because of the severity of the drug abuse problem, the major increase in illegal drug importations, and the need for action to expand effectiveness of narcotic interdiction. As a result of those meetings, coupled with evidence that potentially high-risk aircraft operations are often used to bypass interdiction efforts, the FAA agreed to propose the regulatory action required to respond to the Department of Treasury's request.

Estimates of the cost of compliance with the proposed amendments to Parts 43, 45, and 91 have been developed by the FAA. Cost estimates were obtained primarily from civil aircraft manufacturers and fixed based operators. The estimate of impacts is subject to revision prior to the issuance of a final rule.

This evaluation estimates that the one-time cost of compliance associated with the proposed amendments to § 45.11 (I.D. Plate Requirement) and § 45.29 (12-inch N-number Requirement) would range between $7 million and $8 million (present discounted value of cost at 10 percent, 1987). The proposed amendment to § 45.11 would impact an estimated 79,300 to 82,000 fixed-wing aircraft, rotorcraft, and other types of civil aircraft (blimps, balloons, and gliders) at a cost of $100 each. Morover, the proposed amendment to § 45.29 would affect an estimated 3,900 to 13,500 fixed-wing aircraft and rotorcraft at a cost of $55 and $115 each, respectively. Collectively, the cost of compliance would range between $100 and $215 per aircraft (1985 dollars). Conversely, the proposed amendments to Appendix B of Part 43 (Recording of Major Repairs and Major Alterations), § 91.27 (Civil aircraft: Certifications required), and § 91.173 (Maintenance records.) are estimated to impose no additional cost. At present, the FAA Form 337 is filled out in duplicate, with copies given to the owner/operator and the FAA. Under the proposed amendment, this form would be filled out in triplicate, in order that a copy can be kept on board an aircraft modified with a fuel tank in the passenger compartment or a baggage compartment. In addition, the proposed amendment to § 45.21 (General) is estimated to impose no additional cost to owners/operators because it does not represent a requirement.

The anticipated benefits of the proposed amendments are these: (1) Improved positive identification of those aircraft previously allowed to display small N-numbers while operating in the ADIZ or DEWIZ, (2) Enhanced Customs' effort to determine whether a suspect aircraft had been stolen or the N-numbers falsified, and (3) Increased effectiveness of Customs in concentrating interdiction efforts on suspicious aircraft not authorized to have fuel tanks installed in the passenger compartment or a baggage compartment. The FAA has been unable to quantitatively estimate the extent to which Customs' drug interdiction efforts are expected to be enhanced as a result of this proposal. This difficulty is largely attributed to the fact that Customs' drug enforcement efforts represent a public good. This good does not subject itself to market evaluation. Thus, it is extremely difficult to evaluate these benefits in monetary terms.

Nonetheless, safety benefits will also accrue from this proposal. These benefits would be related to the lowering of fatalities and serious injuries associated with operation of civil aircraft in drug trafficking activity. A review of the National Transportation Safety Board's data base for drug related accidents revealed that 127 fatalities and 33 serious injuries occurred between 1975 and 1984. During the period, these statistics equated to an annual average of 13 fatalities and 3 serious injuries related to drug trafficking activity. This proposal is expected to have a positive impact on these grim statistics, though to what extent is not known by the FAA. In addition to the anticipated decrease in fatalities and serious injuries associated with drug trafficking activity, the overall level of drug abuse activity could be reduced as the result of the proposed rule. An indication of the potential benefits that could accrue from reduced drug abuse activity is shown in a 1984 report by the Research Triangle Institute. The report revealed that the economic cost to society of drug abuse in the United States amounts to $64 billion annually, in which lost labor productivity represents over half of this figure. The figure for drug abuse was converted from 1983 dollars ($60 billion) to 1985 dollars ($64 billion) by the FAA. If, for example, Customs' enhanced drug interdiction efforts were to impact only one-tenth of one percent of this figure, there would be substantial societal gain of $64,000,000 annually.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, the proposed amendments contained in this notice will not have a significant economic impact on a substantial number of small entities. The responsibility for marking and providing I.D. plate information for existing aircraft is placed directly on the owner or operator of the aircraft. However, for new aircraft the I.D. plate responsibility would be placed on the applicant for an airworthiness certificate, usually the manufacturer. This requirement would impose no additional cost since it would only require that the I.D. plate be located on the exterior rather than interior of the aircraft. The majority of small entities impacted by this proposal would represent operators of unscheduled aircraft for hire. These operators would incur a one-time compliance cost ranging between $155 and $215. These costs would be far below the annualized threshold of significant regulatory cost of $3,540. Therefore, if enacted, this proposal would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

All foreign and domestic manufactured aircraft sold in the United States would need to be identified in accordance with the provisions of this proposal. The cost of marking the aircraft will be borne by individual domestic owners or operators only. If adopted, this proposal would have no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Conclusion

Since the proposals contained in this FAA document would assist the U.S. Customs Service of the Department of Treasury in its drug interdiction efforts as requested and would impose only a minimal cost on a minor part of the aviation community, the estimated benefits are expected to exceed the estimated costs of their implementation. For the reasons discussed above, I certify that under the criteria of the Regulatory Flexibility Act, these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. Because it involves important DOT policy, the proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting

the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 43

Aircraft.

14 CFR Part 45

Nationality.

14 CFR Part 91

Aircraft, Airworthiness directives and standards.

The Proposed Rule

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Parts 43, 45, and 91 of the Federal Aviation Regulations (14 CFR Parts 43, 45, and 91) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By amending Appendix B to Part 43 by revising (a) introductory text and adding a new paragraph (d) to read as follows:

Appendix B—Recording of Major Repairs and Major Alternations

(a) Except as provided in paragraphs (b), (c), and (d), each person performing a major repair or major alteration shall—

* * * * *

(d) For extended-range fuel tanks installed within the passenger compartment or a baggage compartment, the person who performs the work and the person authorized to approve the work by § 43.7 shall execute an FAA Form 337 in at least triplicate. One (1) copy of the FAA Form 337 shall be placed on board the aircraft as specified in § 91.173. Remaining forms shall be distributed as required by (a) (2) and (3), or (c) (1) and (2) of this section as appropriate.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

3. The authority citation for Part 45 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354, 1401, 1402, 1421, 1423, 1522; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. By amending § 45.11 by revising (a) and adding a new paragraph (d) to read as follows:

§ 45.11 General.

(a) *Aircraft and aircraft engines.* Aircraft covered under § 21.182 of this chapter must be identified, and each person who manufactures an aircraft engine under a type or production certificate shall identify that engine, by means of a fireproof plate that has the information specified in § 45.13 marked on it by etching, stamping, engraving, or other approved method of fireproof marking. The identification plate for aircraft must be secured in such a manner that it will not likely be defaced or removed during normal service, or lost or destroyed in an accident. Except as provided in paragraphs (c) and (d) of this section, the aircraft identification plate must be secured to the aircraft fuselage exterior so that it is legible to a person on the ground, and must be either adjacent to the right rear-most entrance door or on the fuselage surface near the tail surfaces. For aircraft engines, the identification plate must be affixed to the engine at an accessible location, in such a manner that it will not likely be defaced or removed during normal service or lost or destroyed in an accident.

* * * * *

(d) On aircraft manufactured before October 8, 1986, the identification plate required by paragraph (a) of this section may be secured at an accessible location near an entrance, if the model designation and builder's serial number are also displayed on the aircraft fuselage exterior. The model designation and builder's serial number must be legible to a person on the ground and must be located either adjacent to the right rear-most entrance door or on the fuselage near the tail surfaces. The model designation and builder's serial number must be displayed in such a manner that they are not likely to be defaced or removed during normal service.

5. By amending § 45.21 by revising (d)(3) to read as follows:

§ 45.21 General.

* * * * *

(d) * * *

(3) It is marked temporarily to meet the requirements of § 45.22(c)(1), or § 45.29(h), or both.

6. By amending § 45.29 by revising (b) introductory text and adding a new paragraph (h) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h), the nationality and registration marks must be of equal height and on—

* * * * *

(h) Each operator of an aircraft in an ADIZ or DEWIZ shall display on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352, through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention of International Civil Aviation (61 STAT. 1180); 42 U.S.C. 4321 et. seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

8. By amending § 91.27 by adding a new paragraph (c) as follows:

§ 91.27 Civil aircraft: Certifications required.

* * * * *

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to Part 43, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

9. By amending § 91.173 by revising (c) and adding a new paragraph (d) to read as follows:

§ 91.173 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present the Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to Part 43, a copy of the FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

Issued in Washington, DC, on July 3, 1986

William J. Sullivan,

Acting Director of Airworthiness

[FR Doc. 86–15570 Filed 7–9–86; 8:45 am]

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 218 and 221

Rear End Marking Device—Passenger, Commuter and Freight Trains; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 221

[Docket No. RSRM-2, Notice 2]

Rear End Marking Device—Passenger, Commuter and Freight Trains

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: FRA is amending 49 CFR Part 221 in response to changes in railroad operations and technology developments that have occurred since initial adoption of this rule. The amendments will permit railroads greater flexibility in selecting the personnel who perform the required inspection of rear end marking devices and will accommodate recently developed telemetry devices that provide an electronic check on the marker's condition and display that information on a monitor located in the locomotive cab. In addition, FRA is adopting new procedures in Part 221 to protect non-train crew personnel who perform the inspection and making a corresponding amendment to 49 CFR Part 218. FRA is taking this action in response to technological change, to enhance railroad safety by enabling the crew to monitor the functioning of the rear end marker while the train is enroute, and in recognition of the many requests it has received for waivers of compliance that seek expansion of the categories of personnel permitted to conduct the required inspections.

DATE: These amendments are effective on August 11, 1986.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, FRA, Washington, DC 20590. Telephone: 202–426–0897.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1985, FRA issued a notice of proposed rulemaking (50 FR 35636) to respond to technological developments, operational changes, and minor deficiencies in the existing rule. The changes proposed by FRA were intended to (i) improve the regulatory language concerning the equipping and inspection provisions; (ii) revise the inspection requirement to permit it to be either a visual observation or a radio telemetry verification; (iii) permit expansion of the inspection force authorized to conduct the visual observation if they are given adequate training; and (iv) permit the use of a new procedure to protect this expanded inspection force.

Public Response

FRA received nineteen written comments and heard testimony from twenty-five witnesses during the public hearing held on October 23, 1985. Many of the comments involved topics well beyond the scope of the notice of proposed rulemaking; action on these at this time would therefore be legally impermissible. FRA has also found these out-of-scope comments to be flawed in substance. For example, several commenters suggested that FRA change the requirements relating to the rear marker device light color and/or flash rate. Some commenters, seeking to prevent alleged confusion with other wayside lighting, wanted FRA to require a "red" marker. Others wanted FRA to permit the color "white" and the decrease the required flash frequency so that the batteries powering the marker devices will have an extended life. Neither group of commenters addressed the logic on which FRA premised its initial decision on these same chromaticity and flash rate issues eight years ago or recognized the availability of devices that display a red light yet have the same battery life as other devices that display a yellow or red/orange light. Similarly, the various suggestions for regulatory change based on perceptions of current compliance with the existing rule fail to address the basic logic of the rule and appear to focus on adding redundant or impractical requirements.

Regulatory Clarification

FRA's enforcement experience has indicated that some clarification of the regulatory language would be helpful. Accordingly, FRA proposed that the initial terminal inspection practices implicit in the initial rule be made an explicit requirement so as to ensure that an inspection is made to verify the presence and operational readiness of rear marker devices at initial terminals. Since this initial terminal inspection is generally occurring at the present time, none of the commenters took exception to FRA's proposal to make this inspection and explicit requirement. However, some commenters vigorously objected to the proposed language because it could be read to require that markers be attached to the last car of every train throughout all operations on main track even though neither weather nor darkness necessitated the use of the device.

These commenters asserted that such a requirement would impose substantial new costs on the railroads. For example, the cost of operational delay (for manual repositioning of the device or additional switching) to assure that the device is on the last car would be high, particularly for trains making muiltiple enroute setoffs or pickups. The commenters argued that FRA lacked accident data showing the need to have a marker attached to the last car of all trains even during periods of daylight or good weather.

Since FRA agrees that no data justifies expansion of the display requirement, and since such a significant change was not FRA's original intent, FRA has not adopted this aspect of its proposed clarifying amendments. FRA has reworded the display language of § 221.13 to more effectively state the existing requirements of that provision.

Although not clearly articulated in this proceeding, the responses of some commenters to the display and inspection provisions of this regulation appear to reflect a growing misconception in the regulated community about the extent to which trains can be operated with defective or failed rear end marker devices. FRA is concerned that with the passage of time since the initial adoption of these rules some parties may be misconstruing the regulatory language.

Section 221.17 permits a train on which a marker has failed "enroute" to proceed to the next location where the device can be repaired or replaced. Section 221.17 does not sanction the dispatch of a train from an initial terminal with a defective marker as implied by some commenters; instead, it establishes alternative limits for the continued forward movement of a train that has already departed from its initial terminal when it experiences and reaches failure. When such a train first reaches a repair location, the railroad is obligated to install a non-defective marker at that point.

Since a rear end marker is little more than a large flashlight, its repair normally requires only the most rudimentary of repair capabilities found at virtually every railroad terminal location. Even when the marker is appended to a telemetry device that transmits air brake pressure data, this provision cannot be construed as sanctioning movement of a train with a defective marker for extensive distances because the railroad has elected to concentrate repair of these composite devices at a central location.

A train with a failed marker may not continue to move to a repair location if that would entail passing a location

where a replacement marker could be installed. Although the sophisticated electronics of the telemetry devices may warrant consolidating maintenance at a single repair facility, that consolidation decision does not excuse a railroad's obligation under § 221.17 to move a train with a defective marker no farther than the next location where the marker can be replaced. In FRA's judgement, such replacement locations include the first terminal, yard, or station the train with the defective device reaches where markers are available. This includes locations where markers are stored or kept available for use on local trains, since FRA views the degree of forward movement authorized by this section to be as limited as that prescribed for rolling equipment with safety appliance defects.

Regardless of the simplicity or complexity of the marker device, any train that experiences enroute failure is authorized to proceed only as far as the first location where either repair or replacement can be accomplished. For example, if a railroad elects not to remove or repair a marker, because it is part of composite device whose end-of-train power brake telemetry functions are still operative, and it wants to keep operating that train, its only remaining option under the rule would be to equip that train with a second marker. Consequently, a train that passes a replacement location will be in violation. FRA will consider a railroad's decision to operate a train with a failed or defective device beyond either a repair or replacement location an intentional violation of this rule. Such intentional violations will carry the maximum civil penalty.

Accommodating New Technology

FRA is adopting the proposal to permit the use of radio telemetry equipment as an alternative to visual observations. This change will make it possible for railroads to obtain full advantage of the products that have recently come on the market to monitor the condition of the rear end marker device and communicate that information through radio telemetry to a receiver located in the cab of a train's controlling locomotive. The degree of information and the sophistication of the monitoring varies and although FRA would prefer that railroads select those units that are designed to check all of the functional elements of the marker device because they guard against a wide variety of potential failure modes, FRA is not requiring them to do so in this rule. In sanctioning the use of a telemetry readout in lieu of a visual inspection, FRA has decided that the telemetry data concerning the marker's condition need not exceed the level of information obtained during the visual observation check that FRA currently requires for traditional markers. Such designs provide an effective alternative inspection method and virtually all commenters supported the FRA proposal to permit the introduction of this new technology. In fact, the only criticism of this proposal involved a reservation about possible miscommunication between devices and receivers on different trains.

Several commenters suggested that FRA revise the regulation to accommodate the use of photoelectric cells. The commenters noted that these devices are being employed to monitor ambient light conditions and to activate the marker when daylight has diminished to the point that visibility is impaired. The commenters urged that FRA indirectly sanction the use of such photoelectric cells by amending § 221.13.

Although photoelectric cells no longer represent a "new technology," their use to activate railroad rear end marking devices does represent a new use of that technology. Based on the information gathered during this regulatory proceeding, FRA has decided to accommodate the use of photoelectric cells by amending § 221.13 to establish an alternative method for determining when the rear end marking device must be illuminated. Accordingly, FRA is adopting a criterion for ambient light (1.0 candela per square meter) that will ensure illumination of the rear marker whenever daylight has been reduced to that level normally present prior to sunset and immediately after sunrise.

FRA has included in the docket the technical report that supports the selection of this threshold value for the ambient light. FRA's data indicate that the manufacturers of rear end marking devices that use photoelectric cells have all selected a threshold value that either meets or exceeds the criterion being adopted by FRA. Consequently, FRA does not foresee any adverse impact from adopting this alternative criterion. Indeed, FRA expects that use of this type of marker to have certain benefits to safety, *e.g.*, longer battery life due to reduced unnecessary illumination and a reduced need to divert railroad crews from more safety sensitive functions.

In an enforcement context, FRA will consider the foot candela threshold controlling. If, for example, a photoelectric cell-equipped marker is not illuminated one-half hour before sunset because the ambient light conditions have not diminished 1.0 candela per square meter no violation of the rule has occurred. However, it would be a rule violation where the marker is non-equipped or where the photoelectric cell is not functioning.

Increasing the Inspection Force

FRA has decided to adopt the proposed change to § 221.15(d) of the rule to permit additional employees to perform the visual marker inspection. Most of the comments that addressed this topic supported the proposal. The two commenters who objected to a change offered no substantive reason for their belief that the current rule should be retained. As pointed out by the railroads and confirmed by FRA field inspections, no unusual skill or training is needed to perform the inspection, and there is no discernible safety rationale for continuing this constraint in the face of changed operational practices. Indeed, by implicitly proscribing the use of all personnel but train crew members, the rule may in fact discourage more thorough examinations of trains.

As noted in the preamble to the NPRM, when a railroad selects noncrew members to perform this inspection (as permitted under the amended language) FRA believes the railroad must determine that such personnel are qualified to accomplish this task. Even though minimal skill and ability are involved in the tasks, there is a need to know that the individual performing the tasks knows the proper safety procedures to follow when in close proximity to rolling equipment. In addition, the person needs to have effective communications with the train crew so that personal notification can be accomplished. If a railroad chooses to use radio communications for this purpose, these personnel must be properly schooled in the use of radios.

Alternative Methods of Protection: "Blue Signal Rule"

FRA's proposal to establish an alternative means of protecting individuals performing the task of covering a photoelectric cell or repositioning an activation switch generated many commenters. An understanding of the commenters' positions requires an explanation of the context in which the issue of blue signal protection arises.

Source of the Controversy

As indicated in the NPRM, the existing rule requires that a member of the train crew conduct the enroute inspection prescribed by § 218.15. This limitation on the potential inspection force had always been a subject of controversy, and it became an important

compliance issue for railroads when they began implementing a 1982 collective bargaining agreement sanctioning the elimination of approximately 25 percent of their cabooses from through freight trains.

In the absence of a caboose at the rear of the train all crew members are riding the locomotive consist at the front of the train. Unless that cabooseless train is equipped with a telemetry device that monitors the condition of the marker, it would be necessary for a train crew member to travel to the rear of the train to inspect the marker and return to the front of the train before the train could depart.

FRA's proposal to modify § 221.15 to permit railroads to use personnel other than train crew members to inspect the rear marker device would allow railroads to avoid the delay and costs inherent in such a train crew inspection. It would also enhance the safety of train operations by enabling the crew to monitor the functioning of the rear end marker enroute. For the railroads, expansion of the inspection force has one drawback: Non-train crew inspectors are entitled to blue signal protection, which involve some degree of economic burden. After examining the simple nature of this inspection task, FRA decided to reassess the need for the high level of protection provided by full compliance with the blue signal regulation in the narrow context of this rule.

FRA concluded that, if the tasks were restricted, the locations limited, and effective communications established, it would be possible to sanction an alternative means of protection that was the functional equivalent of full compliance with the existing rule. Accordingly, FRA has so amended § 221.16.

Commenters' Focus

Most of the commenters who addressed the issue of alternative protection asserted that the FRA Blue Signal regulation simply does not apply to workmen performing *any* task associated with a marker device on the theory that the device is on the last car of the train and is thereby categorically not "between" cars so as to trigger the rules protection. If a commenter conceded that the rule applied, the commenter generally asserted that such tasks fitted within the footnote concept of "servicing" that is exempted from the rule.

The commenters urged that FRA avoid any further problems in this area by expanding the proposed alternative protection concept in several ways. Initially they suggest that FRA expand the locations where this alternative can be employed to include "departure," "through freight," and "designated" tracks and that the permissible tasks involving marker devices include installation, repositioning, checking, repairing, and replacement. Finally, they suggest that FRA apply the same approach to all similar tasks involving a different device, the end-of-train telemetry device.

FRA Analysis

FRA began its analysis of the comments by focusing on the assertion that the blue signal rules are not applicable to any of the tasks associated with rear marker devices. FRA categorically rejected that assertion because it runs counter to established industry practice, the regulatory history of the blue signal provisions, and FRA's longstanding, consistent interpretation of these provisions.

Since the late 1880s, individual railroads have had an operating rule that was designed to protect certain types of workmen while they are performing particular tasks involving rolling equipment. The individual carrier formulations of such rules subsequently were translated into the Standard Code of Operating Rules. Developed by the Association of American Railroads as a set of model operating rules for its members, the Standard Code of Operating Rules (AAR Code) has long contained a formulation of that rule which is commonly referred to as "Rule 26" or the "Blue Flag Rule." Using the AAR Code as a guideline, each railroad constructed, interpreted and applied its individual rules on this topic as it saw fit according to the circumstances under which it operated.

Although there was no absolute consistency between individual railroads concerning this industry rule, there is ample evidence to support the conclusion that when a workman such as a carman was required to position himself between the rails while working on a single car or a group of cars he was universally considered to be "afoul" of the equipment. Accordingly, the equipment should be protected with blue flags in order to warn other railroad workers that a person was in a position to be injured if the protected equipment was moved. Tasks such as replacing an airhose or the knuckle of a coupler were normally deemed to be the type of task that entitled a carman to invoke the protection afforded by Rule 26.

The significant individual carrier variations in the application, interpretation, and observance of the AAR's model rule resulted in confusion and uncertainty in the industry, which in turn contributed to a number of serious injuries and fatalities. FRA concluded that the situation warranted the development of a Federal regulation to resolve the safety problems presented by the lack of uniformity in the industry. FRA's regulatory effort began with an advance notice of proposed rulemaking issued in January 1974 and was not concluded until the adoption of a final rule on January 10, 1979 (44 FR 2175).

Among the more difficult aspects of drafting an appropriate rule was selecting precise descriptive language that reflected the basic concept of when protection should be afforded without being unduly restrictive or overly legalistic. Rather than use the industry term, "afoul of the equipment," FRA initially proposed to require blue signal protection for workmen who were "under, on or about" rolling equipment (40 FR 30195). FRA's proposed formulation was changed at the adoption of the initial final rule (41 FR 10904). FRA noted that it was attempting to respond to commenter concern that the word "about" was too ambiguous and explained:

> The basic intent of the rule is to protect a workman in such close proximity to rolling equipment that movement of such equipment could result in contact between the workman and the equipment causing serious personal injury. This "danger zone" would include any situation in which a workman was on or under or between two pieces of equipment. To clarify this intent, the language has been revised to read "on, under, or between".

With respect to "between," FRA did not adopt a requirement of some close physical proximity of the two pieces of equipment. No party to that FRA proceeding had suggested that either the FRA rule or its industry predecessors would be triggered only when other equipment was in immediate proximity to the equipment being worked on. It was irrelevant for all parties whether the workman was performing a task on the end of a car that was coupled to another car or was working on the only car standing on that track. The critical issue was whether the person was inside the clearance line of the equipment and particularly whether the person was within the gauge of the rail. If the person was so positioned, that person was at risk and would be entitled to protection. Consequently, FRA rejects all commenter assertions that tasks being performed on the last car of a train are categorically exempt from the rule because the worker is not "between" two pieces of rolling equipment that are in close physical proximity.

Indeed, both FRA and the parties to the prior rulemaking proceeding recognized how restrictively the rule could be applied, because they attempted to accommodate valid industry concerns that the rule not be read to include a brief list of tasks that historically had not been perceived as warranting this type of protection. These discrete tasks, which demand for example that a worker be "on" the equipment, but which only involve "housekeeping" functions such as supplying drinking water, ice or sanitary supplies, were specifically excluded from the ambit of the rule when FRA added a footnote to the applicability section of the rule (§ 218.21) to exempt these discrete "servicing" tasks from the scope of the rule. In addition to this footnote, FRA augmented the rule with a set of written interpretations that were furnished to all railroads so as to ensure that all concerned parties would have a uniform understanding.

Thus, FRA's position has uniformly been that when a workman positions himself within the clearance lines of rolling equipment, and particularly when he is within the gage of the rail, that person is exposed to risk from the unexpected movement of the equipment and is entitled to protection. Accordingly, FRA has been requiring that personnel working on markers mounted on couplers or drawbars be given the protection required under Part 218. FRA considered altering its position only when FRA concluded that the marker inspection task could be limited to certain discrete actions that would minimize the nature of the person's risk exposure and its duration. Once that conclusion had been reached, FRA knew that a regulatory change would be required and issued the FPRM in this proceeding proposing adoption of an alternative method of protection.

Regardless of their assertions concerning the applicability of the blue signal regulation, the commenters who addressed the issue approved of FRA's concepts for the alternative method of protection and urged expansion of its use. The first suggested expansion was the locations at which this alternative could be used. Basically, the commenters wanted to be able to use the alternative methodology at any location where they anticipate having to inspect on other than main track. Neither a uniform nomenclature for such track nor a unifying principle for identifying such track can be discerned from the comments. In addition, the various track designations being offered all appear to lack the primary characteristic of main track (operational limitations) that FRA identified in the NPRM as being a key ingredient in providing the equivalent level of protection.

Based on this analysis, FRA does not believe that there is an effective way to expand the locations in a regulatory context. If a particular railroad employs a systemwide designation for tracks that are used for this inspection purpose, and if the operational constraint characteristic identified in the NPRM is provided on such tracks, that railroad may have a valid basis for seeking a waiver of compliance to expand the use of this alternative protection methodology.

A few commenters expressed concern that FRA's wording of the alternative protection methodology was unduly restrictive in that it precludes the relaying of information about a completed inspection and prevents the use of qualified personnel such as hostlers from substituting for engineers in the cab of the locomotives. FRA agrees with the commenters and is acting accordingly in adopting the wording of the final rule.

FRA has not adopted the suggestion of several commenters that the alternative protection methodology be revised to include a number of tasks associated with the end-of-train telemetry devices. In addition to being legally beyond the scope of the notice of proposed rulemaking in this proceeding, such an expansion is not justifiable from a safety perspective. As noted, FRA's willingness to consider an alternative was in part premised on the minor nature of the task and the short duration of the person's exposure to risk. Expansion of the permissible tasks to include installation, repositioning, repair, or replacement of the relatively heavier, more awkward telemetry device, which clearly entail longer periods of risk exposure, would reduce the margin of safety to a level that would have been unacceptably low even under the older private industry practices.

Section-By-Section Analysis

Section 221.5

FRA is adopting this section as proposed. The new definition reflects the expansion of the inspection force that FRA is sanctioning under proposed § 221.15 and the new procedures that FRA is sanctioning under § 221.16. FRA will consider an individual to be a member of the expanded inspection force to be "qualified" only when they have been given adequate training concerning the task they are being asked to perform. The degree of instruction needed will vary according to the type of experience the worker has had, but since new procedures are involved here, FRA believes that some training must be given to all non-train crew personnel before such a person can legally perform this task.

Section 221.13

FRA proposed to reword both paragraphs (a) and (b) to eliminate the inartful draftsmanship of the existing provision. For the reasons stated earlier, FRA has decided not to amend this section as proposed, but to amend the section to accommodate the increasing use of photoelectric cells by establishing an ambient light criterion for marker illumination.

Section 221.14

FRA proposed to transfer the provisions previously contained in § 221.15 to this newly designated section, except for the requirement in paragraph (d), for train crew inspection at enroute crew change points, which would be left in § 221.15. FRA has adopted that change and some nonsubstantive editorial improvements.

Section 221.15

FRA proposed to rewrite this section to retain the prior requirement that rear markers be inspected at enroute crew change locations; to make explicit the requirement for an initial terminal inspection of the device; to accommodate possible telemetry inspection; and to permit the railroads to select individuals other than train crew members to conduct the inspection. With the exception of the proposal to explicitly require initial terminal inspections and with a few minor changes, FRA has adopted this section as proposed.

Although not commented on by parties responding to the NPRM, FRA reiterates its intent to ensure that the railroads only use personnel that the railroad has determined are qualified to perform this inspection in terms of their familiarity with the equipment, the inspection task, and the appropriate procedures to be followed to obtain the needed levels of personal safety when in such proximity to rolling equipment. In FRA's judgment, this will necessitate some training for all affected railroad employees and may require equipping some personnel with a communications capability that they do not currently possess.

Section 221.16

FRA is adopting the proposal to add an entirely new provisions to the rule to

allow railroads to conduct the required inspection in an expeditious fashion. As noted earlier, the industry's rule historically was intended to alert train crews to the fact that a non-crew member was in a position that exposed that worker to serious danger if the protected equipment was moved. The FRA rule, like the industry rule, recognizes that crew members work as a unit and know one another's whereabouts. As consequence, the industry rule exempted members of the train crew from blue signal protection and FRA adopted the same exception. FRA's alternative protection methodology, which requires that the person occupying the cab compartment of the controlling locomotive have an effective communications link to the inspector, assures the inspector that the train is secure against movement and will remain that way until the inspection has been completed. In FRA's judgment, this alternative provides the inspector with the same status and protections as a member of the train crew and, for the same reasons, so minimizes the risk of injury that it is appropriate to authorize the inspection without blue signal protection. FRA believes that this new alternative inspection method, in addition to not having any adverse safety implications, will reduce the economic burden for railroads by affording them some additional flexibility. This alternative method of protection is limited to "main track" (defined in § 221.5(d)), since only there do the operating rules serve to prevent other trains from occupying the track where the person needing protection will be stationed. This procedure will usually demand that both the locomotive engineer and the inspector be equipped with operating radios. The locomotive will have to be occupied during the inspection to preclude movement before the task is completed. In adopting this section, FRA has reworded the cab-occupant provision in response to commenters' suggestions that the hostlers also be permitted to occupy the locomotive cab. FRA has made this change because hostlers, who are normally employed in terminal areas to move locomotive consists for servicing, are also qualified to ensure that inadvertent movement of the train will not occur during the inspection.

Although FRA considers this inspector to be functionally a member of the train crew, this amendment does not sanction any activity beyond either covering a photoelectric cell or repositioning the marker's activation switch. Under the rule as amended, if a railroad wants to have battery readings taken, devices repaired, replaced, repositioned or otherwise given additional attention, or if other work is to be performed that is not related to the marker device, then the railroad must continue to fully comply with the blue signal provisions of Part 218.

In adopting this section, FRA has made some editorial changes. One significant change was to eliminate the requirement that the inspection results only be communicated by the inspector to the engineer to the departing train. The reworded section now requires only that the engineer of the departing train crew be personally advised of the inspection findings, thereby sanctioning the relaying of inspection findings to the new train crew by a third party.

Section 218.5

FRA proposed to make a corresponding change to the blue signal rules contained in Part 218. That change is being adopted and alters the language of the footnote to the definitions section of Part 218 to reflect the existence and relevance of this new inspection procedure. In adopting the revisions to this regulation that occurred in 1979, FRA explicitly set forth in the footnote to § 218.5(a) the very narrow tasks that could be performed without providing a workman with protection. Since the task being performed during the marker inspection is primarily an operational test of the device and/or a visual check, FRA is proposing to revise the portion of the footnote relating to "testing" to reflect this new procedure.

Appendix C

To reflect the amendments made by this final rule, FRA is revising the schedule of civil penalties in Appendix C.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is neither a "major" rule under Executive Order 12291 nor a "significant" rule as defined under DOT policies and procedures.

The rule will not increase the economic burden of the existing regulation and has the potential for reducing the cost of compliance since it provides the railroads with alternative means of complying with an existing rule. Although FRA is constrained in its analysis by the absence of well defined industry-wide economic data, FRA has prepared and placed in the rulemaking docket an economic analysis addressing the impact of the final rule. FRA's analysis of the economic impact of the proposed rule was generally accepted as accurate by the commenters and has not been altered by the changes being made in adopting the final rule. It can be inspected or copied at Room 8201, 400 Seventh Street, SW., Washington, DC. Copies can also be obtained from the Docket Clerk, FRA, at the same address.

FRA's economic evaluation identifies total estimated benefits from avoidance of train delays to be $9,802,000 per year. The total first-year costs, attributable to the purchase and installation of telemetry devices, that can be associated with the rule changes are estimated at $1,370,000. These amounts are annual averages from a 20 year forecast that uses a 10 percent discount rate. The benefit to cost ratio for the entire forecast period would be 7 to 1. Although this cost benefit ratio is conservative for a number of reasons, it necessarily simplifies the multiple variables that each railroad will have to consider in analyzing the economic and safety benefits to be realized in the context of its specific operating environment when a responding to this rule change.

In the NPRM, FRA specifically requested that commenters provide information on the question of the economic impact of the proposed rule. The only major difference between the FRA estimate and the commenters' estimates of costs that could be associated with the proposed changes involved costs stemming from the daylight display of the marker during switching operations and from the delay inherent in additional enroute inspections. Since FRA has decided not to adopt the proposed changes that would have caused the imposition of those costs, and since the commenters have validated the accuracy of FRA's initial economic impact which did not include the costs associated with daylight operations, FRA believes that its revised economic impact analysis is reliable.

Since the rear marker regulation only applies to railroads and exempts from compliance small railroads that only operate one train at a time, the amendments contained in this final rule will have no economic impact on those railroads. To the degree that any small railroad must comply with this regulation, this final rule will not have an adverse economic impact since it permits them greater discretion. Based on the facts set forth in this final rule, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Although FRA initially thought that there could be indirect information

collection requirements associated with the NPRM, and stated in the NPRM that these information collection requirements in the proposed rule would be submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), subsequent investigation revealed that these changes do not impose new information collection requirements and will not modify any existing ones.

Environmental Impact

On June 16, 1980, FRA published (45 FR 40850) revised procedures for ensuring full consideration of the environmental impacts of FRA actions as required by the National Environmental Policy Act (42 U.S.C. 4321*et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1C. These FRA procedures require that an "environmental assessment" be performed prior to all major FRA actions.

The FRA environmental procedures also contain a provision that enumerates seven criteria which, if met, demonstrate that a non-categorically exempt action is not a "major" action for environmental purposes. These criteria involve diverse factors, including the availability of adequate relocation housing; the possible inconsistency of the action with Federal, State or local law; the possible adverse impact on natural, cultural, recreational, or scenic environmentals; the use of properties covered by section 4(f) of the DOT Act; and the possible increase in traffic congestion. This final rule meets the seven criteria that establish an action as non-major.

List of Subjects

49 CFR Part 221

Railroad safety, Rear end marking devices.

49 CFR Part 218

Railroad safety, Railroad operating practices.

In consideration of the foregoing, FRA is amending Part 221 and Part 218, Title 49, Code of Federal Regulations, as set forth below:

The Final Rule

1. The authority for Part 221 and Part 218 revised to read as follows:

Authority: Secs. 202 and 209, Pub. L. No. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49.

PART 221—[AMENDED]

2. Section 221.5 is amended by adding a new paragraph (i) to read as follows:

§ 221.5 Definitions.

* * * * *

(i) "Qualified person" means any person who has the skill to perform the task and has received adequate instruction.

3. Section 221.13 is revised to read as follows:

§ 221.13 Marking device display.

(a) During the periods prescribed in subparagraph (b) of this section, each train to which this part applies that occupies or operates on main track shall (1) be equipped with, (2) display on the trailing end of the rear car of that train, and (3) continuously illuminate or flash a marking device prescribed in this subpart.

(b) Unless equipped with a functioning photoelectric cell activation mechanism complying with subparagraph (c) of this section, the marking devices prescribed by this subpart shall be illuminated continuously or flash during the period between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions so restrict visibility that the end silhouette of a standard boxcar cannot be seen from ½ mile on tangent track by a person having 20/20 corrected vision.

(c) Marking devices prescribed by this part and equipped with a functioning photoelectric cell activation mechanism shall illuminate or flash the device continuously when there is less than 1.0 candela per square meter of ambient light.

(d) The centroid of the marking device must be located a minimum of 48 inches above the top of the rail.

4. Section 221.15 is redesignated as § 221.14 and is revised to read as follows:

§ 221.14 Marking devices.

(a) As prescribed in § 221.13, passenger, commuter and freight trains shall be equipped with at least one marking device, which has been approved by the Federal Railroad Administrator in accordance with the procedures included in Appendix A of this part, and which has the following characteristics:

(1) An intensity of not less than 100 candela nor more than 1000 candela (or an effecitve intensity of not less than 100 candela nor more than 1000 candela for flashing lights) as measured at the center of the beam width:

(2) A horizontal beam with a minimum arc width of fifteen (15) degrees each side of the vertical center line, and a vertical beam with a minimum arc width of five (5) degrees each side of the horizontal center line as defined in terms of the 50 candela intensity points;

(3) A color defined by the red-orange-amber color range; and

(4) If a flashing light is used, a flash rate of not less than once every 1.3 seconds nor more than once every .7 seconds.

(b) Marking devices used on passenger and commuter trains in compliance with paragraph (a) of this section shall be lighted under the conditions prescribed in §§ 221.13 (b) and (c).

(c) When a locomotive is operated singly, or at the rear of a train, highly visible marking devices may be provided by the use of:

(1) At least one marking device that complies with paragraph (a) of this section; or

(2) At least one illuminated red or amber classification light on the rear of the locomotive, provided it complies with paragraph (a) of this section; or

(3) The rear headlight of the locomotive illuminated on low beam.

5. Add a new § 221.15 to read as follows:

§ 221.15 Marking device inspection.

(a) Each marking device displayed in compliance with this part shall be examined at each crew change point to assure that the device is in proper operating condition.

(b) This examination shall be accomplished either by visually observing that the device is functioning as required or that the device will function when required by either (1) repositioning the activation switch or (2) covering the photoelectric cell.

(c) This examination shall be conducted either by the train crew or some other qualified person, provided that, if a non-train crewmember performs the examination, that person shall communicate his or her findings to the locomotive engineer of the new train crew.

(d) When equipped with a radio telemetry capability, a marker displayed in accordance with this part may be examined by observing the readout information displayed in the cab of the controlling locomotive demonstrating that the light is functioning as required in lieu of conducting a visual observation.

6. Add a new § 221.16 to read as follows:

§ 221.16 Inspection procedure.

(a) Prior to operating the activation switch or covering the photoelectric cell when conducting this test, a non-train crew person shall determine that he is

being protected against the unexpected movement of the train either under the procedures established in part 218 of this chapter or under the provisions of paragraph (b) of this section.

(b) In order to establish the alternative means of protection under this section, (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer or hostler and be advised by that person that they are occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspection has been completed.

7. Part 221, Appendix C is revised to read as follows:

Appendix C—Schedule of Civil Penalties

Appendix C reflects a statement of policy by the Federal Railroad Administration in making applicable to Part 221 a specific civil penalty schedule for violations of this Part.

	Violation	Intentional violation[1]
Section 221.13	750	1,500
Improper location	1,000	2,500
Device not present	1,500	2,500
Section 221.14:		
Use of unapproved device	500	1,000
Use of device with improper intensity, beam width, color, flash rate	500	1,000
Section 221.15:		
Failure to inspect at crew change	750	1,500
Improper inspection	750	1,500
Section 221.16:		
Failure to obtain protection	750	2,000
Improper protection	750	1,500
Section 221.17: Excessive movement after enroute failure	1,000	2,000

[1] For the purposes of this schedule, an intentional violation is the knowing and willful failure to a carrier or its officers or agents to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty for a violation of any section or subsection contained in Part 221.

PART 218—[AMENDED]

8. In § 218.5, the note to paragraph (a) is revised to read as follows:

§ 218.5 Definitions.

(a) * * *

Note: "Servicing" does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

"Testing" does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

(Authority: Sec. 202, 84 Stat. 971 (45 U.S.C. 431); sec. 1.49(m) of the Regulations of the Secretary of Transportation (49 CFR 1.49(m)).

Issued in Washington, DC on July 7, 1986.

John H. Riley,

Administrator.

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