

modification and discontinuance proceedings in the past has provided valuable insight to FRA—insights that FRA is not willing to lose in its effort to ease reporting burdens on railroads.

Conrail expressed the opinion that the changes to this section do not go far enough. Conrail states that: “[p]ole line carrying signal control circuits can be replaced by a number of systems to carry vital signal information between locations. Such systems in use and being installed on Conrail today include: electronic track circuits carrying encoded information, conventional AC or DC coded track circuits, underground buried cable, and polar track circuits \* \* \*.” Conrail therefore asked that FRA amend the rule to provide relief from filing an application to re-space signals when open wire signal pole line is replaced with the noted systems, including “future technologies performing the same function.” FRA notes that the rule changes will not necessarily prevent railroad use of other systems to replace pole line, however, such replacement will continue to require FRA review and approval. FRA will continue to review the use of other systems and new technologies as they develop, and will amend its procedures when it can be assured that use of other systems can be implemented safely without the necessity of FRA review. Therefore, FRA is making no change to the rule.

#### *Section 236.590 Pneumatic apparatus.*

FRA amended 49 CFR 236.590 to provide that the inspection and cleaning time interval requirements for pneumatic apparatus (automatic train stop, automatic train control or automatic cab signal pneumatic apparatus) be governed by the air brake testing intervals established in 49 CFR 229.29 rather than the requirements of this section that required that inspection and cleaning at least once every 736 days. Although section 229.29 also requires a 736-day test interval, due to existing waivers, the testing and cleaning intervals for air brake systems and pneumatic systems on many locomotives do not coincide. By conforming the requirements of section 236.590 to those of 49 CFR 229.29, any changes in inspection and testing intervals or recordkeeping requirements made to air brake systems will automatically apply to pneumatic train control valves on similar types of locomotive.

In addition to the above changes, FRA also provided “out of service” credit that is applied to air brake systems under 49 CFR 229.33 to train control systems under 49 CFR 235.590. When a

locomotive with automatic train stop, train control, or cab signal pneumatic apparatus receives out-of-use credit pursuant to § 229.33, the automatic train stop, train control, or cab signal apparatus must be tested in accordance with § 236.588 prior to the locomotive being placed in service. This further conforms the two sets of testing and maintenance requirements. All commenters supported this provision.

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

These amendments have been evaluated in accordance with existing policies and procedures and because they are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that the revisions do not constitute significant rule under either Executive Order 12866 or DOT’s regulatory policies and procedures.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

#### **Paperwork Reduction Act**

These amendments reduce information collection requirements and therefore reduce reporting burdens imposed on railroads.

#### **Environmental Impact**

FRA has evaluated these regulations in accordance with its procedure 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. FRA has determined that this final rule is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment.

#### **Federalism**

FRA believes it is in compliance with Executive Order 13132. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule will not have federalism implications that impose substantial direct compliance costs on State and local governments.

#### **Environmental Impact**

FRA has evaluated these regulations in accordance with its procedure for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. FRA has determined that the amendment of Parts 233, 235 and 236 of Title 49 of the CFR does not constitute a major FRA action requiring an environmental assessment.

#### **List of Subjects**

##### *49 CFR Part 233*

Railroad safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 235*

Administrative practice and procedure, Railroad safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 236*

Railroad safety, Reporting and recordkeeping requirements.

#### **The Rule**

In consideration of the foregoing, the interim final rule amending 49 CFR parts 233, 235, and 236 which was published at 61 FR 33871 on July 1, 1996, is adopted as a final rule without change.

Issued in Washington, DC on September 19, 2001.

**Allan Rutter,**

*Federal Railroad Administrator.*

[FR Doc. 01–24243 Filed 9–27–01; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 234**

[FRA Docket No. RSGC–5; Notice No. 9]

RIN 2130–AA97

#### **Grade Crossing Signal System Safety**

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

**ACTION:** Final Rule.

**SUMMARY:** On June 20, 1996, FRA published Interim Final Rule Amendments amending the regulations on grade crossing signal system safety. That rule required that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. The rule also required that railroads take specific and timely

actions to protect the traveling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems. Aside from the typographical and minor corrections made today, the final rule issued today is identical to the Interim Final Rule Amendments published on June 20, 1996.

**EFFECTIVE DATE:** This final rule is effective on September 28, 2001.

**FOR FURTHER INFORMATION CONTACT:**

William Goodman, Staff Director, Signal and Train Control, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-493-6325), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-493-6061) (e-mail address: mark.tessler@fra.dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 30, 1994, FRA published a final rule (59 FR 50086) requiring that railroads comply with specific maintenance, inspection, and testing requirements for active highway-rail grade crossing warning systems. The final rule also requires that railroads take specific and timely actions to protect the traveling public and railroad employees from the hazards posed by malfunctioning highway-rail grade crossing warning systems.

On June 20, 1996 FRA published an Interim Final Rule which amended the rule issued in 1994 (61 FR 31802). The Interim Final Rule addressed issues raised as a result of actual experience under the new regulations. In addition, shortly after the regulations were issued, an FRA Technical Resolution Committee (TRC) met to discuss the regulations, their interpretation and implementation. Included in the TRC were FRA signal and train control specialists from across the country along with headquarters staff. Representatives from rail labor and management were invited to attend certain sessions as non-voting members to offer their perspective and expertise to the group, together with representatives of two States active in FRA's State Participation Program. Although the purpose of this TRC was to develop the appropriate application and interpretation of the final rule, the discussion, together with other lessons learned during implementation, also indicated the need to clarify certain portions of the regulatory text. Additionally, the American Short Line Railroad Association, the Brotherhood of Railroad Signalmen, and the Association of American Railroads

jointly filed a Petition for Reconsideration with FRA requesting that FRA stay enforcement of certain sections of the final rule (§§ 234.215 and 234.223) pending further consideration of those provisions. Subsequent to the joint filing, FRA issued an Interim Policy Manual addressing, among others, the issues and questions raised by the petitioners. FRA granted the petition for reconsideration although it did not agree to stay enforcement since enforcement issues had been addressed in the Interim Policy Manual. The Interim Final Rule was in part a response to the joint petition for reconsideration.

FRA received a number of comments on the Interim Final Rule. The following discussion addresses those comments.

The Brotherhood of Railroad Signalmen (BRS) pointed out typographical errors in §§ 234.215 and 234.247(b). Those errors are being corrected.

**Section-By-Section Analysis**

The majority of changes contained in the Interim Final Rule generated no comments. Accordingly, the following section-by-section analysis addresses only those sections about which comments were received.

*Section 234.7 Accidents Involving Grade Crossing Signal Failure*

The Illinois Department of Transportation suggested that the term "activation failure" in the first sentence of § 234.7(a) should be replaced with the term "warning system malfunction" which would then include partial activation and false activation as situations for which telephonic reports of accidents must be made. This section requires reports within 24 hours of occurrence of impact accidents involving activation failure. Because activation failures are much more likely to immediately result in accidents, FRA needs information regarding these malfunctions as soon as possible. Telephonic reports of accidents involving partial and false activations would not materially assist FRA in its safety function, while requiring such reports would place an undue administrative burden on the railroad. FRA will still receive information pertaining to partial activations and false activations in the normal course of accident reporting. This information, together with the record keeping requirements of § 234.109, will provide FRA sufficient information with which to monitor compliance with this part and grade crossing safety generally.

*Section 234.9 Grade Crossing Signal System Failure Reports*

The Illinois Department of Transportation recommends that the term "activation failure" be replaced in this section with the all encompassing term "warning system malfunction". This change would have the effect of requiring that partial activations and false activations be reported to FRA within 15 days of occurrence. This requirement would burden railroads with a reporting requirement while providing FRA with information not needed on such a short time frame. FRA's information requirements will be adequately served by the record keeping requirements of § 234.109. Under that section, records of partial activations and false activations will be available to FRA for a period of one year after the occurrence. The availability of those records will provide FRA with sufficient information for safety oversight. Therefore, the change suggested by the Illinois Department of Transportation's suggestion will not be adopted.

*Section 234.217 Flashing Light Units*

The Iowa Department of Transportation (Iowa DOT) recommended that the last sentence of paragraph (b) be amended. This paragraph presently states: "Each flashing light unit shall be maintained to prevent dust and moisture from entering the interior of the unit. Roundels and reflectors shall be clean and in good condition." Iowa DOT suggests adding to the last sentence "including the condition of the paint adequate to provide a contrasting dark background."

We agree with the importance of maintaining conditions which ensure that the light unit maintain its visibility to the motorist. Essential to good visibility is the non-reflective black finish of the light hood and background surrounding the light. Maintaining a contrasting dark background contributes to the light's visibility. The present language of the rule is adequate to cover the situation in which the background or hood are in such a condition that the background does not provide sufficient contrast. FRA expects that the railroad responsible for maintenance of the crossing warning system will comply with § 234.207 which requires that "when any essential component of a highway-rail grade crossing warning system fails to perform its intended function, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay." The railroad thus has the responsibility to repair or replace

backgrounds or hoods if they fail to perform their intended function—to provide adequate contrasting background in the case of the background, and to provide a non-reflective shade in the case of the hood. FRA expects that the railroad responsible for maintenance of the grade crossing warning system will comply with § 234.207 in these situations. FRA Signal and Train Control inspectors will be prepared to enforce this section accordingly.

#### *Section 234.225 Activation of Warning System*

The Illinois Department of Transportation recommended that language be added to the present regulatory section as follows: “Where highway traffic signals and railroad warning signals are interconnected, additional warning time may be required to enable the traffic signals to clear the intersection and display a green signal for the track approach leg of the intersection. This time will vary depending on the length of storage distance between the tracks and the highway intersection.”

This important subject has been addressed by the Secretary of Transportation’s Technical Working Group. The language proposed by the Illinois DOT is best approached as a general guideline to be used in certain situations rather than as a regulatory requirement. The Technical Working Group has recommended that practitioners, when planning and designing preemption systems, use guidance found in the Institute of Transportation Engineers (ITE) revised Recommended Practices (ITE Journal, February 1997) “Design Guidelines for Railroad Preemption at Signalized Intersections.”

#### *Section 234.245 Signs*

One commenter suggested that this section require that signs “shall reflect current site conditions.” The content of signs mounted on grade crossing signal posts is not an appropriate matter for a rule dealing with maintenance, inspection and testing and is beyond the scope of this proceeding. The information needed to be conveyed on a signal post is dependent on a decision by the state or local transportation authority having jurisdiction over the highway crossing the railroad tracks and is subject to the requirements of the Federal Highway Administration’s Manual on Uniform Traffic Control Devices (MUTCD).

#### *Section 234.247 Purpose of Inspections and Tests; Removal From Service of Relay or Device Failing To Meet Test Requirements*

The BRS questioned whether a railroad has an obligation under § 234.247, to respond to reports of false activations while a track is out of service. A railroad would have an obligation to respond to any false activation reports since the motorist will be responding to the grade crossing warning system irrespective of the status of rail service. However, this section would not apply if the grade crossing warning system is temporarily taken out of service when the tracks over the grade crossing are taken out of service or when the railroad suspends operations during a portion of the year. Of course, a full inspection and all required tests must be successfully completed before railroad operations over the grade crossing resume. This section is being revised to eliminate the typographical error of in which the phrase “or the railroad suspends operations during a portion of the year” appeared twice in paragraph (b).

#### *Section 234.261 Highway Traffic Signal Preemption*

Iowa Department of Transportation suggests that this section be amended by adding the following paragraphs: “(b) A tag or marking shall be affixed inside the control unit for any railroad signal which is interconnected with a highway traffic signal. In addition to the words “**WARNING, INTERCONNECTION WITH HIGHWAY TRAFFIC SIGNALS,**” the name, date and telephone number of the responsible highway authority shall be posted therein in a legible manner and be maintained current as of the date of the last contact with that authority. (c) The responsible highway authority shall be contacted immediately when any change is made in the crossing warning system that affects the operation of the highway traffic signal system.”

This concept has been addressed by the Secretary’s Technical Working Group. A form similar to that suggested by Iowa DOT has been developed and is being distributed throughout the country for placement in both grade crossing signal cases and in highway traffic signal cases. The form states in part: “Highway-Rail Grade Crossing Warning System and Highway Traffic Signals are Interconnected. **BEFORE MODIFICATION** is made to any operation which connects to or controls the timing of an active railroad warning system and/or timing and phasing of a traffic signal the appropriate party(ies) shall be notified and, if necessary, a joint

inspection conducted.” The form contains the U.S. DOT/AAR Crossing Number together with contact names and phone numbers for the appropriate highway agency and railroad. This voluntary approach has been working very well and there does not appear to be any need to regulate this issue.

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

These amendments have been evaluated in accordance with existing policies and procedures. Because these amendments are primarily technically oriented and generally reduce the regulatory burden on railroads, FRA has concluded that this revisions do not constitute a significant rule under either Executive Order 12866 or DOT’s regulatory policies and procedures.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no substantial economic impacts for small units of government, businesses, or other organizations.

#### **Paperwork Reduction Act**

These amendments to part 234 do not change any information collection requirements.

#### **Environmental Impact**

FRA has evaluated these regulations in accordance with its procedure 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. FRA has determined that this final rule is not a major FRA action requiring the preparation of an environmental impact statement or environmental assessment.

#### **Federalism**

FRA believes it is in compliance with Executive Order 13132. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule will not have federalism implications that impose substantial direct compliance costs on State and local governments.

#### **List of Subjects in 49 CFR Part 234**

Highway safety, Railroad safety, Reporting and recordkeeping requirements.

## The Rule

In consideration of the foregoing, the interim final rule revising 49 CFR part 234 which was published at 61 FR 31802 on June 20, 1996, is adopted as a final rule with the following changes:

### PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

1. The authority citation for part 234 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, and 49 CFR 1.49.

2. Revise § 234.215 to read as follows:

#### § 234.215 Standby power system.

A standby source of power shall be provided with sufficient capacity to operate the warning system for a reasonable length of time during a period of primary power interruption. The designated capacity shall be specified on the plans required by § 234.201 of this part.

3. Revise § 234.247(b) to read as follows:

#### § 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.

\* \* \* \* \*

(b) If a railroad elects not to comply with the requirements of §§ 234.249 through 234.271 because all tracks over the grade crossing are out of service or the railroad suspends operations during a portion of the year, and the grade crossing warning system is also temporarily taken out of service, a full inspection and all required tests must be successfully completed before railroad operations over the grade crossing resume.

\* \* \* \* \*

Issued in Washington, D.C. on September 19, 2001.

Allan Rutter,

Federal Railroad Administrator.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AG02

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), have determined endangered status under the Endangered Species Act (Act) of 1973, as amended, for two perennial herbs—*Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch). Three small populations of *A. holmgreniorum* exist in Washington County, Utah, and adjacent Mohave County, Arizona. Five small populations of *A. ampullarioides* exist in Washington County, Utah. Significant portions of the habitat of both species are subject to disturbance from urban development, off-road vehicles (ORVs), grazing, displacement by exotic weeds, and mineral development. This determination that *A. holmgreniorum* and *A. ampullarioides* are endangered species implements the Federal protections provided by the Act for these plants.

**DATES:** Effective October 29, 2001.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115.

**FOR FURTHER INFORMATION CONTACT:** John L. England, Botanist, Utah Field Office, at the address listed above (telephone 801/524-5001).

#### SUPPLEMENTARY INFORMATION

##### Background

*Astragalus holmgreniorum* (Holmgren milk-vetch) was first collected as a scientific specimen in 1941 by Melvin Ogden. Rupert Barneby and Noel and Patricia Holmgren rediscovered the species in 1979. Barneby (1980) recognized the species as a unique taxon occurring in a localized area on the Arizona-Utah border, and named it for its co-discoverers. *Astragalus ampullarioides* (Shivwits milk-vetch)

was first collected near Shem in Washington County, Utah, by Duane Atwood in 1976. The species was originally described by Stanley Welsh (1986) as a variety of *A. eremiticus*. Barneby (1989) questioned the taxonomic significance of the species and submerged *A. eremiticus* var. *ampullarioides* within typical *A. eremiticus*. Later research work by Harper and Van Buren (1998) and Stubben (1997) demonstrated significant genetic and ecological differences between typical *A. eremiticus* and *A. eremiticus* var. *ampullarioides*. Welsh (1998) revised the species' taxonomy elevating the taxon to full species status as *A. ampullarioides*. Both species are narrowly distributed Mojave Desert endemics restricted to the immediate vicinity of St. George, Utah.

A member of the pea family (Fabaceae), *Astragalus holmgreniorum* is a stemless herbaceous (non-woody) perennial that produces leaves and small purple flowers in the spring, both of which die back to its roots after the flowering season. The plant's pinnately compound leaves (leaves arranged on opposite side of the stem in a row) arise directly from the root crown. The leaves are pressed close to the ground, and are 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in)) long, and have 9 to 15 leaflets. The leaflets are 0.8 to 1.6 cm (0.3 to 0.6 in) long and are broadly obovate (oval with the narrow end towards the base of the leaf) in shape. The flowers of *A. holmgreniorum* are 1.8 to 2.4 cm (0.7 to 0.9 in) long, and 0.6 to 0.9 cm (0.2 to 0.4 in) wide and have the distinctive papilionaceous flower shape of a legume (pea-like flower with five petals that include a large petal on top enclosing two lateral petals and two smaller lower petals). The flowers are borne in a raceme inflorescence (flowers occur along a stalk), commonly with 6 to 16 flowers. The peduncle (flower stalk) is 2 to 8.5 cm (0.8 to 3.6 in) long and arises directly from the root crown. The peduncle is erect during anthesis (period the flower is open) and is prostrate when the plant's in fruit (Barneby 1980; 1989; Welsh, et al. 1987; Stubben 1997). The fruits are pods 3 to 5 cm (1 to 2 in) long and 0.6 to 0.9 cm (0.2 to 0.4 in) across. The pods retain seeds even after the pods fully open up along the margin. With age, each pod eventually dries out and opens up at both the top and bottom ends (Barneby 1989; Stubben 1997).

*Astragalus holmgreniorum* grows on the shallow, sparsely vegetated soils derived primarily from the Virgin limestone member of the Moenkopi Formation. The species is a principal member of a warm-desert shrub