

exclude locomotives and passenger cars used exclusively in passenger service from this rule because the conspicuity issues attendant to passenger service are significantly different from those of freight service. For example, particularly in commuter service, the highway-rail grade crossings through which passenger trains operate are typically better protected than crossings used exclusively in freight service. Also, many passenger cars have bright stainless steel exteriors or are painted contrasting light colors and are maintained in a much cleaner condition than freight cars. Passenger cars typically have inside lights which are visible through side windows that run the entire length of the cars. Although FRA does not at this time propose to require the application of reflective material to locomotives and passenger cars used exclusively in passenger service, FRA may do so in a future rulemaking if it proves a cost-effective method of mitigating collision risk at highway-rail grade crossings.

As in all aspects of this proposed rule, FRA invites comments on the jurisdictional determinations proposed in this notice.

#### Section 224.5 Definitions

This proposed rule uses various terms, which for purposes of this rulemaking, have very specific meanings. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule and several of these definitions warrant further discussion.

“*Freight rolling stock*” includes any locomotive subject to 49 CFR part 229 used to haul or switch freight cars in revenue or work train service and any railroad freight car subject to 49 CFR part 215, including a car stenciled MW pursuant to § 215.305. Although FRA proposes to limit the definition of “freight rolling stock” to locomotives and freight cars, FRA requests comments on the potential utility and practicability of reflectorizing other rail equipment, such as specialized maintenance of way vehicles (particularly maintenance of way vehicles not falling within the purview of subpart D to 49 CFR part 214) or any other rail equipment used to haul freight cars. FRA specifically requests data demonstrating what, if any, other types of rail equipment (other than locomotives subject to 49 CFR part 229) are used to haul freight cars and the potential feasibility of reflectorizing such equipment and any data and/or relevant comments related to the conspicuity of maintenance of way equipment which is not subject to 49

CFR part 214 (e.g., how often is this equipment involved in grade crossing accidents, what, if any, conspicuity devices are already utilized on this equipment, would it be practicable to equip these vehicles with retroreflective material, etc.).

“*Freight rolling stock owner*” is defined to include any person who owns freight rolling stock, leases freight rolling stock, manages the maintenance or use of freight rolling stock on behalf of an owner or one or more lessors or lessees, or who otherwise controls the maintenance or use of freight rolling stock. This definition recognizes the practicalities of freight car ownership in the industry today. It is estimated that over one-half of all freight cars are privately owned. This number continues to increase. Because private freight car owners often contract with others to maintain their cars and may not even see their cars on a regular basis, this definition contemplates that those who control the maintenance or use of freight cars by contractual agreements or otherwise, will also be responsible for compliance with this part in conjunction with the actual owners of the cars.

“*Obscured*” means, for purposes of this part, concealed or hidden. Specifically excluded from this definition are ordinary accumulations of dirt, grime, or ice resulting from the normal railroad operating environment. FRA recognizes that the harsh railroad operating environment inevitably results in dirt accumulating on the sides of freight rolling stock. The standards for retroreflective material set forth in this part take into account this ordinary accumulation. The term “obscured,” however, is intended to refer to situations where reflective material is covered by paint, a dense chemical residue, or any other foreign substance, such that the material no longer reflects light. For example, FRA understands that the sides of coal cars will accumulate coal dust and other dirt over time due to the nature of normal railroad operations. An accumulation of coal dust or other dirt, even if it significantly darkens and dirties the retroreflective material, will not cause the material to be “obscured” for purposes of this rule. The standards proposed in this rule account for the effects of accumulations of dirt and grime inherent in the railroad operating environment, the aging of the reflective material, and other adverse effects of the operating environment (e.g., harsh weather conditions). FRA believes that reflective material meeting the requirements of this rule when initially applied will still provide adequate

reflectivity throughout the manufacturers’ stated useful life despite inevitable accumulations of dirt. If, however, retroreflective material is covered with paint (e.g., graffiti), a dense chemical residue (e.g., product spilled from a tank car), or any other foreign substance, other than dirt or grime, which effectively blocks all incoming light, that material would be considered “obscured” under this part.

In order to ensure that the requirements of this part would be practicable for each type of freight car to which they apply, FRA has included definitions for railroad freight car, flat car, and tank car. The proposed requirements for each type of car differ based on configurational differences between the vehicles in those groups. FRA believes that almost 99% of the freight car fleet that would be subject to this rule falls within one of these three definitions. The remaining 1% of the fleet that does not fall within one of these definitions is provided for in § 224.105(a)(4) addressing “cars of special construction.” FRA requests comments on the use of these definitions, specifically, whether these definitions are adequate to identify car types for purposes of this rule or whether commenters have other definitions that they would prefer.

#### Section 224.7 Waivers

This section explains the process for requesting a waiver from a provision of this rule. FRA has historically entertained waiver petitions from parties affected by an FRA regulation. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general regulatory criteria can be made without compromising or diminishing safety.

The rules governing the FRA waiver process are found in 49 CFR part 211. In summary, after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. FRA, after reviewing information from the petitioning party and others, will grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest.

#### Section 224.9 Responsibility for Compliance

General compliance requirements are proposed in this section. Paragraph (a) states that freight rolling stock owners