

Agreement, for actions requiring the agreement of both parties. This includes actions such as amending an existing lease to acquire additional space, obtaining partial release of space, revising the terms of a lease, settling restoration claims, and acquiring alterations.

(c) The contracting officer may use GSA Form 1364, Proposal To Lease Space to obtain offers from prospective offerors.

(d) The contracting officer may use GSA Form 1217, Lessor's Annual Cost Statement, to obtain pricing information regarding offered services and lease commissions.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

[Docket No. FRA-2006-26173; Notice No. 4]

RIN 2130-AB82

#### Accident/Incident Reporting Requirements

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

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration related to FRA's November 9, 2010, final rule revising FRA's regulations addressing accident/incident reporting and recording, the FRA Guide for Preparing Accident/Incident Reports (FRA Guide), its accident/incident recording and reporting forms in addition to its Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide). The final rule, which becomes effective June 1, 2011, was intended to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. This document amends and clarifies the final rule based on FRA's review of the petitions for reconsideration and in order to make necessary technical and clarifying changes.

**DATES:** This rule is effective July 1, 2011.

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Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-306, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-6296); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-204, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-1381).

#### SUPPLEMENTARY INFORMATION:

##### I. The FRA Guide and the Companion Guide

FRA has revised the FRA Guide based upon its review of the petitions for reconsideration submitted in response to the final rule and to make necessary technical amendments that are addressed in the "Section-by-Section" analysis. The FRA Guide is posted on FRA's website at <http://safetydata.fra.dot.gov/officeofsafety>. Hard copies of the FRA Guide will be available upon request. Information on requesting hard copies of the FRA Guide can be found in § 225.21, "Forms," of this final rule. FRA has also revised its Companion Guide containing instructions for electronically submitting monthly reports to FRA based upon its review of the petitions for reconsideration and to make necessary technical amendments that are addressed in the "Section-by-Section" analysis. The Companion Guide is posted on FRA's website at <http://safetydata.fra.dot.gov/officeofsafety>.

##### II. Background

On September 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM), which proposed miscellaneous amendments to FRA's accident/incident reporting regulations in order to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. See 73 FR 52496. The NPRM also proposed revisions to the 2003 FRA Guide for Preparing Accident/Incident Reports (2003 FRA Guide) and FRA's accident/incident recording and reporting forms.

On September 10, 2008, during the 36th Railroad Safety Advisory Committee (RSAC) meeting, RSAC Task No. 2008-02 was presented for acceptance. The task offered to the RSAC for consideration was to review comments received on FRA's NPRM and would have allowed the RSAC to make recommendations for the content of the final rule. The task was withdrawn at the meeting without RSAC acceptance.

Following publication of the NPRM in the **Federal Register**, FRA held a public

hearing in Washington, DC on December 18, 2008, and extended the comment period for an additional thirty (30) days following the hearing. The hearing was attended by a number of railroads, organizations representing railroads, and labor organizations. FRA received oral and written testimony at the hearing as well as written comments during the extended comment period. A copy of the hearing transcript was placed in Docket No. FRA-2006-26173 on <http://www.regulations.gov>. During the initial and extended comment period, FRA received comments and heard testimony from the following organizations, in addition to comments from individuals, listed in alphabetical order:

- American Association for Justice;
- Association for American Railroads (AAR);
- American Train Dispatchers Association;
- BNSF Railway Company;
- Brotherhood of Locomotive Engineers and Trainmen;
- Brotherhood of Maintenance of Way Employes Division;
- Brotherhood of Railroad Signalman;
- California Public Utilities Commission;
- U.S. Department of Labor;
- Illinois Commerce Commission/Transportation Bureau/Rail Safety Section;
- Kansas City Southern Railway Company;
- Metro-North Commuter Railroad Company;
- National Railroad Passenger Corporation (Amtrak);
- New York State Metropolitan Transportation Authority;
- NJ Transit Rail Operations;
- Norfolk Southern Corporation;
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- Union Pacific Railroad Company (UP); and
- United Transportation Union.

On November 9, 2010, FRA issued a final rule, entitled Miscellaneous Amendments to the Federal Railroad Administration's Accident/Incident Reporting Requirements; Final Rule, clarifying and amending FRA's accident/incident reporting and recording standards and guidance. See 75 FR 68862. Following the publication of the final rule, FRA received one formal petition for reconsideration from SEPTA, which was entered into the docket on January 28, 2011. FRA also received an informal request from UP to revise the FRA Guide by adding additional circumstance codes. FRA opted to treat UP's comments as an informal petition for reconsideration

entering the request into the docket on January 28, 2011, and is responding to UP's request in this document. The petitions for reconsideration raised various issues relating to the telephonic reporting requirements, the telephonic reporting chart and circumstance codes. The purpose of this document is to address the issues raised in the petitions for reconsideration relating to the final rule requirements.

The specific issues and recommendations raised by these petitioners, and FRA's responses to those petitions are discussed in detail in the "Section-by-Section Analysis" portion of the preamble. The following section-by-section analysis also contains a detailed discussion of each provision of the final rule text, the final rule preamble, the FRA Guide and forms contained in the FRA Guide, or the FRA Companion Guide that accompanies the final rule that is being clarified or amended. This discussion will enable the regulated community to more readily compare this document with the preamble discussion contained in the final rule and will aid the regulated community in understanding the requirements of the rule. Due to the complexity of the final rule and the number of documents affected and addressed in the rulemaking document and in an effort to provide readers as clear of an understanding as possible of the technical and clarifying amendments being made by this document, the section-by-section analysis is being divided into the following discussion sections:

- A. Amendments to the Regulatory Text of Part 225.
- B. Portions of Petitions for Reconsideration Being Denied.
- C. Clarifying or Technical Amendments to the Preamble Discussion of the Final Rule.
  - 1. Section 225.15 Accidents/incidents Not To Be Reported
  - 2. Chapter 2 of the FRA Guide, "Definitions."
  - 3. Appendix C to the FRA Guide, "Train Accident Cause Codes."
- D. Revisions to the FRA Companion Guide.
- E. Clarifying or Technical Amendments to the FRA Guide.
  - 1. Chapter 1 of the FRA Guide, "Overview of Accident/Incident Reporting and Recordkeeping Requirements."
  - 2. Appendix F of the FRA Guide, "Circumstance Codes."
  - 3. Appendix H to the FRA Guide, "Forms."
  - 4. Appendix J to the FRA Guide, "Type of Territory Codes."

5. Appendix L to the FRA Guide, "49 CFR part 225."

6. Appendix M to the FRA Guide, "Telephonic Reporting Chart."

#### IV. Section-by-Section Analysis

##### A. Amendments to the Regulatory Text of Part 225

FRA is making amendments to only one section of the final rule text. This amendment concerns the definition of "event or exposure arising from the operation of a railroad contained in § 225.5.

##### Section 225.5 Definitions

This document makes a technical amendment to the first tier subpart (ii)(A) of the definition of "Event or exposure arising from the operation of a railroad". The amendment removes "non-train incident" from the list of qualifying events arising from the operation of the railroad with regards to non-employees who are injured while off railroad property. This technical amendment is necessary because the addition of this type of accident/incident to tier one subpart (ii)(A) in the final rule inappropriately expanded the meaning of the term "event or exposure arising from the operation of the railroad" and the type of injuries captured for non-employees who are off railroad property beyond the scope intended. Removing "non-train incident" from the definition brings the meaning of the term into conformance with the intent and scope of the NPRM and final rule. The inclusion of this type of accident/incident in the definition is an obvious error and a technical amendment is an appropriate action to correct this oversight.

The final rule's clarification and restructuring of the definition of "event or exposure arising from the operation of the railroad", was not intended to change the term's meaning. Rather, the amendments were intended to clarify the term and bring it into conformance with existing industry practices. As such, the intent of the final rule was to remain consistent with the FRA's intent in the 2003 Final Rule:

FRA developed a compromise position, proposing that railroads not be required to report deaths or injuries to persons who are not railroad employees that occur while off railroad property unless they result from a train accident, a train incident, a highway-rail grade crossing accident/incident, or a release of a hazardous material or other dangerous commodity related to the railroad's rail transportation business.

68 FR 10108–09, March 3, 2003 (FRA's 2003 Final Rule). The term "event or exposure arising from the operation of a railroad" and its definition were added

in FRA's 2003 Final Rule to more narrowly tailor what types of accidents/incidents were considered to "arise from the operation of a railroad" and were, therefore, potentially reportable. 68 FR 10115–16.

However, the final rule in this proceeding amended the language proposed in the NPRM for the first tier subpart (ii)(A) by adding the term "non-train incident" to the list of qualifying events. Non-train incident is defined as an "event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents." See § 225.5, "Definitions—Non train incident." FRA stated in the final rule that this term was included to make the definition consistent with the list of accidents/incidents contained in the 2003 FRA Guide in addition to FRA's 2003 Final Rule amending its accident/incident regulations. 68 FR 10107, March 3, 2003. In the 2003 FRA Guide, non-train incidents are included in the list of categories of accidents/incidents; however, non-train incident was not included in FRA's 2003 Final Rule definition as a qualifying event arising from the operation of the railroad for non-employees who are injured while off railroad property.

Upon further review, it appears that the final rule's clarifying amendment is not consistent with the intent of FRA's 2003 Final Rule and expands the meaning of the term beyond the intent and scope of the final rule and NPRM. While non-train incident is included in the list of accidents/incidents in the 2003 FRA Guide, it was excluded as a triggering event for non-employees off railroad property in the related 2003 Final Rule. Moreover, the purpose of defining "event or exposure arising from the operation of the railroad" in the 2003 Final Rule was to limit the qualifying events with regards to non-employees. Based upon the definition of non-train incident, a railroad would be potentially responsible for reporting an injury to a non-employee occurring off railroad property that does not involve the movement of rail equipment. For example, under the definition contained in the final rule, if an individual suffers a reportable injury as the result of a car accident off railroad property involving a railroad automobile, any subsequent injury to the non-employee would be potentially reportable. This type of injury was not intended to be captured by FRA's accident/incident reporting regulations. As such, this document removes non-train incident from the list of qualifying events under the first tier

subpart (ii)(A) of the definition of “event or exposure arising from the operation of the railroad”.

#### *B. Portions of Petitions for Reconsideration Being Denied*

This document denies that portion of SEPTA’s petition for reconsideration requesting the amendment of this section with regard to limiting and consolidating the notification requirements to which a railroad is subject.

#### Section 225.9 Telephonic reports of certain accidents/incidents and other events

SEPTA’s petition for reconsideration noted that a railroad may potentially be required to comply with several agencies’ immediate notification requirements following an accident/incident, and; therefore, a railroad would be required to comply with each agency’s separate notification requirements. SEPTA further suggested that the agencies should share the information rather than requiring a railroad to make several different notifications to streamline the process and to ease the burden on the railroad.

As an initial matter, in the NPRM, FRA requested comments and suggestions on four issues of concern. One of these issues was § 225.9 telephonic reporting. Specifically, the NPRM noted that FRA was considering changing the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made. Under FRA’s current regulations, railroads are required to telephonically report certain accidents/incidents to the National Response Center (NRC), who in turn provides notification of the accidents/incidents to FRA. The NPRM indicated that FRA was reviewing whether it would be preferable for railroads to report these accidents/incidents directly to FRA via electronic transmission, and specifically sought comments and suggestions on the issue. FRA opted not to adopt any of the suggested changes or to require direct reporting to FRA, as FRA’s infrastructure is inadequate to handle direct reporting. *See* 75 FR 68876, November 9, 2010.

With regards to SEPTA’s specific suggestion to consolidate various agency notification requirements, again, FRA is declining to adopt the recommendation. Each government agency’s notification requirements are aimed to alert the agency to specific accidents/incidents. These requirements may vary from agency to agency based upon their regulatory authority and mission. Moreover, each regulation may vary in

terms of how and when notifications must occur. As such, the accidents/incidents for which FRA requires notification may not capture the accidents/incidents or the specific information that other agencies are interested in or need to fulfill their mission. Moreover, FRA does not have regulatory authority to control, change or alter other agencies’ notification requirements; as such, FRA is not currently in a position to adopt or enforce SEPTA’s recommendation. Finally, FRA does not currently have the infrastructure in place to handle notifications on behalf of other agencies or the ability to share that information outside the FRA to the extent required by SEPTA’s recommendation.

#### *C. Clarifying or Technical Amendments to the Preamble Discussion of the Final Rule*

This document is making several clarifying or technical amendments to the preamble discussions contained in the final rule. The preamble discussions being clarified in this document involve discussions of the regulatory text as well as discussions of the FRA Guide.

#### 1. Section 225.15 Accidents/incidents Not To Be Reported

This document is making a clarifying amendment to the preamble language in the Section-by-Section Analysis of the final rule relating to a railroad’s duty to investigate trespasser fatalities. *See also*, 75 FR 68889. The final rule requires railroads to investigate all trespasser fatalities in order to determine the cause of death. As explained in the final rule, FRA included this requirement to ensure that railroads are taking the proper steps to confirm whether or not a death is a suicide. The railroad must continue its investigation for a period of six months or until it is able to confirm the cause of death (or whichever occurs first). FRA anticipates that, if the cause of death is obvious (e.g., there are no indications that the individual(s) died as the result of a suicide), a railroad’s investigation will not take the full six months and the cause of death will be easily confirmed with proper authority.

In discussing this new requirement, the preamble language stated that “if a railroad cannot obtain the required information after making a documented good faith effort for six months, then the railroad may discontinue its investigation and report the casualty as a trespasser fatality.” 75 FR 68870, 68879. After reviewing this language and receiving questions from the industry, FRA has determined that this sentence is confusing and misleading. Consequently, this document clarifies

the discussion contained in Section-by-Section Analysis for the final rule.

FRA did not intend to negate a railroad’s duty to create and submit a Form FRA F 6180.55a for a reportable trespasser fatality within 30 days after the month within which the death occurred. Rather, this preamble discussion was intended to explain a railroad’s obligation at the end of the six month investigative period if the railroad cannot confirm the cause of the death. As such, once a railroad learns about a reportable trespasser fatality, the railroad must create and submit a Form FRA F 6180.55a to the FRA within 30 days after the month within which the death occurred. However, after submitting the Form FRA F 6180.55a, the railroad must continue to try to confirm the cause of death for a period of up to six months for trespasser fatalities. If the railroad is able to confirm the cause of death, the railroad must amend, or correct, the Form FRA 6180.55a as appropriate. If the railroad is unable to confirm the cause of death, the fatality may be reported as a trespasser fatality so that the death remains as a trespasser fatality on the Form FRA F 6180.55a and the railroad is not required to amend or correct the report.

FRA is clarifying the above language to avoid any potential confusion and to ensure that railroads are consistently submitting their reports to the FRA in a timely fashion. As stated above, the new investigative requirements are not meant to eliminate a railroad’s duty to make a report per § 225.11 or to delay the reporting of trespasser fatalities for a period of six months (or until the railroad can determine cause of death). Rather, FRA was attempting to instruct railroads on how to proceed at the end of the six month investigative period in situations in which the railroad is unsuccessful in determining the cause of death.

#### 2. Chapter 2 of the FRA Guide, “Definitions”

This document identifies and corrects preamble language regarding Chapter 2 of the FRA Guide relating to the Definition of “Worker on Duty-Employee (Class A).” This correction does not result in any amendments or changes to the actual definition.

The final rule removed an example to the definition of Worker on Duty-Employee (Class A) characterizing an employee on his lunch break as on duty. This example was inserted into the definition in the NPRM. FRA received a comment from the AAR with regards to this example requesting its removal as an employee who is injured on an

unpaid lunch break may not be considered on-duty. FRA agreed with the AAR and recognized that an employee who is not under pay is generally considered off duty.

Consequently, FRA removed the example in the final rule to avoid confusion. However, in removing the example, the preamble language stated that “[i]n general, an employee on a break, whether paid or unpaid, is considered an Employee Not On Duty (Class B).” See 75 FR 68886.

This statement is incorrect and clearly inconsistent with the definition of Worker on Duty-Employee (Class A) contained in the final rule and the examples contained in the FRA Guide. Rather, as stated in the definition of Worker on Duty-Employee (Class A), “[w]hether or not the worker is under pay will normally be the deciding factor for determining ‘on-duty’ status.” FRA Guide, Chapter 2. While there are certain exceptions, an employee who is under pay at the time of his injury is generally considered on-duty. FRA intended to state that an employee on a break, if unpaid, is generally considered an Employee Not On Duty (Class B). Consequently, the preamble language was an obvious error and a technical amendment is an appropriate action to correct this oversight.

### 3. Appendix C to the FRA Guide, “Train Accident Cause Codes”

This document identifies and corrects erroneous information contained in the preamble language to the final rule. However, this correction does not result in any amendments or changes to the actual Train Accident Cause Codes. The final rule added an additional Train Accident Cause Code in response to a recommendation from the National Transportation Safety Board (NTSB). Both the final rule and NPRM discussed the background and history of this recommendation in the preamble. Specifically, the final rule stated that:

FRA added Train Accident Cause Code T224 in response to the National Transportation Safety Board’s (NTSB) 2005 recommendation that FRA provide a train accident cause code for derailments caused by bond wire attachments. This recommendation arose from the NTSB’s investigation of the derailment of northbound National Railroad Passenger Corporation (Amtrak) train No. 58 while operating on Canadian National (CN) track near Flora, Mississippi, on April 6, 2004. The derailment resulted in one fatality, 35 injuries (that were reportable to FRA), and damage costs of approximately \$7 million. The NTSB recommended that FRA include in the FRA Guide a train accident cause code for derailments caused by rail cracks originating from bond wire attachments, and that

information on the methods and locations of those attachments be provided in the narrative section of the accident/incident report (NTSB Recommendation Number RAR-05/02).

See 75 FR 68891. However, upon further review, FRA has discovered that the final rule and NPRM erroneously referenced NTSB Recommendation Number RAR-05/02. Rather, the relevant recommendation is actually contained in NTSB Railroad Accident Report Number 05/01 (RAR 05/01). Moreover, the final rule and NPRM mistakenly discussed the facts involved in NTSB Railroad Accident Report Number 05/02 (RAR 05/02). See 75 FR 68891.

To clarify, FRA added Train Accident Cause Code T224 in response to NTSB Safety Recommendation No. Recommendation-05-02 (R-05-02), which was contained in NTSB’s RAR 05/01. Moreover, this recommendation arose from the NTSB investigation into the derailment of a northbound CN train on February 9, 2003, in Tamaroa, Illinois, and the subsequent release of hazardous materials. A copy of the NTSB’s RAR 05/01, containing NTSB’s R-05-02, has been placed in Docket No. FRA-2006-26173 on <http://www.regulations.gov> for ease of reference.

### D. Revisions to the FRA Companion Guide

The Companion Guide, a technical manual that did not go through formal notice and comment, contains instructions for electronically submitting monthly reports. As such, the Companion Guide also includes directions for handling reports and records after June 1, 2011, with regards to the creation and submission of the reports, including late reports, and the amending/correcting of reports for accidents/incidents occurring prior to the effective date. The Companion Guide currently instructs that “railroads amending reports or records created or submitted prior to the effective date of the new rule, or submitting late reports for accidents that occurred prior to the effective date of the new rule, must amend those records and reports consistent with the new regulations and newest FRA Guide.” See Companion Guide, Introduction.

However, upon further consideration, FRA is revising the instructions contained in the Companion Guide to eliminate any confusion, to avoid requiring railroads to retroactively apply the new rules and regulations, and to prevent any potential issues with the collection of accident/incident data. FRA will also include these revised

instructions in the FRA Guide. As an initial matter, the instructions contained in the Companion Guide are being revised as they could potentially create confusion and problems with FRA’s accident/incident data and require the railroad to retroactively apply the new rule and regulations. If a railroad is required to apply the reporting and recording regulations contained in the final rule to determine whether an accident/incident occurring prior to the effective date is reportable, a railroad may potentially have to report an accident/incident that was not reportable at the time it occurred. For example, under the current guidance, a railroad may have to report a suicide or attempted suicide even though it occurred prior to the effective date of the final rule. The revised instructions, set forth below, will ensure that accidents/incidents are reported/recorded in a manner consistent with the rules and regulations that were in place at the time the accident/incident occurred.

FRA received numerous questions from the railroads requesting additional clarification and instructions with regards to this issue indicating that the directions contained in the Companion Guide are either too difficult to find and/or to understand. By revising these instructions and including them in the FRA Guide, FRA anticipates eliminating further confusion, improving compliance, and ensuring accurate accident/incident data.

### E. Clarifying or Technical Amendments to the FRA Guide

This document makes the following general clarifying or technical amendments throughout the FRA Guide: correct typos and formatting issues; highlight key provisions for additional emphasis; and update the Index and Table of Content to reflect changes in pagination. Moreover, this document updates the publication and effective dates throughout the FRA Guide.

#### 1. Chapter 1 of the FRA Guide, “Overview of Accident/Incident Reporting and Recordkeeping Requirements”

This document makes a clarifying amendment to Chapter 1 of the FRA Guide by adding instructions for creating and submitting records and reports, including late reports, in addition to amending/correcting reports after the final rule’s June 1, 2011, effective date for accidents/incidents occurring prior to that date. This issue is addressed in the preceding discussion related to revisions being made to the FRA Companion Guide. This document

provides notice that the revised directions discussed above are being added to the FRA Guide for ease of reference and convenience. Consequently, this document adds the revised instructions, which are consistent with the revised instructions contained in the Companion Guide, to Chapter 1 of the FRA Guide. These instructions explain to railroads that:

[w]hen determining whether (and which form(s) to use) to report/record an accident/incident a railroad must use the forms and standards that were in effect on the date that the accident/incident occurred. Therefore any reports, including late reports, or records created for an accident/incident that occurred prior to June 1, 2011, are subject to the standards (and required to use the forms) that were in effect prior to the Miscellaneous Amendment to the Federal Railroad Administration's Accident/Incident Reporting Requirements; Final Rule, which became effective June 1, 2011. 75 FR 68862, November 9, 2010. When amending/correcting a report/record after June 1, 2011, for an accident/incident that occurred prior to June 1, 2011, a railroad should simply amend/correct the report/record that was originally created for the accident/incident.

See FRA Guide, Chapter 1. Again, these amendments are appropriate as they will clarify the reporting/recording requirements for certain accidents/incidents and eliminate any potential data collection issues.

## 2. Appendix F of the FRA Guide, "Circumstance Codes"

This document amends Appendix F of the FRA Guide by adding additional Circumstance Codes in response to the petitions for reconsideration. The final rule added new Circumstance Codes to Appendix F of the FRA Guide for use on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)".

This document is adding Location Circumstance Code CE—"On Station Platform" to Part III of the "Location Circumstance Codes" in response to SEPTA's petition for reconsideration. The preamble to the final rule stated that the final rule would change Location Circumstance Code C2—"On Platform" to "On Platform Station." See 75 FR 68892. However, as SEPTA noted in its petition, the final rule did not in fact make this change. While this document adds this new code, this document does not remove or replace Location Circumstance Code C2—"On Platform". Upon further review, FRA has determined that "On Station Platform" is too specific to replace "On Platform" as there are other types of platforms beyond station platforms. As FRA wants to continue collecting information about accidents/incidents

occurring at those locations, this document does not eliminate C2—"On Platform". Moreover, this document uses the code "On Station Platform" instead of "On Platform Station" as the former is a more accurate description.

This document is also amending Appendix F of the FRA Guide by adding several additional Circumstance Codes in response to UP's petition for reconsideration. FRA has reviewed the additional codes recommended by UP and believes that they will improve FRA accident/incident data. Thus, FRA is adding the following new codes to Appendix F—Circumstance Codes as follows:

(a) To Part I of the "Location Circumstance Codes" FRA adds codes:

- F—Restroom;
- U—Airport/Airplane;
- V—Freight terminal; and,
- W—Private property.

(b) To Part III of the "Location Circumstance Codes" FRA adds codes:

- AA—At freight terminal;
- AB—On tower;
- AC—In cafeteria/lunch room;
- D1—At lodging facility;
- D2—On highway/street;
- D3—On private property;
- D4—On sidewalk/walkway
- D5—In airport;
- D6—In airplane;
- D7—In hotel room;
- E1—On parking lot;
- E2—In building; and,
- E3—In restroom.

(c) To the "Tools, Machinery, Appliances, Structures, Surfaces, (etc.) Circumstance Codes" FRA adds code:

- 8K—Knuckle.

## 3. Appendix H to the FRA Guide, "Forms"

This document makes a general clarifying or technical amendment to each of the accompanying FRA forms, updating the expiration date of each form. The Office of Management and Budget (OMB) approved the information collections submissions associated with the accident/incident final rule. As such, the new expiration date for the forms is February 28, 2014. FRA received notification of OMB's decision following the publication of the final rule and, as such, this document makes the technical amendment so that the forms to reflect the change in the expiration date.

The forms are revised as follows:

*Form FRA F 6180.107.* This document corrects certain preamble language addressing a railroad's obligation to create a Form FRA F 6180.107 within a proscribed time period. However, this correction will not result in any changes to the regulatory text or FRA Guide. In

discussing revisions to the Form FRA F 6180.107 with regards to block 23, the final rule stated that:

FRA is making this revision to ensure that it can discern if the railroad entered each claimed occupational illness on the appropriate record no later than seven calendar days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred, as required in § 225.25(i)(2).

See 75 FR 68897. These instructions are an obvious mistake and this document clarifies that, consistent with the instructions in § 225.21(i)(2) and throughout the preamble to the final rule, a railroad must actually enter each claimed occupational illness "no later than seven working days after receiving knowledge that an employee is claiming they have incurred an occupational illness." See 75 FR 68907. This technical amendment is appropriate as the mistake was obvious and this document highlights this issue to avoid any potential confusion.

*Form FRA F 6180.150.* A technical amendment is being made to Form FRA F 6180.150, by removing the word "draft" from the form. As stated in the final rule, Form FRA F 6180.150 was submitted to OMB and pending approval. See 75 FR 68888. FRA submitted the Form FRA F 6180.150 to OMB with the final rule. OMB notified FRA that it approved the form, and; as such, it may now be used to collection information about potential injuries to highway-users involved in highway-rail grade crossing accidents/incidents.

## 4. Appendix J to the FRA Guide, "Type of Territory Codes"

This document makes several clarifying and technical amendments to Appendix J of the FRA Guide, which provides Type of Territory Codes and instructions for the use of those codes when completing block 30, "Type of Territory," on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report." See 75 FR 68897. The codes represent the type of territory (*i.e.*, signaled territory versus non-signaled territory); the authority for movement (*i.e.*, signal indication; mandatory directive; other than main track—Rule 105); and additional miscellaneous supplemental codes. See FRA Guide, Appendix H, "Forms".

This document amends the list identifying the various methods of control (*i.e.*, systems) contained on page J-2 of the FRA Guide, Appendix J, by eliminating the outdated term "Direct Train Control". Previously, FRA included this term because one particular railroad used it as a formal method of operation; however, that

particular railroad no longer uses that method of operation and has since started using Track Warrant Control. Therefore, this term is no longer applicable and no longer used in the industry. Thus, FRA is removing it for clarity and to avoid any potential confusion. Moreover, there will be no conflict with FRA's use of the term Direct Train Control as a generic, or "umbrella," term, which FRA uses, generally, to refer to this common method of operation in the industry as a whole.

This document adds supplemental code "Z—Other-Narrative Required" to the list for position 4 and 5 for non signals on page J-4 of the FRA Guide, Appendix J. FRA created the code "Other-Narrative Required" to ensure that if other existing codes are inadequate the railroads are able to accurately complete the field and to ensure that FRA is able to obtain a response. FRA discovered that it failed to list this supplemental code in two positions. While the directions found on page J-1 of the FRA Guide, Appendix J, make it clear that this code is always available in case existing codes are insufficient; this document adds these codes for clarity and consistency.

This document also amends the supplemental codes found on pages J-5 and J-6 so that the supplemental codes consistently correspond to the same narrative throughout Appendix J to the FRA Guide. This clarifying amendment is intended to eliminate any confusion potentially created in the final rule resulting from switching the supplemental code and the narrative description throughout Appendix J to the FRA Guide. As a result of this amendment, the supplemental codes correspond to the same narrative (*e.g.*, Supplemental Code L means Special Instructions) throughout Appendix J to the FRA Guide; whereas, under the final rule, the supplemental code and its narrative varied throughout Appendix J to the FRA Guide. Consequently, the supplemental codes contained in Appendix J to the FRA Guide have the following meaning:

- A—Auto Cab Signals
- B—Auto Train Control
- C—Auto Train Stop
- D—Automatic Block Signals System
- E—Broken Rail Monitoring
- F—Direct Traffic Control
- G—Interlocking
- H—Manual Block System
- J—Positive Train Control
- K—Restricted Speed or Equivalent
- L—Special Instructions
- M—Switch Point Monitoring
- N—Time Table/Train Orders
- P—Track Warrant Control

- Q—Traffic Control System/CTC
- R—Yard/Restricted Limits
- T—Other Than Main Track
- Z—Other-Narrative Required

#### 5. Appendix L to the FRA Guide, "49 CFR part 225"

The document makes two technical amendments to Appendix L of the FRA Guide, which includes the full regulatory text of part 225. The final rule included this rule text for ease of reference. This document alters only the rule text found in Appendix L of the FRA Guide and does not affect any other part of the final rule. First, a technical amendment is being made to update the reporting threshold by including the reporting threshold for 2011, which is \$9,400. The reporting threshold for 2011 was calculated and published after the publication of the final rule. *See* 75 FR 75911, December 7, 2010. This revision affects § 225.19 (c) and (e), which include a list of the current and past reporting thresholds.

An amendment is also being made to the title of Form FRA F 6180.56 in § 225.21 in Appendix L of the FRA Guide. The regulatory text included Appendix L as part of the final rule identified Form FRA F 6180.56 as "Annual Railroad Report of Manhours by State" and this document corrects the form's title to "Annual Railroad Report of Employee Hours and Casualties by State." This was an obvious error as the form is correctly identified elsewhere in the final rule, the actual regulatory text and the FRA Guide.

#### 6. Appendix M to the FRA Guide, "Telephonic Reporting Chart"

This document revises the Telephonic Reporting Chart contained in Appendix M to the FRA Guide to make clarifying and technical amendments in response to the petitions for reconsideration and to make the chart consistent with the rule text. In addition, this document makes several general technical amendments to the Telephonic Reporting Chart. These include updating the footnote numbering as a result of substantive changes and correcting typos.

The Telephonic Reporting Chart is amended in response to SEPTA's petition for reconsideration. In its petition for reconsideration, SEPTA requested clarification with regards to the use and placement of footnote number four dealing with the "24 hours notification cap" for fatalities resulting from a highway-rail grade crossing accident/incident. SEPTA noted that the placement of the footnote appeared to expand the "24 hours notification cap"

to all fatalities regardless of the circumstances.

The final rule amended the accident/incident telephonic reporting requirements related to fatalities that occur at highway-rail grade crossings as a result of train accidents or train incidents. FRA had previously required railroads to report immediately to the National Response Center (NRC), via telephone, "a fatality at a highway-rail grade crossing as a result of a train accident or train incident." 49 CFR 225.9(a)(2)(iii). FRA found that confusion existed as to the applicability of this requirement when death does not occur at the scene of the accident/incident, but occurs several hours or days later, after the fatally injured person is taken to the hospital for treatment.

As a result, the final rule revised the telephonic reporting requirement for highway-rail grade crossing fatalities to require telephonic reporting only if death occurs within 24 hours of the accident/incident. This revision is consistent with the Department of Transportation, Office of Inspector General's November 28, 2005 recommendation (Report No. MH-2006-016), which recommended that FRA amend § 225.9 to clarify the reporting requirements and to include criteria requiring railroads to report to NRC any death at a highway-rail grade crossing, only if death occurs within 24 hours of the accident/incident.

This document updates and moves footnote number four to make it clear that the "24 hours notification cap" applies only to "a fatality at a highway-rail grade crossing as a result of a train accident or train incident" as explained in the final rule. 49 CFR 225.9(a)(2)(iii). FRA agrees with SEPTA's contention that the placement of the footnote could potentially cause confusion, and; as such, the clarifying amendment is appropriate.

This document updates the Telephonic Reporting Chart contained in Appendix M to the FRA Guide to reflect changes made to § 225.9(a)(2)(iv) and to accurately reflect the regulatory language in § 225.9(a)(2)(v). The final rule made a technical amendment to paragraph (a)(2)(iv) by adding the words "or more" after \$150,000, to clarify that the telephonic reporting requirement is triggered when a train accident results in damage of \$150,000 or more to railroad and non-railroad property. The Telephonic Reporting Chart is updated to reflect this change in the rule text. Similarly, the Telephonic Reporting Chart is updated so that it accurately reflects the rule text in § 225.9(a)(2)(v) by changing the language from "damage

in excess of \$25,000” to “\$25,000 or more”. Both of these amendments are necessary to correct obvious errors.

Finally, in reviewing the Telephonic Reporting Chart, FRA discovered that the chart does not include paragraph (a)(1)(iii). Thus, the Telephonic Reporting Chart is being amended so that it includes paragraph (a)(1)(iii) and accurately reflects the rule text. Again, the failure to include this paragraph was an obvious oversight and this amendment makes the Telephonic Reporting Chart consistent with the rule text.

## V. Regulatory Impact and Notices

### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This revised final rule in response to petitions for reconsideration has been evaluated in accordance with existing policies and procedures and determined to be non-significant under not only Executive Orders 12866 and 13563 but also DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has analyzed the costs and benefits of the revisions to the final rule. With two exceptions, the revisions FRA is making are technical corrections or clarifications and will not have any economic impact. They will serve to make clear and correct the requirements of the final rule and its accompanying FRA Guide. Although the addition of circumstance codes for Location as well as Tools, Machinery, Appliances, and Structures may add some reporting burden, it would be nominal. Parties filling out the forms would have more codes to select from to describe the accident or incident circumstances, but no fields have been added to any reporting forms. FRA is also revising the definition of “event or exposure arising from the operation of the railroad” in § 225.5, “Definitions”. In the final rule, FRA included non-train incidents in the list of events that can result in a reportable injury to a non-employee while off railroad property. Upon further review, it appears this amendment was overly broad and would capture more information than original intended. As such, FRA is removing this from the list.

Since any burden associated with the added cause codes for accidents and incidents would be nominal and the Regulatory Evaluation conducted in support of the final rule already took into account the impacts of the new definition of “event or exposure arising from the operation of the railroad,” FRA believes that the outcome of that analysis would not be impacted. Even if

that were not the case, FRA is confident that the cost savings from the revised definitions would exceed any additional cost burden. In other words, the revised definition represents the least costly alternative for achieving the desired safety outcome. To the extent that any additional burden results from the additional circumstance codes, it will be nominal and have no impact on the findings of the Regulatory Evaluation of the final rule.

### B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that the revisions to the final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by these revisions, none of these entities will be significantly impacted. The net impact of these revisions is beneficial stemming from a reduction in burden associated with not reporting certain events. At the NPRM stage, FRA certified that the proposal would not result in a significant economic impact on a substantial number of small entities and requested comment on such certification as well all other aspects of the NPRM. Although many comments were received in response to the NPRM, no comments directly addressed the certification. In developing the final rule, FRA considered all comments received in response to the NPRM. FRA also certified that the final rule would not have a significant economic impact on a substantial number of small entities.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with

fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. *See* “Size Eligibility Provisions and Standards,” 13 CFR part 121 subpart A. Additionally, section 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may use a different standard for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking. This final rule applies to railroads. There are approximately 665 small railroads that would be affected by this final rule. The factual basis for the certification that this final rule will not have a significant economic impact on a substantial number of small entities, is that the total cost of complying with the final rule will be either unchanged or reduced.

### C. Paperwork Statement—Accident/ Incident Reporting and Recordkeeping

This response to petitions for reconsideration of the final rule does not change any of the information collection requirements and associated estimated burden contained in the original final rule.

### D. Federalism Implications

This response to petitions for reconsideration and the revised final rule have been analyzed in accordance with the principles and criteria contained in Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), which requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in

the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the proposed regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA believes it is in compliance with Executive Order 13132. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the final rule, this document will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among various levels of government. In addition, FRA has determined that this response to petitions for reconsideration of the final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

FRA notes that this part could have preemptive effect by the operation of law under the FRSA. See 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “essentially local safety or security hazard” exception to § 20106.

In sum, FRA has analyzed this response to petitions for reconsideration in accordance with the principles and criteria contained in Executive Order 13132, and has determined that preparation of a federalism summary

impact statement for this document is not required.

#### *E. International Trade Impact Assessment*

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This response to the petitions for reconsideration and the revised final rule are purely domestic in nature and are not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

#### *F. Environmental Impact*

FRA has evaluated this response to the petitions for reconsideration in accordance with its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545; May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this response to the petitions for reconsideration is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA’s Procedures. See 64 FR 28547; May 26, 1999. Section 4(c)(20) reads as follows:

Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment \* \* \*. The following classes of FRA actions are categorically excluded: \* \* \* Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA’s Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this response to petitions for reconsideration that might trigger the need for a more detailed environmental review. As a result, FRA finds that this revised final rule is not a major Federal action significantly affecting the quality of the human environment.

#### *G. Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) [\$140.8 million in 2010] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This response to the petitions for reconsideration of the final rule, including the revised final rule, would not result in the expenditure, in the aggregate, of \$140.8 million or more in any one year, and thus preparation of such a statement is not required.

#### *H. Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355, May 22, 2001. Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to the petitions for reconsideration of the final rule, including the revised final rule, in accordance with Executive Order 13211. FRA has determined that this revised final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.



Consequently, FRA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

#### *I. Privacy Act*

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). To get more information on this matter and to view the Regulations.gov Privacy Notice go to <http://www.regulations.gov/search/footer/privacyanduse.jsp>. You may review DOT’s complete Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477–78).

#### **List of Subjects in 49 CFR Part 225**

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

For the reasons discussed in the preamble, FRA amends part 225 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

#### **PART 225—[AMENDED]**

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 225.5 is amended by revising paragraph (1)(ii)(A) in the

definition of “event or exposure arising from the operation of a railroad” to read as follows:

#### **§ 225.5 Definitions.**

\* \* \* \* \*

*Event or exposure arising from the operation of a railroad means—*

(1) \* \* \*

(ii) \* \* \*

(A) A train accident or a train incident involving the railroad; or

\* \* \* \* \*

Issued in Washington, DC, on May 24, 2011.

**Joseph C. Szabo,**  
*Administrator, Federal Railroad Administration.*

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