

quality/hospice/hope and the information collection request (OMB control number 0938–1153/Expiration date: 1/31/2026) associated with this rule found at <https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pralisting>.”

b. Third column, lines 15 through 21, the sentence that reads “This increase in incremental burden is explained further in the Regulatory Impact Analysis (RIA) section of this Rule, and is also discussed in detail in the Information Collection Request and PRA accompanying this Rule.” is corrected to read “This increase in incremental burden is explained further in the Regulatory Impact Analysis (RIA) section of this rule, and is also discussed in detail in the information collection request accompanying this rule (OMB control number (0938–1153/Expiration date: 1/31/2026).”

11. On page 64262, in Table 18, titled “Summary of Changes in Burden”, the entry “HUV Timepoint” is corrected to read “HUV Timepoints”.

Elizabeth J. Gramling,

*Executive Secretary to the Department,
Department of Health and Human Services.*

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA–2024–0034]

RIN 2130–AC98

Federal Railroad Administration Accident/Incident Investigation Policy for Gathering Information and Consulting With Stakeholders

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

ACTION: Direct final rule.

SUMMARY: FRA is taking direct final action to amend its Accident/Incident Regulations governing reporting, classification, and investigations by codifying FRA’s policy for gathering information from, and consulting with, stakeholders during an accident/incident investigation.

DATES:

Effective date: This final rule is effective on October 31, 2024, without further notice unless FRA receives adverse, substantive comment by October 31, 2024. If FRA receives

adverse, substantive comment on this direct final rule, it will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2024–0034 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC98). Note that all comments received will be posted without change to <https://www.regulations.gov> including any personal information provided. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. For additional submission methods and general guidance on making effective comments, please visit <https://www.transportation.gov/regulations/rulemaking-process>.

Docket: For access to the docket to read comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Rick Huggins, Supervisory Railroad Security Specialist, Office of Railroad Safety, FRA, telephone: 202–465–6922 or email: ricky.huggins@dot.gov; or Senya Waas, Senior Attorney, Office of the Chief Counsel, FRA, telephone: 202–875–4158 or email: senyaann.waas@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to 49 U.S.C. 20103, FRA, as delegated by the Secretary of Transportation,¹ has authority to “prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.” As part of its mission to enforce and improve rail safety, FRA investigates rail transportation accidents/incidents which result in serious injury to an individual or to railroad property. See 49 U.S.C. 20902. In Section 22417 of the Infrastructure Investment and Jobs Act (IIJA), Congress mandated that the Secretary of Transportation (Secretary) create a standard process for investigators to use during accident and incident investigations conducted under

this section. This process is to be used to determine when it is appropriate and the appropriate method for gathering information about an accident or incident under investigation from railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary. The process will also be used to determine when it is appropriate to consult with railroad carriers, contractors or employees of railroad carriers, or representatives of employees of railroad carriers, and others, as determined relevant by the Secretary, for technical expertise on the facts of the accident or incident under investigation. See Public Law 117–58, section 22417, Nov. 15, 2021, 135 Stat. 748.

In developing this standard process, the Secretary must also factor in ways to maintain the confidentiality of any entity if:

- (1) The entity requests confidentiality;
- (2) The entity was not involved in the accident or incident; and
- (3) Maintaining the entity’s confidentiality does not adversely affect FRA’s investigation.

The IIJA specifies that any process developed under section 22417 applies only to FRA investigations and does not apply to any investigation carried out by the National Transportation Safety Board (NTSB).

In response to the IIJA mandate, FRA worked with stakeholders, including both labor and rail organizations, to develop a *Policy for Gathering Information and Consulting with Stakeholders* (Policy Document). The resulting Policy Document is available on FRA’s website² and includes guidelines for:

- When FRA will provide the opportunity for stakeholders to participate in FRA accident/incident investigations;
- How FRA will notify stakeholders of an accident investigation in which they may participate;
- The expectations of stakeholders;
- How stakeholders can participate in FRA’s accident investigation process;
- How stakeholders can submit information to FRA to assist with the investigation; and
- How confidentiality of individuals and requests for confidentiality by entities will be addressed and maintained.

This rule codifies the process contained in the Policy Document.

² <https://railroads.dot.gov/elibrary/bipartisan-infrastructure-law-section-22417-fra-accident-and-incident-investigations-0>.

¹ 49 CFR 1.89(a); 49 U.S.C. 103(g).

FRA is publishing this rule without a prior proposed rule because it views this as a noncontroversial action that generally codifies FRA's current process for accident investigations. As noted above, FRA has already worked with stakeholders (both labor and the rail organizations) to develop the Policy Document which is posted on FRA's website. Accordingly, FRA anticipates no adverse, substantive comment on any of the provisions of the rule. If FRA receives an adverse, substantive comment on any of the provisions, it will publish in the **Federal Register** a timely withdrawal, informing the public that the direct final rule will not take effect.

II. Section-by-Section Analysis

Part 225 Investigations

FRA is amending 49 CFR 225.31 by consolidating existing paragraphs (a) through (f) into numbered paragraphs (a)(1) through (6) and adding new paragraph (b) addressing stakeholder participation in certain FRA accident/incident investigations. FRA is also revising existing paragraph (a) (now paragraph (a)(1)) to clarify that FRA's policy is to investigate rail accidents/incidents which result in the serious injury or death of a railroad employee or passenger and other accidents/incidents where FRA determines investigation would substantially serve to promote railroad safety.

New paragraph (b) codifies the process contained in the Policy Document. Specifically, paragraph (b) codifies the procedures for FRA investigators to gather information from, and consult with, various stakeholders as part of certain accident/incident investigations. Consistent with the Policy Document, paragraph (b) includes guidelines for when FRA will provide stakeholders the opportunity to participate in investigations, how FRA will notify stakeholders of an accident investigation, how stakeholders will participate in the accident investigation process, and how stakeholders can submit information to FRA to assist with the investigation.

Paragraph (b) explains that, based on initial information, for accidents or incidents involving an on-duty employee fatality, an on-duty employee amputation, or an on-duty employee suffering a life-threatening injury), and other accidents or incidents FRA's Chief Safety Officer (or their delegate) determines appropriate, FRA will provide an opportunity for stakeholder involvement in the agency's accident investigation. Paragraph (b) further provides that those stakeholders may

include railroads, contractors, employees, representatives of employees, industry associations, academia, the Volpe National Transportation Systems Center, and others, as FRA determines relevant.

Paragraphs (b)(1) through (6) set forth the procedures both FRA and involved stakeholders must follow when conducting or participating in accident/incident investigations under this section.

Paragraph (b)(1) addresses FRA's initial accident response and stakeholder notification. Specifically, when initiating an accident investigation under this section, paragraph (b)(1) requires FRA to identify stakeholders relevant to the accident/incident.

Paragraph (b)(1)(i) requires FRA to notify identified stakeholders when it is initiating an investigation of an accident or incident under paragraph (b), and (b)(1)(ii) requires stakeholders interested in participating in any such investigation to communicate their intent to participate to FRA's Chief Safety Officer (or their delegate) within 24 hours of being notified of the investigation.

As soon as practicable after receipt of a stakeholder's notice of its intent to participate in an FRA investigation, paragraph (b)(1)(iii) requires FRA to establish clear channels of communication with stakeholders, including, for example, email correspondence, teleconferences, and in-person meetings, to facilitate the efficient transfer of information, and consultation and coordination between FRA and the stakeholders.

Paragraph (b)(2) establishes guidelines for stakeholder access to an accident or incident site, and includes rules that FRA, the involved railroad(s), and other stakeholders must follow. Specifically, paragraph (b)(2)(i) provides that stakeholders may only gain access to an accident site through the incident command (if the accident site is off railroad property) or on-site railroad personnel (if the accident site is on-railroad property). This paragraph makes clear that when investigations occur on railroad property, although FRA encourages railroads to permit on-site access to all relevant stakeholders participating in FRA's investigation process and expects that railroads will grant such access, FRA cannot, at its own discretion, provide stakeholders access. If a railroad rule prohibits a stakeholder from accessing an accident site during FRA's on-site investigation, the railroad must promptly notify FRA in writing of any such rule and FRA will subsequently communicate the

substance of that rule to all affected stakeholders. Paragraph (b)(2)(i) further provides that, in the event a railroad rule prohibits a stakeholder from accessing an accident site, FRA may consult with that stakeholder by other means (e.g., real time participation in on-site meetings via video or conference call, off-site in-person meetings, virtual meetings, or phone calls).

Paragraph (b)(2)(ii) makes clear that any stakeholders participating in FRA's accident/incident investigation process under this paragraph are not actual or implied agents of FRA and, as such, FRA is not responsible for the safety of the stakeholders.

Paragraph (b)(2)(iii) provides that FRA will initiate its on-site investigation when FRA staff arrive at an accident site, and the FRA investigation team will depart the accident site upon completion of FRA's on-site investigation activities. FRA will not await the arrival of stakeholder representatives to begin its investigation, and, if a stakeholder timely notifies FRA's of its intent to participate but does not arrive at the accident/incident scene during the investigation, FRA may make a reasonable effort, at its discretion, to provide a verbal summary of the status of the investigation before FRA departs the scene.

Paragraph (b)(2)(iv) requires each stakeholder representative participating in FRA's on-site investigation to contact the FRA Inspector-in-Charge (IIC) upon arrival at the accident site and provide photo identification to the IIC. This paragraph further explains that, at the time of a stakeholder's initial contact with the IIC, the IIC or other FRA representative will provide the stakeholder with the name and contact information for the incident commander and other pertinent information related to the accident known to the IIC at the time.

Paragraph (b)(3) addresses stakeholder participation in FRA's off-site information gathering and investigative activities. Specifically, paragraph (b)(3)(i) provides that FRA will establish a means to receive and share documents and information electronically with stakeholders. As outlined in FRA's *Policy for Gathering Information and Consulting with Stakeholders*, FRA has developed a web-based document sharing site for stakeholders to provide relevant documents or information to FRA and for FRA to share relevant information with stakeholders. Consistent with the published policy statement, stakeholders submitting documents and information to FRA's investigation team must submit those

materials electronically through the site. Protection of personal confidential information and requests for protection of confidential business information by entities that have been granted by FRA will apply to relevant documents provided pursuant to this paragraph.

Paragraph (b)(3)(ii) provides that stakeholders may request meetings with representatives of other non-FRA stakeholders and request that FRA participate in such meetings. Although FRA participation is not guaranteed, any information pertinent to the investigation made available through these meetings must be documented and submitted to FRA.

Paragraph (b)(3)(iii) provides that any stakeholder seeking to provide confidential information to FRA, must coordinate with the IIC prior to submittal of that information and submit the information to FRA in compliance with 49 CFR 209.11.

Paragraph (b)(4) addresses stakeholder participation in FRA's off-site analysis portion of an FRA accident investigation. This paragraph provides that, when FRA deems appropriate, the FRA investigation team will consult with stakeholders to review the facts gathered during the FRA's investigation, FRA's analysis of those facts, and FRA's input and outputs of root cause analyses. Stakeholders may offer input, raise concerns, and participate in discussions aimed at identifying root causes and potential recommendations to mitigate risk or prevent reoccurrence of the accident/incident. Stakeholders will not be included in any FRA deliberations or consideration of potential compliance or enforcement issues related to an accident/incident investigation.

Paragraph (b)(5) addresses the confidentiality of certain information related to accident or incident investigations.

Paragraph (b)(5)(i) specifies that, in accordance with all applicable laws and regulations, FRA will maintain as confidential any personally identifiable information or sensitive security information as defined in 49 CFR 1520.5, respectively. This paragraph further requires that any documents or information a stakeholder provides to FRA as part of that stakeholder's participation in an accident/incident under this section, and for which the stakeholder requests confidentiality,

must be submitted in accordance with 49 CFR 209.11. Moreover, FRA, pursuant to 49 CFR part 209, will maintain the confidentiality of any stakeholder if: (1) such stakeholder requests confidentiality; (2) such stakeholder was not involved in the accident or incident; and (3) maintaining such stakeholder's confidentiality does not adversely affect an FRA investigation.

Additionally, until FRA publishes its report on an investigation, stakeholders participating in the investigation may not disseminate any information (whether that information is confidential or not), or comment on an investigation to non-stakeholders through any means, unless FRA's Chief Safety Officer determines that public safety necessitates allowing the release of certain information to non-stakeholders. FRA's Chief Safety Officer must make any such determination in writing. This limitation on sharing information is intended to limit participating stakeholders from publicly sharing information about the ongoing investigation, to ensure FRA's ability to conduct the investigation. The limitation does not limit participating stakeholders from sharing information with individuals within their organization.

Paragraph (b)(6) provides that nothing in this rule may be construed to reduce, in any way, the protections afforded to individuals who exercise the conduct protected by 49 CFR 225.33, *Internal Control Plans*, and 49 United States Code (U.S.C.) 20109, *Federal Railroad Safety Act, Whistleblower Protections*. Paragraphs (d), (e), and (f) of this section are being redesignated as paragraphs (a)(2) through (6) although the text remains substantively unchanged.

III. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094 and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866, as amended by E.O. 14094, "Modernizing Regulatory Review"³ and DOT's Order, "Rulemaking and Guidance

³ 88 FR 21879 (Apr. 6, 2023) available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

Procedures," DOT 2100.6A (June 7, 2021).⁴ FRA made this determination because the economic effects of this regulatory action will not exceed the \$100 million annual threshold as defined by E.O. 12866.

FRA is amending its Accident/ Incident Regulations, covering reporting, classification, and investigations, by codifying its policy for gathering information from and consulting with stakeholders during an accident/incident investigation. FRA has revised its accident investigation process to establish procedures for stakeholder participation in investigation, including notifying stakeholders of an accident investigation; permitting the assistance of stakeholders in investigations; and allowing stakeholders to submit information to FRA to assist with the investigation.

FRA anticipates the primary benefit of this rule will be the increased information made available for accident/incident investigations. Involving stakeholders may result in the accident investigation process receiving more diverse perspectives and more complete information, which will provide accident investigators with valuable information that could be essential towards making well-informed determinations. FRA also expects that providing a means to submit information to an accessible web-based document sharing site will increase transparency and efficiency in the accident investigation process since there will now be one central point for all documentation related to each accident investigation, and the information will be accessible to all necessary parties.

FRA estimates this direct final rule will incur a cost of approximately \$0.8 million (Present Value (PV)),⁵ 7-percent over the next ten years. Table 1 displays the costs of this rule.

⁴ DOT-2100.6A-Rulemaking and Guidance (Jun. 7, 2021) available at <https://www.transportation.gov/sites/dot.gov/files/2021-08/Final-for-OST-C-210407-001-signed.pdf>.

⁵ The present value of costs are calculated in this analysis. Present value provides a way of converting future costs into equivalent DOT-2100.6A—Rulemaking and Guidance (Jun. 7, 2021) available at <https://www.transportation.gov/sites/dot.gov/files/2021-08/Final-for-OST-C-210407-001-signed.pdf>.

TABLE 1—TOTAL COSTS OF THE DIRECT FINAL RULE (2023 DOLLARS)⁶

Year	Total stakeholder costs	Total government costs	Total costs	Discounted 7%	Discounted 3%
1	\$97,922	\$19,753	\$117,675	\$117,675	\$117,675
2	97,922	10,541	108,463	101,367	105,304
3	97,922	10,541	108,463	94,736	102,237
4	97,922	10,541	108,463	88,538	99,259
5	97,922	10,541	108,463	82,746	96,368
6	97,922	10,541	108,463	77,333	93,561
7	97,922	10,541	108,463	72,273	90,836
8	97,922	10,541	108,463	67,545	88,190
9	97,922	10,541	108,463	63,126	85,622
10	97,922	10,541	108,463	58,997	83,128
Total	979,220	114,622	1,093,842	824,336	962,180

Note: This table and some others throughout this analysis may not sum due to rounding.

Baseline Scenario

If this final rule were not promulgated, FRA would conduct the same number of annual accident/incident investigations but would not have a formal process to allow stakeholders to submit relevant documents to FRA related to an accident/incident. The accident/incident investigation process will now

include an opportunity for stakeholders to participate in formal investigations. The additional documentation from stakeholders will create more transparency and efficiency in the accident investigation process.

Assumptions and Inputs

The analysis associated with this final rule is based on assumptions in Table 2.

Unless otherwise specified, FRA obtained these estimates from subject matter experts within FRA’s Office of Railroad Safety, who have over 50 years of combined industry experience. This analysis uses a 2023 base year. Numbers are not discounted in the first year of analysis.

TABLE 2—ASSUMPTIONS

Accident Investigation Notifications	
Annual number of accidents/incidents per year for which FRA will require stakeholder notifications	25 accidents.
Time for Chief Safety Officer to provide each notification	0.25 hours.
Stakeholder Accident Investigation Representations	
Percent of accident investigations with in-person representation	50 percent.
Round-trip travel time per day for union representative	2 hours.
Time per day for accident/incident investigation	8 hours.
Average number of union representatives per investigation	2 employees.
Average number of investigation days per accident/incident	3 days.
Percent of accident/incident investigations that may overlap with National Transportation Safety Board investigations.	25 percent.
Percent of accident/incident investigations that may require a hotel stay	50 percent.
Stakeholder hotel and flight travel costs per investigation	1,500 dollars.
FRA-Provided Training and Outreach	
FRA outreach training time	1 hour.
Number of annual FRA training sessions	5 sessions.
Stakeholder Documentation Submissions to FRA	
Percent of investigations where stakeholders submit documents to FRA	100 percent.
Time per investigation to gather and submit documents	4 hours.
FRA Review of Stakeholder Documentation	
Time for FRA employee to review documents	2 hours.
Document Sharing Site Creation	
Time to create document sharing site	64 hours.
Time for FRA Senior Leadership to review/approve document sharing site	16 hours.
Time needed for IT developers to grant document sharing site access to stakeholders	1 hour.

⁶ All figures are presented in a 2023 base year unless otherwise noted.

Benefits

FRA anticipates the primary benefit of this rule will be the increased information made available for accident/incident investigations. FRA has not quantified the benefits of this final rule, but FRA expects these benefits should be considered when discussing the effect of this final rule. Involving stakeholders may result in the accident investigation process receiving more diverse perspectives and more complete information, which will provide accident investigators with valuable information that could be essential towards making well-informed determinations. FRA also expects that providing a means to submit information to an accessible web-based document sharing site will increase transparency and efficiency in the accident investigation process since there will now be one central point for all documentation related to each accident investigation, and the

information will be accessible to all necessary parties. FRA acknowledges that additional unquantified benefits could occur as a result of this final rule.

Costs

FRA estimates the costs that would be associated with this final rule. Specifically, there will be time and travel-related costs to stakeholders who participate in the accident/incident investigations, as well as time spent in their submission of documents to FRA. There will also be costs to FRA related to accident/incident investigation notifications, training, and outreach, reviewing stakeholder documentations, and the creation of the web-based document sharing site.

Accident Investigation Notifications

FRA will provide notifications to stakeholders for each investigation of an accident/incident that results in the serious injury or death of a railroad employee or passenger and other

accidents/incidents for which FRA determines investigation would substantially serve to promote railroad safety. The notifications will include relevant details regarding the accident/incident, and the scope of the investigation. FRA estimates that approximately 25 accident/incident investigation notifications will be sent annually, and each notification will take approximately 15 minutes (0.25 hours) to send. FRA’s Chief Safety Officer (or their designee) will notify relevant stakeholders when FRA is initiating an accident investigation subject to this rule.⁷ For purposes of this analysis, FRA uses a burdened wage rate of \$148.56 to represent the wage for the Chief Safety Officer.⁸ Using this information, FRA estimates an annual cost of \$929, undiscounted, for accident investigation notifications to be sent to stakeholders. Table 3 displays the annual cost to FRA for sending accident/incident investigation notifications to stakeholders.

TABLE 3—ANNUAL ACCIDENT INVESTIGATION NOTIFICATIONS

Number of annual notifications a	Time per notification (hours) b	Burdened hourly wage c	Annual notification cost d = a × b × c
25	0.25	\$148.56	\$929

In-Person Representation

Upon receiving notification from FRA, stakeholders are given the opportunity to participate in each accident/incident investigation. FRA subject matter experts assume stakeholders will attend approximately 50 percent of the investigations in-

person. Using this data, FRA estimates stakeholders will attend 13 accident/incident investigations annually. However, FRA anticipates that about 25 percent of these accident investigations may have some overlap with existing NTSB accident investigations. Thus, FRA estimates approximately 10 annual FRA-led accident/incident

investigations will have stakeholder in-person representation. FRA uses this assumption to estimate travel and in-person investigation cost estimates in the sections below. Table 4 displays the number of annual FRA-led investigations with in-person stakeholder representation that will be used for purposes of this analysis.

TABLE 4—ANNUAL FRA-LED INVESTIGATIONS WITH IN-PERSON STAKEHOLDER REPRESENTATION

Number of annual in-person investigations attended a	Percentage of FRA-led investigations b	Number of annual FRA-led investigations c = a × b
13	75	10

Travel Costs

For purposes of this analysis, FRA estimates travel costs associated with the FRA-led accident investigations.

FRA assumes stakeholders will send senior-level representation for each accident/incident investigation. FRA uses a wage of \$118.46 to represent the

burdened hourly wage for stakeholder representation throughout this analysis.⁹

⁷ In some situations, FRA’s Chief Safety Officer may delegate this duty to other FRA personnel. In these cases, the costs would be lower.

⁸ Senior Executive Service, average salary, 2023, burdened at 75%. [https://www.opm.gov/policy-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx)

[data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx).

⁹ STB 2023 wage rates for Group #100 (Executives, Officials, & Staff Assistants), \$67.69, burdened at 75-percent. Surface Transportation

Board: 2023 Quarterly Wage A&B Data, annual data. <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>.

FRA assumes stakeholders would drive to the investigation location daily, and half of the stakeholders would incur additional hotel and flight expenses. FRA assumes two stakeholder representatives would attend each investigation for purposes of this analysis.

FRA estimates all of the annual FRA-led investigations will require stakeholders to drive to and from the investigation location each day, either from home or from a hotel. FRA assumes, on average, each investigation will take approximately three working days (or 24 hours total) for purposes of

this analysis. FRA estimates it will take stakeholders approximately one hour to drive each one-way trip (or two hours daily). Table 5 displays the travel costs associated with stakeholders commuting daily to/from the investigation site.

TABLE 5—STAKEHOLDER DRIVING COSTS

Number of annual investigations	Stakeholder travel time per investigation (hours)	Number of stakeholders	Burdened hourly wage	Travel (driving) costs
a	b	c	d	$e = a \times b \times c \times d$
10	6	2	\$118.46	\$14,215

FRA estimates half (5) of the annual FRA-led investigations may require stakeholders to pay for flight and hotel

travel expenses. FRA assumes travel costs for stakeholders would accrue to approximately \$1,500 per investigation.

Table 6 displays the travel costs associated with stakeholders who may require flight and hotel expenses.

TABLE 6—STAKEHOLDER HOTEL AND FLIGHT COSTS

Number of annual investigations with flight and hotel	Stakeholder flight and hotel costs per investigation	Number of stakeholders	Annual flight and hotel costs
a	b	c	$d = a \times b \times c$
5	\$1,500	2	\$15,000

Using the information above, FRA estimates an annual stakeholder travel cost of \$29,215, undiscounted, for this rule.

Accident Investigation Participation

FRA estimates stakeholders will participate in 10 FRA-led accident/incident investigations each year. FRA estimates, on average, each investigation

will take 24 hours (three working days) to complete. Using this information, FRA estimates an annual cost of \$56,861 for stakeholders to participate in FRA-led investigations, shown in Table 7.

TABLE 7—ANNUAL COST FOR STAKEHOLDER INVESTIGATION PARTICIPATION

Number of annual FRA-led investigations	Average number of hours per investigation	Number of stakeholders	Burdened hourly wage	Annual cost
a	b	c	d	$e = a \times b \times c \times d$
10	24	2	\$118.46	\$56,861

Documentation Submission

FRA estimates stakeholders will submit documentation for each accident/incident investigation,

regardless of whether the stakeholder participates in-person. FRA estimates it will take stakeholders approximately four hours to gather and submit relevant documents to FRA for the investigation

process. FRA estimates an annual cost of \$11,846 for stakeholders to submit documents to FRA for investigations, shown in Table 8.

TABLE 8—ANNUAL COST FOR STAKEHOLDERS TO SUBMIT DOCUMENTS TO FRA

Number of annual submissions	Time per submission (hours)	Burdened hourly wage	Annual submission cost
a	b	c	$d = a \times b \times c$
25	4	\$118.46	\$11,846

FRA estimates, upon receiving the documents from stakeholders, a railroad safety specialist will conduct a review of the package. FRA estimates that each submission package will take

approximately two hours to review. For purposes of this analysis, FRA uses a burdened hourly wage rate of \$126.21 to represent the wage for a railroad safety specialist.¹⁰ FRA estimates an annual

cost of \$6,311 for FRA to review the documents submitted by stakeholders, shown in Table 9.

TABLE 9—FRA DOCUMENTATION REVIEW

Number of annual submission reviews a	Time per review (hours) b	Burdened hourly wage c	Annual review cost d = a × b × c
25	2	\$126.21	\$6,311

FRA Outreach to Stakeholders

FRA anticipates multiple occasions annually where FRA would meet with labor unions and stakeholder groups to ensure they understand the

amendments to the accident investigation process. FRA estimates five meetings would occur annually where a railroad safety specialist would provide outreach to stakeholders and answer questions they may have

regarding the amended process. FRA estimates each session would take approximately one hour to conduct. FRA uses this information to estimate an annual cost of \$631 for stakeholder outreach, shown in Table 10.

TABLE 10—FRA OUTREACH COSTS

Number of FRA outreach sessions a	Time per session (hours) b	Burdened hourly wage c	Annual outreach cost d = a × b × c
5	1	\$126.21	\$631

Web-Based Document Sharing Site Creation

FRA has developed a web-based document sharing site as a means for stakeholders to submit documents to FRA as a part of the accident/incident investigation process. FRA anticipates stakeholders will utilize this site as the primary means of document submission

and sharing of information for future accident investigations.¹¹

The web-based document sharing site was created internally by FRA's information technology (IT) office. The total project development time was 80 hours. The project development process was split between both an IT developer creating the site and FRA senior leadership reviewing and approving the site before it was finalized. FRA

estimates it took 64 hours for the IT developer to create and finalize the web-based document sharing site, and it took 16 hours for FRA senior leadership to review and approve it. For purposes of this analysis, FRA uses a burdened wage rate of \$106.80 to estimate the costs of the web-based document sharing site creation.¹² Table 11 displays the one-time costs of the web-based document sharing site.

TABLE 11—WEB-BASED DOCUMENT SHARING SITE CREATION

	Web-based document sharing site development time (hours) a	Burdened wage rate b	Web-based document sharing site cost c = a × b
IT Specialist	64	\$106.80	\$6,835
SES Review/Approval	16	148.56	2,377
Total	80	9,212

FRA estimates all 25 annual accident investigations will have documentation

submitted by the stakeholders, regardless of whether or not the

stakeholder participates in-person. FRA estimates stakeholders would need to

¹⁰ Washington, DC Locality Pay, 2023, GS–14, Step 5 (\$150,016), divided by 2,080 hours, burdened at 75%. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/DCB.aspx>.

¹¹ Although FRA anticipates the web-based document sharing site as the primary means to submit/share information relevant to accident/incident investigations, stakeholders may still submit relevant information to FRA without using the site.

¹² Washington, DC Locality Pay, 2023, GS–13, Step 5 (\$126,949), divided by 2,080 hours, burdened at 75%. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/html/DCB.aspx>.

submit minimal contact information to FRA to be granted access to the web-based document sharing site. FRA considers these costs to be *de minimis*. However, FRA does account for the cost

to FRA for granting access to stakeholders once this information has been submitted. FRA estimates it will take approximately one hour for FRA's IT developer to grant access to each

stakeholder upon receiving the necessary information. Table 12 displays the annual cost to FRA for granting stakeholders access to the web-based document sharing site.

TABLE 12—FRA COSTS FOR GRANTING STAKEHOLDERS DOCUMENT SHARING SITE ACCESS

Number of annual stakeholder access requests	Time to grant access (hours)	Burdened wage rate	Annual access cost
a	b	c	d = a × b × c
25	1	\$106.80	\$2,670

Total Costs

FRA estimates a total 10-year cost of \$0.7 million (PV, 7-percent) to

stakeholders for this rule. Table 13 displays the total costs to stakeholders for this final rule.

TABLE 13—TOTAL 10-YEAR COST TO STAKEHOLDERS

Year	Travel	Investigation participation	Document submission	Total stakeholder costs	Discounted 7%	Discounted 3%
1	\$ 29,215	\$ 56,861	\$ 11,846	\$ 97,922	\$ 97,922	\$ 97,922
2	29,215	56,861	11,846	97,922	91,516	95,070
3	29,215	56,861	11,846	97,922	85,529	92,301
4	29,215	56,861	11,846	97,922	79,934	89,613
5	29,215	56,861	11,846	97,922	74,704	87,002
6	29,215	56,861	11,846	97,922	69,817	84,468
7	29,215	56,861	11,846	97,922	65,250	82,008
8	29,215	56,861	11,846	97,922	60,981	79,620
9	29,215	56,861	11,846	97,922	56,991	77,301
10	29,215	56,861	11,846	97,922	53,263	75,049
Total	292,150	568,610	118,460	979,220	735,907	860,354

FRA estimates a total 10-year cost of \$0.1 million (PV, 7-percent) to FRA for

this rule. Table 14 displays the total costs to FRA for this final rule.

TABLE 14—TOTAL 10-YEAR COST TO FRA

Year	Notifications	Outreach/training	Documentation review	Web-based document sharing site	Total government costs	Discounted 7%	Discounted 3%
1	\$929	\$631	\$6,311	\$11,882	\$19,753	\$19,753	\$19,753
2	929	631	6,311	2,670	10,541	9,851	10,234
3	929	631	6,311	2,670	10,541	9,207	9,936
4	929	631	6,311	2,670	10,541	8,605	9,647
5	929	631	6,311	2,670	10,541	8,042	9,366
6	929	631	6,311	2,670	10,541	7,516	9,093
7	929	631	6,311	2,670	10,541	7,024	8,828
8	929	631	6,311	2,670	10,541	6,564	8,571
9	929	631	6,311	2,670	10,541	6,135	8,321
10	929	631	6,311	2,670	10,541	5,734	8,079
Total	9,290	6,310	63,110	35,912	114,622	88,431	101,828

FRA estimates a total 10-year cost of \$0.8 million (PV, 7-percent) for this direct final rule, shown in Table 15.

TABLE 15—10-YEAR TOTAL COSTS

Year	Total stakeholder costs	Total government costs	Total costs	Discounted 7%	Discounted 3%
1	\$97,922	\$19,753	\$117,675	\$117,675	\$117,675
2	97,922	10,541	108,463	101,367	105,304
3	97,922	10,541	108,463	94,736	102,237
4	97,922	10,541	108,463	88,538	99,259
5	97,922	10,541	108,463	82,746	96,368
6	97,922	10,541	108,463	77,333	93,561
7	97,922	10,541	108,463	72,273	90,836
8	97,922	10,541	108,463	67,545	88,190
9	97,922	10,541	108,463	63,126	85,622
10	97,922	10,541	108,463	58,997	83,128
Total	979,220	114,622	1,093,842	824,336	962,180

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a proposed rule, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although this final rule will impact small entities, it is entirely voluntary for those entities to participate, imposing only *de minimis* additional burdens or benefits on regulated entities. The regulation would therefore not have a significant impact on a substantial number of small entities. Pursuant to 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant impact on a substantial number of small entities.

In addition, FRA has determined the RFA does not apply to this rulemaking. The Small Business Administration’s A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act (2017), provides that if, under either the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered. *See* 5 U.S.C. 604(a). If an NPRM is not required, the RFA does not apply. Therefore, because FRA is not required to publish an NPRM, the RFA does not apply.

C. Paperwork Reduction Act

There are no new or additional information collection requirements associated with this final rule. Therefore, FRA is not required to provide an estimate of a public reporting burden in this document.

D. Environmental Assessment

FRA has evaluated this final rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality’s NEPA implementing regulations (40 CFR parts 1500 through 1508), FRA’s regulations implementing NEPA (23 CFR part 771), and other environmental statutes, executive orders, and related regulatory requirements. FRA has determined that this rule is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review.

This rulemaking would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. FRA has concluded that no such unusual circumstances exist with respect to this final rule and it meets the requirements for categorical exclusion.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has

determined this undertaking has no potential to affect historic properties. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). Further, FRA reviewed this final rulemaking and found it consistent with E.O. 14008, “Tackling the Climate Crisis at Home and Abroad.”

E. Environmental Justice

Executive Order 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” which expands on E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (“U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) instructs DOT agencies to address compliance with E.O. 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income

populations.¹³ FRA has evaluated this final rule under Executive Orders 12898, 14096, and DOT Order 5610.2C, and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

F. Federalism Implications

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. Thus, in accordance with E.O. 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

G. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

H. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). FRA has evaluated this rule in accordance with E.O. 13211 and determined that this rule is not a “significant energy action” within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, “Consultation and Coordination with Indian Tribal Governments,” dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

J. 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 rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 49 CFR Part 225

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

In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

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

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Revise and republish § 225.31 to read as follows:

§ 225.31 Investigations.

(a) *General.* (1) It is the policy of FRA to investigate rail transportation accidents/incidents which result in the serious injury or death of a railroad employee or passenger and other accidents/incidents, the investigation of which FRA determines would substantially serve to promote railroad safety.

(2) FRA representatives are authorized to investigate accidents/incidents and have been issued credentials authorizing them to inspect railroad records and properties. They are authorized to obtain all relevant information concerning accidents/incidents under investigation, to make inquiries of persons having knowledge of the facts, conduct interviews and inquiries, and attend as an observer, hearings conducted by railroads. When necessary to carry out an investigation, the FRA may authorize the issuance of subpoenas to require the production of records and the giving of testimony.

(3) Whenever necessary, the FRA will schedule a public hearing before an authorized hearing officer, in which event testimony will be taken under oath, a record made, and opportunity provided to question witnesses.

(4) When necessary in the conduct of an investigation, the Federal Railroad Administrator may require autopsies and other tests of the remains of railroad employees who die as a result of an accident/incident.

(5) Information obtained through FRA accident investigations may be published in public reports or used for other purposes FRA deems to be appropriate.

(6) Section 20903 of title 49 of the United States Code provides that no part of a report of an accident investigation under section 20902 of title 49 of the United States Code may be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident investigation report.

(b) *Stakeholder participation.* For accidents or incidents involving, based on initial information, an on-duty employee fatality, an on-duty employee amputation, or an on-duty employee suffering life-threatening injuries, and other accidents or incidents FRA’s Chief Safety Officer (or their delegate) determines appropriate, FRA will provide an opportunity for stakeholder involvement in FRA’s accident investigation. Stakeholders may include, but are not limited to, railroads, contractors, employees, representatives of employees, industry associations, academia, the Volpe Center, and any other persons or entities FRA determines to be relevant. FRA, involved stakeholders, and railroads whose property is the site of an investigation, shall adhere to the following procedures and limits when conducting or participating in accident/incident investigations under this section:

(1) *Initial response and stakeholder notification.* When initiating an investigation into an accident under this paragraph, FRA will identify stakeholders relevant to the accident or incident.

(i) FRA will promptly notify, in writing where practicable, the identified stakeholders of the agency’s initiation of an investigation into an accident or incident. Such notifications will include the known relevant details regarding the incident and the expected scope of the investigation.

(ii) Stakeholders interested in participating in the investigation must communicate their intent to participate to FRA’s Chief Safety Officer (or their

¹³E.O. 14096 “Revitalizing Our Nation’s Commitment to Environmental Justice,” issued on April 26, 2023, supplements E.O. 12898, but is not currently referenced in DOT Order 5610.2C.

delegate) within 24 hours of the notification under paragraph (b)(1)(i) of this section.

(iii) As soon as practicable, upon receipt of stakeholders' notice of intent to participate in an investigation, FRA shall establish clear channels of communication with the identified stakeholders. These channels may include, but are not limited to, email correspondence, teleconferences, in-person meetings, and online forums.

(2) *On-site investigation.* (i) Stakeholders may only gain access to the accident site through the incident command or on-site railroad personnel. When investigations occur on railroad property, FRA encourages railroads to permit on-site access to stakeholders participating in FRA's investigation process and expects that railroads will grant such access. However, FRA cannot, at its own discretion, provide stakeholders' access to an accident site. If a railroad rule prohibits a stakeholder from accessing the accident site during FRA's on-site investigation, a railroad must promptly notify FRA in writing of any such rule, and FRA will subsequently communicate the substance of the rule to all affected stakeholders. In these instances, as practicable, FRA may consult with any affected stakeholder by other means (e.g., through real-time participation in on-site meetings via video or conference call, off-site in-person meetings, virtual meetings, or phone calls).

(ii) Stakeholders are not actual or implied agents of FRA. FRA is not responsible for the safety of stakeholders.

(iii) FRA will initiate its on-site investigation when FRA staff arrive at an accident site, and the FRA investigation team will depart the accident site upon completion of FRA's on-site investigation activities. FRA will not wait for participating stakeholders to arrive at the accident site to begin its investigation, but FRA will make a reasonable effort to provide a stakeholder that does not arrive at the accident site during the investigation a verbal summary of the status of the investigation. As needed, FRA will advise stakeholder representatives when the FRA team expects to leave the accident site.

(iv) Each stakeholder representative participating in FRA's on-site investigation must contact the FRA Inspector-in-Charge (IIC) upon arrival at the accident site and provide photo identification to the IIC. At the time of a stakeholder's initial contact with the IIC, the IIC or other FRA representatives will provide the stakeholder with the name and contact information for the

incident commander and other pertinent information related to the accident known to the IIC at the time. As needed, FRA's investigation team should coordinate meeting(s) with stakeholders and provide a verbal summary of the status of the investigation as stakeholders arrive to the accident site.

(3) *Off-site information gathering and investigative activities.* (i) When conducting accident/incident investigations under this paragraph, to the extent practicable, FRA will establish a means to receive and share documents and information with Stakeholders electronically. Any documents or information stakeholders submit to FRA's investigation team must be provided to FRA through such established system. With the exception of confidential information or documents or information appropriately submitted consistent with paragraph (4) of this section, FRA may share documents relevant to its investigation with Stakeholders.

(ii) Stakeholders may request meetings with representatives of other non-FRA stakeholders and request that FRA participate in such meetings. FRA participation is not guaranteed, and any information pertinent to the investigation made available through these meetings must be documented and submitted through the established electronic information sharing system.

(iii) Any stakeholder seeking to provide confidential information to FRA, or to maintain the confidentiality of such stakeholder's identity, must coordinate with the IIC prior to submittal of that information and submit the information to FRA in compliance with 49 CFR 209.11.

(4) *Analysis activities.* As appropriate, the FRA investigation team will consult with stakeholders to review the facts gathered during the team's investigation of the accident/incident, FRA's analysis of those facts, and FRA's inputs and outputs of root cause analyses. Stakeholders may offer input, raise concerns, and participate in discussions aimed at identifying root causes and potential recommendations to mitigate risk or prevent reoccurrence of the accident/incident. Stakeholders will not be included in FRA deliberations or consideration of potential compliance or enforcement issues related to an accident/incident investigation.

(5) *Confidentiality.* (i) FRA recognizes the sensitive nature of certain information involved in accident or incident investigations. In accordance with applicable laws and regulations, FRA will maintain as confidential any personally identifiable information or

sensitive security information as defined in 2 CFR 200.1 and 49 CFR 1520.5, respectively. Any other documents or information a participating stakeholder provides to FRA as part of that stakeholder's participation in an accident/incident investigation under this section, and for which a stakeholder claims confidentiality, must be submitted in accordance with 49 CFR 209.11.

(ii) FRA shall maintain the confidentiality of any stakeholder if:

(A) such stakeholder requests confidentiality;

(B) such stakeholder was not involved in the accident or incident; and

(C) maintaining such stakeholder's confidentiality does not adversely affect an FRA investigation.

(iii) Until FRA publishes its report on the investigation, a stakeholder participating in an investigation may not disseminate any information or comment on an investigation to non-stakeholders through any means. Only when necessary for public safety, and only with the FRA Chief Safety Officer's written permission, may stakeholders release information to non-stakeholders if the information is factual, neutral and objective in tone, and without purported FRA characterization of the matter's contribution to the underlying accident/incident.

(6) *Whistleblower protections.*

Nothing in this paragraph may be construed to reduce in any way the protections afforded to individuals who exercise the conduct protected by 49 CFR 225.33, *Internal Control Plans*, and 49 United States Code (U.S.C.) § 20109, *Federal Railroad Safety Act, Whistleblower Protections*.

Issued in Washington, DC.

Allison Ishihara Fultz,
Chief Counsel.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 240524-0146]

RIN 0648-BL96

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the New England Wind Project, Offshore Massachusetts; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and