



4910-06-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 225**

**RIN 2130-AC58**

**Update to Email Address for the Electronic Submission via the Internet of Certain Accident/Incident Reports**

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

**ACTION:** Final rule.

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**SUMMARY:** This final rule updates FRA's accident/incident reporting regulations to provide the current electronic mail address railroads must use to electronically submit to FRA certain accident/incident report forms.

**DATES:** Effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Kebo Chen, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-314, 1200 New Jersey Ave., SE, Washington, DC 20590 (telephone 202-493-6079); 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 W33-435, 1200 New Jersey Ave., SE, Washington, DC 20590 (telephone 202-493-1381).

**SUPPLEMENTARY INFORMATION:** This rule updates the electronic mail (e-mail) address provided in 49 CFR part 225 for railroads to electronically submit certain FRA accident/incident report forms.<sup>1</sup> Part 225 references the FRA e-mail address in two places: paragraph (c) of § 225.27 and paragraph (c)(1) of § 225.37. Those paragraphs direct railroads to submit the specified forms to the following e-mail address: aireports@frasafety.net. This FRA e-mail address is out of date and no longer functional. Accordingly, in this rule FRA is updating the e-mail address referenced in paragraph (c) of § 225.27 and paragraph (c)(1) of § 225.37 to the current e-mail address where FRA can receive these reports. The current e-mail address is: [RsisAiReports@dot.gov](mailto:RsisAiReports@dot.gov).

Starting in 2013, FRA informed railroad reporting officers of the change in the e-mail address in §§ 225.27 and 225.37 and started transitioning to the new RsisAiReports@dot.gov e-mail address. FRA established the RsisAiReports@dot.gov e-mail address to avoid increased costs associated with the previous e-mail address in the regulations. Until December 31, 2015, FRA accepted e-mailed accident/incident report forms at the e-mail address in part 225 (aireports@frasafety.net) and at RsisAiReports@dot.gov, but the aireports@frasafety.net e-mail address no longer functions.

This rule only updates the e-mail address in the regulation and makes no other changes to part 225. FRA is issuing this final rule without providing an opportunity for

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<sup>1</sup> FRA is not simultaneously updating the e-mail address in the FRA Guide for Preparing Accident/Incident Reports (Guide) because this final rule and updates on FRA's website, in addition to communication between FRA and individual railroads, makes it unnecessary to revise the Guide at this time.

prior to public notice and comment as the Administrative Procedure Act (APA) normally requires. See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Because this final rule makes no substantive amendment to FRA's regulations and only changes the e-mail address for railroads to submit to FRA certain already required documents, FRA finds, for good cause, that notice and public comment is unnecessary, because the public would not benefit from such notice. Moreover, the e-mail address currently listed in §§ 225.27 and 225.37 is no longer functional and it is necessary to make the update without undue delay. The scope of this regulatory change is very limited; FRA is merely replacing an outdated e-mail address with a current e-mail address.

## **REGULATORY EVALUATION**

### **Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures**

FRA evaluated this final rule under existing policies and procedures and determined it to be a non-significant regulatory action under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. This final rule only updates the e-mail address used by railroads to report certain accident/incident forms to FRA, and makes no substantive changes to part 225's reporting requirements. This rule is necessary because the current e-mail address is out of date and no longer accepts accident/incident report forms. Over the past three years, FRA has repeatedly notified railroads of the new e-mail address that should be used for

submitting accident/incident report forms. Consequently, most railroads already use the new e-mail address referenced in this rule, but some do not and will need to do so under this final rule. These railroads will incur a minor administrative burden to make note of the new e-mail address and revise their contact lists accordingly, in comparison to no change in the e-mail address used to submit accident/incident report forms to FRA.

The administrative burden to update the e-mail address will depend on how the railroads submit accident/incident report forms to FRA. In general, railroads use the e-mail address in two ways to submit accident/incident report forms. First, a railroad may manually enter the e-mail address into its e-mail program or electronic device (such as a multi-function printer) each time the railroad submits an accident/incident report form to FRA. In this case, substituting the new e-mail address for the old one would present no additional burden because the railroad would have had to enter an e-mail address regardless. Furthermore, if occasionally updating e-mail addresses is a regular part of a railroad reporting officer's duties (the employee most likely to submit accident/incident report forms to FRA), the burden of updating the e-mail address is already taken into account. The railroad employee would only need to take note of the new e-mail address, requiring a minimal amount of time.

Second, a railroad may use an automated system to submit accident/incident report forms to FRA. In such a system, the reporting officer would need to update, save and/or compile, and check for errors when using the new e-mail address (such as entering in the e-mail address wrong). These steps are standardized, and again, would require minimal time to update one e-mail address. In addition, whether e-mail addresses are

entered manually, or stored in an automated system, the e-mail address would only need to be updated once. Thus, given the small amount of time needed to revise the current e-mail address to the new one, and one-time occurrence of the task, the costs associated with this change will be minimal.

In sum, this final rule makes no substantive changes to part 225's reporting requirements. The rule only makes an administrative change to facilitate railroads submission of accident/incident forms to FRA. Thus, the rule imposes no significant additional costs, and creates no new significant benefits and FRA has determined further analysis under Executive Orders 12866, 13563 or DOT policies and procedures is not necessary.

#### **Regulatory Flexibility Act and Executive Order 13272**

FRA developed this rule under Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act of 1980 (RFA) 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 economic impact on a substantial number of small entities.

This final rule simply updates an e-mail address railroads use to electronically submit to FRA certain accident/incident report forms. This rule does not contain any new substantive regulatory requirements. As a result, this rule will impose no new

compliance costs on small entities other than those minimal potential costs outlined above in the Regulatory Evaluation section. Under the RFA, the Administrator of FRA certifies this final rule will have no significant economic impact on a substantial number of small entities.

Furthermore, FRA has determined the RFA does not apply to this rulemaking because FRA is not publishing a proposed rule in this proceeding. Given the minor change to replace an outdated e-mail address with a current e-mail address and FRA's finding that notice and public comment is unnecessary and would serve no public benefit, per guidance from the Small Business Administration, the RFA does not apply. See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, Small Business Administration, Office of Advocacy (May 2012, p.55).

### **Paperwork Reduction Act**

There are no new or additional information collection requirements associated with this final rule. FRA's collection of accident/incident reporting and recordkeeping information is currently approved under OMB No. 2130-0500. Therefore, FRA is not required to provide an estimate of a public reporting burden in this document.

### **Federalism Implications**

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), 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, or the agency consults with State and local government officials early in the process of developing the 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 analyzed this final rule under the principles and criteria in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. In addition, FRA determined this rule does not impose substantial direct compliance costs on State and local governments. Accordingly, FRA concluded the consultation and funding requirements of Executive Order 13132 do not apply and preparation of a federalism assessment is not required.

### **Environmental Impact**

FRA evaluated this final rule under 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 this

final rule 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 under section 4(c)(20) of FRA's Procedures. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) 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: . . . (20) 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.

Consistent with section 4(c)(20) of FRA's Procedures, FRA concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds this rule is not a major Federal action significantly affecting the quality of the human environment.

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

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 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 \$100,000,000 or more (adjusted annually for inflation) 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 final rule will not result in the expenditure of more than \$156,000,000 by the public sector in any one year. Thus, preparation of such a statement is not required.

### **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 a notice of inquiry, advance notice of proposed rulemaking, and notice of proposed rulemaking) that (1)(i) 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) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this rule under Executive Order 13211. FRA has determined this rule will not have a significant adverse effect on the supply, distribution, or use of energy, and, thus, is not a “significant energy action” under Executive Order 13211.

### **Executive Order 12898 (Environmental Justice)**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require 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. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA evaluated this final rule under Executive Order 12898 and the DOT Order and determined it would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

#### **Executive Order 13175 (Tribal Consultation)**

FRA evaluated this final rule under the principles and criteria in Executive Order 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 Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

#### **Trade Impact**

The Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting 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. FRA assessed the potential effect of this final rule on foreign commerce and concluded its requirements are consistent with the Trade Agreements Act.

### **Privacy Act**

Interested parties should be aware that anyone can search the electronic form of all written 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.). You may review DOT's complete Privacy Act Statement in the Federal Register (65 FR 19477-19478, Apr. 11, 2000) or you may visit <http://www.transportation.gov/privacy>.

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

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

### **The Rule**

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—[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 1.89.

2. Amend § 225.27 by revising the first sentence of paragraph (c) to read as follows:

**§ 225.27 Retention of records.**

\* \* \* \* \*

(c) Each railroad shall retain the original hard copy of each completed and signed Form FRA F 6180.55, "Railroad Injury and Illness Summary," that the railroad submits to FRA on optical media (CD-ROM) or electronically via the Internet to [RsisAiReports@dot.gov](mailto:RsisAiReports@dot.gov) for at least five years after the calendar year to which it relates. \*

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3. Amend § 225.37 by revising paragraph (c)(1) introductory text to read as follows:

**§ 225.37 Optical media transfer and electronic submission.**

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(c)(1) Each railroad utilizing the electronic submission via the Internet option shall submit to FRA at [RsisAiReports@dot.gov](mailto:RsisAiReports@dot.gov):

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Issued in Washington, DC, on December 1, 2016.

Amitabha Bose,

Acting Administrator.

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