



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. FRA-2024-0034]

RIN 2130-AC98

Accident/Incident Investigation Policy for Gathering Information and Consulting with Stakeholders

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

ACTION: Final rule; withdrawal.

SUMMARY: FRA is withdrawing the direct final rule titled “Federal Railroad
Administration Accident/Incident Investigation Policy for Gathering Information and
Consulting with Stakeholders,” (the Rule) which was published on October 1, 2024.

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

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SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2024, FRA published the Rule in the Federal Register amending 49
Code of Federal Regulations (CFR) 225.31, in accordance with section 22417 of the
Infrastructure Investment and Jobs Act (IIJA), to create a standard process for
investigators to use during accident and incident investigations conducted under that

section.¹ This process was to be used to determine when it was appropriate to collect information and the appropriate method for gathering that 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 was also to be used to determine when it was 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* Pub. L. 117-58, section 22417, Nov. 15, 2021, 135 Stat. 748.

The Rule generated two adverse, substantive comments. Accordingly, as described in more detail below, FRA has decided to withdraw the Rule.

II. Reasons for Withdrawal

FRA is withdrawing the Rule, which took effect on November 15, 2024. FRA received two adverse, substantive comments which opposed the Rule. There were no comments submitted in support of the Rule.²

Commenters objecting to the Rule stated that the Rule was insufficient as it needed to be expanded to include the outside review of accidents/incidents by professionals, such as physicists or highly qualified industrial engineers, as independent reviews of findings.

Commenters also alleged that FRA's outreach to the Class I railroads was limited and insufficient, and nonexistent to short line railroads. As such, it was the position of the commenters that FRA did not account fully for how the Rule would affect the railroad industry in the following ways: (1) FRA's "catch-all" provision for determining which

¹ 89 FR 79767. A correction to the Rule was published on October 28, 2024 (89 FR 85450).

² As stated in 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." 89 FR 79767 at 79768.

accidents trigger the information gathering and stakeholder consultation requirements is vague and fails to implement the IIJA mandate properly; (2) FRA’s description of “stakeholders” fails to implement the IIJA mandate properly; (3) FRA fails to explain substantive regulatory changes in 49 CFR 225.31(a); (4) loopholes allow for information to be shared with third parties during an investigation; (5) it is unclear how FRA’s web-based document sharing site will protect against the disclosure of confidential information; (6) there are no protections against post-investigation disclosures of confidential information; (7) the identity of a stakeholder should not be kept confidential from other stakeholders; (8) FRA’s investigation policy would create untenable conflicts with NTSB practice in situations where NTSB and FRA conduct overlapping investigations; (9) FRA limits improperly the basis for restricting stakeholder access to an accident site; (10) FRA does not have the authority to grant a stakeholder “virtual” access to railroad property; (11) the investigation policy will result in undue delays in clearing accident sites; (12) FRA adopts an incident command model but fails to provide details on its structure and tasks; and (13) FRA underestimates the cost of compliance of the new regulation.

Given the extent of the commenters’ substantive issues with the Rule, FRA is withdrawing the Rule.

III. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has evaluated this final rule in accordance with E.O. 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993), and DOT Order 2100.6B, Policies and Procedures for Rulemaking (Mar. 10, 2025). The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

FRA is amending its Accident/Incident Regulations, covering reporting, classification, and investigations, by withdrawing its regulation (*i.e.*, the Rule) for gathering information from and consulting with stakeholders during an accident/incident investigation. Through this withdrawal of the Rule, FRA is revising its accident investigation process by removing the changes made by the Rule that established 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 withdrawing the Rule will be the ability to re-assess in light of concerns raised by commenters.

In the Rule, FRA estimated total costs of approximately \$0.8 million (Present Value (PV)³ in 2023 dollars, 7-percent) over the ten-year analysis. By withdrawing the Rule, FRA estimates this will now incur a cost savings. Table 1 displays the cost savings of withdrawing the Rule from the Accident/Incident regulations in 49 CFR part 225.

Table 1: Total Cost Savings of the Final Rule (2023 Dollars)⁴

Year	Total Stakeholder Cost Savings	Total Government Cost Savings	Total Cost Savings	PV 7%	PV 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: Table may not sum due to rounding.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

³ The present value of costs is calculated at the time of analysis. Present value provides a way of converting future costs into equivalent dollars of the base year. The formula used to calculate this is: $\$1/(1+r)^t$, where “r” is the discount rate, and “t” is the base year. Discount rates of 3 percent and 7 percent are used in this analysis.

⁴ All figures are presented in a 2023 base year unless otherwise noted.

E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Jan. 31, 2025), requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”⁵ Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, March 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.⁶

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This final rule is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action.

C. Regulatory Flexibility Act and E.O. 13272

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 an agency to prepare and to make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking. FRA has determined that this rule is exempt from notice and comment rulemaking. Therefore, a regulatory flexibility analysis is not required for this rule.

D. Paperwork Reduction Act

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

E. Environmental Assessment

⁵ Executive Office of the President. *Executive Order 14192 of January 31, 2025. Unleashing Prosperity Through Deregulation.* 90 FR 9065-9067. Feb. 6, 2025.

⁶ Executive Office of the President. Office of Management and Budget. *Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.”* Memorandum M-25-20. Mar. 26, 2025.

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1C, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), “[p]lanning and administrative activities that do not involve or lead directly to construction, such as: [p]romulgation of rules, regulations, and directives.” This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

F. Federalism Implications

This withdrawal 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 withdrawal 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 withdrawal in accordance with E.O. 13211 and determined that this withdrawal is not a “significant energy action” within the meaning of E.O. 13211.

I. E.O. 13175 (Tribal Consultation)

FRA has evaluated this withdrawal in accordance with the principles and criteria

contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments, (Nov. 6, 2000). The withdrawal 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 withdrawal 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

49 CFR Part 225

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

The Final Rule

In consideration of the foregoing, FRA amends 49 CFR part 225 as follows:

PART 225- RAILROAD ACCIDENTS/INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATION

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.

§ 225.31 [Amended]

2. Amend § 225.31 by removing the heading for paragraph (a), removing paragraph (b), and redesignating paragraphs (a)(1) through (6) as paragraphs (a) through (f) respectively.

Issued in Washington, DC.

Robert Andrew Feeley,
Acting Administrator.

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