

FLETCHER & SIPPEL ALERT

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Friday, March 09, 2012

FRA ISSUES FINAL RULE FOR ON-TRACK SAFETY

The FRA has issued a final rule to delay the effective date of new on-track safety procedures until July 1, 2013. On November 30, 2011, the FRA published a final rule amending its regulations on railroad workplace safety to protect roadway workers from the movement of trains or other on-track equipment on adjacent tracks. The effective date of this final rule was to be May 1, 2012. In response to the final rule, FRA received a petition for reconsideration requesting a delay in the effective date of the final rule until July 1, 2013, for reasons related to the railroads' safety training schedules. Accordingly, the FRA is delaying the effective date of the final rule until July 1, 2013 and opening a 60-day comment period on the petition for reconsideration. Comments are due by May 7, 2012. A copy of the final rule is attached.

Please contact [Jeremy M. Berman](#) at (312) 252-1510 if you have any questions.

comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document or visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Procedure 3—Quality Assurance Requirements for Continuous Opacity Monitoring Systems at Stationary Sources Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Docket Facility and Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566-1742, and the telephone number for the Public Reading Room is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Ms. Lula H. Melton, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143-02), Research Triangle Park, NC 27711; telephone number: (919) 541-2910; fax number: (919) 541-0516; email address: melton.lula@epa.gov.

SUPPLEMENTARY INFORMATION:

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through <http://www.regulations.gov> or email. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404-02, Research Triangle Park, NC 27711, telephone: (919) 541-0880, email: morales.roberto@epa.gov, Attention Docket ID No. EPA-HQ-OAR-2010-0873. Clearly mark any of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA,

mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of the direct final rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg>. The TTN provides information and technology exchange in various areas of air pollution control.

Dated: March 1, 2012.

Mary Eileen Henigin,
Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2012-5433 Filed 3-7-12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA-2008-0059, Notice No. 5]

RIN 2130-AB96

Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers

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

ACTION: Final rule; delay of effective date and request for comments.

SUMMARY: This document delays the effective date of the final rule published November 30, 2011, and scheduled to take effect on May 1, 2012. The final rule mandates that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on "adjacent controlled track," and requests comments on the petitions for reconsideration of the final rule that FRA has received. In response to the final rule, FRA received two petitions for reconsideration that raise a number of substantive issues requiring a detailed response. Accordingly, in order to respond fully to the petitions for reconsideration and for the reasons set forth below, this document delays the effective date of the final rule until July 1, 2013. FRA is establishing a 60-day comment period in order to permit interested parties an opportunity to respond to the submitted petitions for reconsideration.

DATES: The effective date for the final rule published November 30, 2011, at 76 FR 74586, and originally effective on May 1, 2012, is delayed until July 1, 2013. Comments in response to the petitions for reconsideration must be received on or before May 7, 2012.

ADDRESSES: *Comments on the Petitions for Reconsideration:* Any comments on the petitions for reconsideration related to Docket No. FRA-2008-0059, Notice No. 4, may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, M-33, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department

of Transportation, West Building, Ground Floor, M-33, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202-493-2251.

Instructions: All submissions must include (1) the agency name and (2) either the docket number for this rulemaking (Docket No. FRA-2008-0059) or the current Regulatory Identification Number (RIN) for this rulemaking (RIN 2130-AB96). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading under the **SUPPLEMENTARY INFORMATION** section of this preamble.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> anytime, or to the Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS-15, Mail Stop 25, Washington, DC 20590 (telephone 202-493-6236); or Anna Winkle, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC-12, Mail Stop 10, Washington, DC 20590 (telephone 202-493-6166 or 202-493-6052).

SUPPLEMENTARY INFORMATION: On November 30, 2011, FRA published a final rule amending its regulations on railroad workplace safety to further reduce the risk of serious injury or death to roadway workers performing work with potentially distracting equipment near certain adjacent tracks. See 76 FR 74586. In particular, the rule requires that roadway workers comply with specified on-track safety procedures that railroads must adopt to protect those workers from the movement of trains or other on-track equipment on "adjacent controlled track." The effective date of this final rule was to be May 1, 2012. In response to the final rule, FRA received two petitions for reconsideration that raise substantive issues, requiring a detailed response from FRA. One of the petitions requests a delay in the effective date of the final rule until July 1, 2013, for reasons related to the railroads' safety training schedules. In addition, since the publication of the final rule, it has come to FRA's attention that, while the overwhelming majority of railroads complete their annual training of roadway workers by May 1st of each calendar year, there is at least one railroad that does not complete its training by that date but that would complete it by July 1st of the calendar year. Accordingly, in order to allow FRA appropriate time to consider and fully respond to the petitions for reconsideration and to accommodate all of the railroads' normal training schedules, this document delays the effective date of the final rule until July 1, 2013. Therefore, any requirements imposed by the final rule need not be complied with until July 1, 2013.

Additionally, FRA is establishing a 60-day comment period in order to

permit interested parties an opportunity to respond to the petitions for reconsideration related to Docket No. FRA-2008-0059, Notice No. 4. The petitions for reconsideration are available for review in the docket for this rulemaking, and have been assigned identification numbers of FRA-2008-0059-0031 and FRA-2008-0059-0032. FRA's response to the petitions for reconsideration and any comments received on these petitions will be published under a new RIN number (2130-AC37), but will be filed in the same docket.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FRA's dockets 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** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://DocketsInfo.dot.gov>.

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA delays the effective date of the final rule until July 1, 2013.

Issued in Washington, DC, on March 2, 2012.

Karen J. Hedlund,

Deputy Administrator.

[FR Doc. 2012-5667 Filed 3-7-12; 8:45 am]

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