

d. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

19. The reporting requirements proposed in this document could have an impact on small entities. However, even though the proposals may impose some financial burden on smaller entities, the Commission believes these requirements are necessary to ensure that progress toward the stated goals of HCF can be measured.

20. The document seeks comment on the data collection process for the consortium annual reports that will allow the Commission to measure progress in increasing HCP access to broadband, fostering the development and deployment of health care broadband networks, and ensuring the cost-effectiveness of HCF.

e. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

22. In this document, we make a number of proposals that may have an economic impact on small entities that participate in the universal service support mechanism for HCPs. Specifically, as addressed above, we seek comment on collecting data to measure the Commission's goals that HCF identified: (1) Increase access to high-speed broadband for eligible HCPs; (2) foster the development and deployment of health care broadband networks; and (3) reduce the burden on the Universal Service Fund by ensuring the cost-effectiveness of the program. If adopted, these proposals will provide the Commission with much-needed data to assess the efficacy of HCF in achieving these goals and to inform any potential future reforms to the program.

23. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, we have invited comment on how these proposals might be made

less burdensome for small entities. We again invite commenters to discuss the benefits of such changes on small entities and whether these benefits are outweighed by resulting costs to rural HCPs that might also be small entities. We anticipate that the record will reflect whether the overall benefits of the proposed annual report contents would outweigh any burden on small entities and suggest ways in which the Commission could further lessen the overall burdens on small entities. We encourage small entities to comment.

24. To minimize the economic impact on consortium lead entities, we propose to collect the annual reports through the Universal Service Administrative Company's "My Portal" web interface, with which all consortium applicants are familiar. Filling out and submitting these reports online will significantly reduce the amount of time and resources needed for consortium lead entities to comply with the annual reporting requirements of § 54.647 of the Commission's rules.

f. Federal Rules That May Duplicate, or Conflict With Proposed Rules

25. None.

C. *Ex Parte*

26. The proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and

must be filed consistent with § 1.1206(b) of the Commission's rules). In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

**Radhika Karmarkar,**

*Acting Deputy Chief, Telecommunication Access Policy Division Wireline Competition Bureau.*

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**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 223

[Docket No. FR–2012–0103]

**RIN 2130–AC43**

#### Safety Glazing Standards

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA proposes to revise and clarify existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses. This proposed rule would reduce paperwork and other economic burdens on the rail industry by removing a stenciling requirement for locomotives, passenger cars, and cabooses that are required to be equipped with glazing. This proposed rule would also clarify the application of the regulations to antiquated equipment and to the end locations of all equipment to provide more certainty to the rail industry and more narrowly address FRA's safety concerns. FRA is also proposing to clarify the definition of passenger car and separately to update the rule by removing certain compliance dates that are no longer necessary.

**DATES:** (1) Written comments must be received by November 25, 2014. Comments received after that date will

be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to October 27, 2014, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA–2012–0103 may be submitted by any of the following methods:

- *Web site:* Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulation.gov> including any personal information. Please see the Privacy Act heading in the Supplementary Information section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Zuiderveen, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Federal Railroad Administration, 1200 New Jersey Avenue SE., W35–216, Washington, DC 20590 (telephone 202–493–6337), or Michael Masci, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., W31–115, Washington, DC 20590 (telephone 202–493–6037).

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

Beginning on January 18, 2011, the President issued a set of Executive Orders (EO) which require Federal agencies to review existing regulations and reduce the regulatory burden on industry, when appropriate. (See EO 13563 and EO 13610, discussed in more detail in section II of this preamble). During FRA's review of FRA's Safety Glazing Standards in 49 CFR part 223<sup>1</sup> ("part 223"), FRA identified potential changes to requirements related to stenciling and "antiquated equipment" as opportunities to reduce paperwork and other economic burdens on the rail industry without adversely impacting safety. This NPRM proposes to modify these requirements.

Specifically, this NPRM proposes to eliminate as unnecessary the requirement to stencil inside walls of locomotive cabs, passenger cars, and cabooses to indicate that the equipment contains window glazing certified in compliance with FRA's Safety Glazing Standards. Further, this NPRM proposes to use a rolling, 50-year calculation to determine whether equipment is "antiquated" based on its build date—rather than a fixed build date of 1945 or earlier—thereby eliminating the cost of fitting equipment with compliant glazing for equipment that is more than 50 years old and used only for certain purposes. To maintain safety in connection with the proposed change to the application of the term "antiquated equipment," FRA is proposing to clarify requirements for emergency windows in occupied passenger cars operated in intercity passenger or commuter trains, as well as clarify requirements for locomotives, passengers, and cabooses that are currently equipped with compliant glazing.

Separately, this NPRM proposes changes based on a Railroad Safety Advisory Committee (RSAC) recommendation. In 2013, FRA's RSAC recommended that FRA clarify the application of the glazing requirements in part 223 to address requirements for the next generation of high speed trainsets. FRA agrees that aspects of the RSAC recommendation are appropriate to adopt generally for all equipment, and is therefore proposing to do so in this NPRM. Specifically, FRA believes that amending the application of the phrase "end facing glazing location" in part 223 would reduce the economic burden on the rail industry without adversely impacting safety.

<sup>1</sup> Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

In addition, FRA is proposing to clarify the application of requirements related to private cars, and to eliminate compliance phase-in dates that are no longer necessary.

## Economic Impact

FRA believes that the proposals in this NPRM are consistent with current industry practices and would reduce the current regulatory burden on the rail industry.

The estimated quantified benefits or cost savings of this proposal total \$993,057. The present value, discounted at 7 percent, of the estimated quantified benefits is approximately \$747,436. FRA concludes that the industry would incur only a minimal cost of approximately \$6,000 to take advantage of the flexibilities proposed in this rule. Therefore, FRA estimates the net benefit (cost savings) of this proposed rule is approximately \$741,436 (PV, 7 percent).

## II. Background and General Overview of the Proposal

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address all areas of railroad safety, including: Railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. See 49 U.S.C. 20103 and 49 CFR 1.89. In the area of safety glazing standards, FRA has issued regulations, generally found at part 223. FRA continually reviews its regulations and revises them as needed to ensure that the regulatory burden on the rail industry is not excessive; to clarify the application of existing requirements and remove requirements that are no longer necessary; and to keep pace with emerging technology, changing operational realities and safety concerns.

On January 18, 2011, the President issued EO 13563 (Improving Regulation and Regulatory Review). EO 13563 requires agencies to periodically conduct retrospective analysis of their existing rules to identify requirements that may be outmoded, ineffective, insufficient, or excessively burdensome. The EO further requires that agencies modify, streamline, expand, or repeal any problematic regulatory provisions identified during the course of their review. During FRA's retrospective analysis of part 223, the agency identified requirements related to antiquated equipment in particular as being potentially burdensome to the regulated community. The language

used in these requirements is broad and not explicitly defined in the rule text, and FRA's existing interpretive guidance has the potential of imposing a progressively larger burden on a small segment of the industry as time passes. This rulemaking proposes to modify the Safety Glazing Standards to clarify the application of these requirements and reduce their potential economic burden on the rail industry.

Further, on May 10, 2012, the President issued EO 13610 (Identifying and Reducing Regulatory Burdens). EO 13610 requires agencies to take continuing steps to reassess regulatory requirements, and where appropriate, to streamline, improve, or eliminate those requirements. EO 13610 emphasizes that agencies should prioritize "initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens." In response to these instructions, DOT carried out a Paperwork Reduction Act initiative that focused on identifying and eliminating paperwork burdens on the rail industry, when appropriate. FRA conducted a comprehensive review of its regulations based on the guidance provided in EO 13610 and determined that the elimination of the stenciling requirement of § 223.17 is an opportunity to reduce the paperwork burden on the rail industry without adversely impacting safety. (Section 223.17 had also been identified as a candidate for elimination by EO 13563). Accordingly, this rule proposes to eliminate this stenciling requirement.

In addition to the changes being proposed in response to these EOs, FRA is proposing changes based on an RSAC recommendation addressing the application of the safety glazing standards for the next generation of high speed trainsets. The RSAC is a forum for developing consensus recommendations on rulemakings and other safety program issues that was established by FRA in March 1996. The RSAC includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces and

task groups to develop facts and options on a particular aspect of a given task.

In March 2013, after the RSAC accepted a task related to high speed rail, the Engineering Task Force Tier III Cab Glazing Task Group (Task Group) was established to assist the RSAC's Engineering Task Force with issues concerning safety glazing. The Task Group discussed glazing during four meetings held throughout 2013. During the Task Group's last meeting, the Group reached consensus on a recommendation to apply safety glazing standards to trainsets operating at speeds up to 220 miles per hour, including requirements applicable to end facing glazing locations that focus on the exposed exterior of the trainsets. On June 14, 2013, the full RSAC adopted the Task Group's recommendation and presented it to FRA for consideration. Based on FRA's experience enforcing the requirements related to passenger equipment, FRA believes that aspects of the RSAC recommendation are appropriate to adopt generally for all equipment, not only high speed trainsets, and is therefore proposing to do so in this NPRM. FRA believes it would be helpful to clarify for equipment operating at conventional speeds what exterior locations are intended to be considered end facing glazing locations, so as to reduce the economic burden on the rail industry without adversely impacting safety.

Finally, FRA's review of part 223 identified several compliance phase-in dates in the regulation that have passed and are no longer necessary. To improve the plain language of these requirements and make the regulation more clear and concise, FRA is proposing to remove the dates that have passed.

#### *A. Removal of the Requirement To Stencil Certified Glazing Compliance on Inside Walls of Locomotive Cabs, Passenger Cars, and Cabooses*

FRA's review of its regulations pursuant to EO 13563 and EO 13610 identified as a candidate for elimination § 223.17, which requires that locomotive cabs, passenger cars, and cabooses be stenciled inside on an interior wall with the type of glazing present in the equipment. In particular, EO 13610 requires agencies to take continuing steps to reassess regulatory requirements and, where appropriate, to streamline, improve, or eliminate those requirements. EO 13610 emphasizes that agencies should prioritize "initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens." In 2012, FRA

conducted a comprehensive review of its regulations based on the guidance provided in EO 13610 and determined that the removal of the certified glazing stenciling requirement inside of locomotive cabs, passenger cars, and cabooses is an opportunity to reduce the paperwork burden on the rail industry without adversely impacting safety. The certified glazing stencil was originally intended to be an aid for demonstrating compliance. It was required as an easily identifiable method for railroads to demonstrate compliance with the safety glazing requirements contained in part 223, when large numbers of affected equipment were not equipped with part 223 glazing. However, the need for this requirement has diminished since compliance was phased in for equipment existing at the time part 223 was promulgated. (See the below discussion of the proposal to remove compliance phase-in dates from part 223.) Moreover, in practice, FRA has found that the stencil is not always accurate, and that each window needs to be examined to determine whether proper glazing has been applied. An easy and reliable way to determine the compliance of each window individually is to read the permanent marking on each window panel that is required by appendix A to part 223. Each window that is equipped with certified glazing is required to be permanently marked by the manufacturer to indicate the type of glazing that has been applied, and that marking remains unchanged for each glazing panel's service life. Appendix A requires glazing to be tested and then marked according to the tests that have been passed as either "FRA Type I" or "FRA Type II" glazing. By considering the location of the window and examining the marking, FRA inspectors can apply the requirements and determine whether the glazing use is compliant.

FRA believes that the markings on the windows are more reliable than the stenciling located inside the equipment in which they are installed, and that the markings provide sufficient information to determine compliance with the safety glazing standards. Therefore, FRA concludes that the stenciling requirement of § 223.17 is no longer necessary, and this rule proposes to eliminate the requirement for a certified glazing stencil located inside locomotive cabs, passenger cars, and cabooses.

#### *B. Clarification of the Term "Antiquated Equipment"*

The term "antiquated equipment" is used in part 223 to identify equipment

that is excluded from the application of part 223, provide that the equipment is operated in only specified types of service (i.e., excursion, educational, recreational or private transportation). However, the meaning of the term is not clear based on the specific language contained in the regulation. Part 223 does not provide a definition for the term “antiquated equipment,” nor does the context in which the term is used in the regulation clearly indicate its meaning. During the implementation of part 223, FRA identified the need to clarify the term “antiquated equipment” to help ensure its consistent application. FRA developed guidance interpreting the term in 1989, and it was provided by FRA’s Associate Administrator for Safety to the agency’s regional safety management. Subsequently, the interpretation was made part of a 1990 FRA technical bulletin. For purposes of this NPRM, FRA will reference the 1990 FRA technical bulletin, which has been included in the public docket for this rulemaking proceeding.

The interpretation indicated that the term “antiquated equipment,” as used in part 223, means equipment that was built in 1945 or earlier; however, it does not explain the basis for distinguishing between equipment that was built in 1945 or earlier from equipment that was built after 1945. FRA believes that the year 1945 was generally chosen as the cut-off date because it was the end of World War II, the date was approaching approximately 50 years prior to the date that the guidance was issued, and the approaching 50-year difference in time was consistent with FRA’s treatment of other equipment. Based on FRA’s experience, after 50 years certain equipment becomes antiquated and justifies distinct treatment due to significant changes in technology, including design standards and the materials used for construction. For example, this distinction is used in the Freight Car Safety Standards that are contained in 49 CFR part 215.

In part 215, the operation of freight cars that are more than 50 years old, measured by the date of original construction, is restricted unless the operating railroad successfully petitions FRA for continued use. This requirement reflects FRA’s general belief that after 50 years freight equipment is typically outdated and often not in the best condition given its years of service. Accordingly, for purposes of safety, FRA believes that after 50 years of age, freight equipment should not be treated the same as newer equipment when used in certain types of service. As an industry practice, cars that are more than 50 years old are

generally used only in limited freight service. However, passenger cars that are more than 50 years old have been successfully used for commuter service, which to be clear is not the type of service that is identified in part 223 as being for an educational, excursion, recreational, or private transportation purpose.

The term “antiquated equipment” has been applied in the enforcement of part 223 consistent with FRA’s 1990 technical bulletin without significant opposition, until the recent industry response to FRA’s efforts to implement section 415 of the Rail Safety Improvement Act of 2008 (section 415), Public Law 110–432, Division A. Section 415 required the Secretary of Transportation<sup>2</sup> to conduct a study related to tourist and historical railroads for compliance with Federal rail safety laws. While conducting the section 415 study, FRA utilized the year 1945 as a reference point in applying the glazing requirements. Because the 1990 technical bulletin did not clearly specify that the term “antiquated equipment” could be subject to a rolling 50-year calculation, an equitable reading of the technical bulletin could conclude that the year 1945 was intended to be a fixed date for determining whether equipment is antiquated. In other words, a person could reasonably understand that all equipment built in 1945 or earlier is antiquated, while all built after 1945 is not.

Following the section 415 study, FRA initiated several enforcement actions against owners of equipment in service that was more than 50 years old, but built after 1945. Many in the rail industry expressed surprise at these enforcement actions and, as a result, approximately 175 petitions for waiver from the relevant requirements contained in part 223 were filed with FRA pertaining to equipment built after 1945. In addition to requesting relief from part 223, many petitioners argued that based on their understanding of the term “antiquated equipment,” as used in part 223 and based on FRA’s enforcement history (i.e., the fact that they never before had received notice of non-compliance from FRA), they believed that their equipment was antiquated and therefore not subject to part 223. Many of the petitioners were represented by the American Association of Private Railroad Car Owners (AAPRCO), which in 2009 on behalf of its members submitted a letter expressing concern over FRA’s application of the term “antiquated

equipment.” FRA responded to AAPRCO, explaining that use of the fixed date of 1945 to determine whether equipment is antiquated was consistent with FRA’s interpretive guidance.

Subsequently, EO 13563 was issued requiring agencies to conduct a retrospective analysis of their existing rules. As noted above, the analysis was intended to identify requirements that may be outmoded, ineffective, insufficient, or excessively burdensome, and lead agencies to modify, streamline, expand, or repeal such rules in accordance with what has been learned. During FRA’s retrospective analysis of the Safety Glazing Standards, FRA identified the application of its existing interpretation of the rule language related to antiquated equipment as potentially creating an unnecessary burden on the industry. The cost of retrofitting all non-compliant equipment that was built more than 50 years prior to the current date but after 1945 with compliant glazing would result in a considerable expense to the rail industry, would likely be too costly for some small businesses to continue operating, and would provide a nominal safety benefit. Based on this information, FRA is proposing to modify the term “antiquated equipment” to reduce the burden on the rail industry. FRA believes that the use of a rolling 50-year calculation to determine whether equipment is antiquated would significantly reduce the burden on the rail industry by eliminating the cost of fitting equipment with compliant glazing for equipment that is older than 50 years and used only for certain purposes. In other words, FRA believes that the term antiquated equipment, for purposes of part 223, should mean equipment that is more than 50 years old, not equipment that was more than 50 years old as of a certain, fixed date.

This clarification would also better align the Safety Glazing Standards with other Federal rail safety requirements that address older equipment. The existing safety glazing requirements distinguish between older and newer equipment by use of the term “antiquated equipment,” but do so in a way that is not necessarily consistent with other Federal rail safety requirements. For example, because of its age and technology, a caboose that was built in 1960 receives particular treatment as older equipment under § 215.203 and must be stenciled as required by § 215.303, but that same caboose is essentially treated by the Safety Glazing Standards as newer equipment that was built in 2014, because it is not considered “antiquated

<sup>2</sup> The Secretary delegated the responsibility to carry out this mandate to FRA. See 49 CFR 1.89(b).

equipment” in accordance with the interpretation of the term in FRA’s guidance. This proposal would help classify equipment more consistently because of its age.

*C. Clarification of the Terms “Private Car” and “Passenger Car”*

Previous amendments to part 223, which revised the definition of the term “passenger car” for the purpose of clarifying contemporaneous revisions to the regulation, may have caused some unintentional confusion regarding the application of the glazing requirements to “private cars.” In 1998 and 1999, FRA issued comprehensive regulations for intercity passenger and commuter train safety, amending part 223 among other things to add requirements related to emergency windows in intercity passenger and commuter trains, which part 223 has long required for passenger cars with certified glazing to facilitate occupant egress. *See* 63 FR 24630 (May 4, 1998 final rule on Passenger Train Emergency Preparedness) and 64 FR 25540 (May 12, 1999 final rule on Passenger Equipment Safety Standards), as amended at 73 FR 6370 (February 1, 2008 final rule on Passenger Train Emergency Systems). The amendments to part 223 included revising the definition of the term “passenger car” by specifically excluding from the definition a “private car.” 63 FR 24675. This revision of the term “passenger car” was intended to clarify that requirements being established for passenger cars in intercity passenger and commuter train service only, such as new requirements in former § 223.9(d) for marking emergency windows, did not apply to private cars. *See* 63 FR 24675. It was not intended to change the existing application of the rest of part 223 to private cars. Yet, the substantive requirements contained in §§ 223.9 and 223.15 specify that they apply to “passenger cars,” which by a literal reading of the current definition of the term “passenger car,” in § 223.5, would seemingly exclude private cars.

However, as evidenced by the “Application” section of part 223 (particularly § 223.3(b)(3)), FRA’s intent was to continue to apply the glazing requirements of part 223 to private cars as previously specified, as no general exclusion was suggested or made. *Id.* FRA believes that the rail industry has the same understanding. The application of the glazing requirements with regard to private cars is clear, as provided in § 223.3. Section 223.3(a) states that the requirements contained in part 223 apply to any railroad rolling equipment that is operated on standard gauge track that is a part of the general

railroad system of transportation. Section 223.3(b) excludes equipment that is used for private transportation purposes, but only if it is historical or antiquated. Nonetheless, to alleviate any confusion, FRA is proposing to amend the definition of the term “passenger car,” contained in § 223.5, by removing the last sentence of the existing definition that indicates “[t]his term does not include a private car.”

*D. Emergency Windows for Occupied Passenger Cars That Are More Than 50 Years Old But Built After 1945 and Operated in an Intercity Passenger or Commuter Train*

This rule proposes to clarify the application of the emergency window requirements that are contained in part 223 to passenger cars that are more than 50 years old but built after 1945 by incorporating provisions in waivers granted by FRA’s Railroad Safety Board (*see, e.g.,* FRA–2010–0080), without changing the existing regulatory framework for the emergency window requirements. Both parts 223 and 238 of this chapter contain requirements related to emergency windows that apply to various types of passenger vehicles (*see, e.g.,* §§ 223.8, 223.9, 223.15, and 238.113). For the purposes of emergency window and other requirements, part 238 distinguishes between categories of passenger vehicles—namely, “passenger cars” and “passenger equipment.” A passenger car, as defined by § 238.5, is a subset of “passenger equipment” and must comply with the emergency window exit requirements that are contained in § 238.113. By contrast, the part 238 emergency window exit requirements found in § 238.113 do not apply to all passenger equipment, as defined by § 238.5. Instead, passenger equipment not subject to § 238.113, including a private car, is required to be equipped with emergency windows as provided for in §§ 223.9(c) or 223.15(c), as appropriate. In this proposed rule, the application of the emergency window requirements to passenger equipment and passenger cars in part 238 would remain unchanged. However, a change to part 223 is needed to incorporate provisions of existing waivers of the requirements of part 223 that require emergency windows, in light of the proposed change concerning “antiquated equipment,” discussed above.

Specifically, in connection with the proposed change to the application of the term “antiquated equipment,” FRA intends to revise the existing rule language contained in § 223.3(b) expressly to state that the exclusion

provided in § 223.3(b)(3) for “antiquated equipment,” for purposes of emergency windows, does not apply to occupied passenger cars that were built after 1945 when they operate in an intercity passenger or commuter train in service covered by part 238 (“part 238 train”). *See* 49 CFR 238.3. An occupied private car that is operated in a train covered by the requirements of part 238 is not required to be equipped with emergency windows under part 238; these cars are required to be equipped with emergency windows only under §§ 223.9(c) or 223.15(c) of part 223, if they are not “historical or antiquated equipment” and used for solely an excursion, educational, recreational, or private purpose as applicable under § 223.3(b)(3). *See, e.g.,* 73 FR 6378. However, FRA’s Railroad Safety Board has granted a series of waivers that permit such cars that are neither “historical or antiquated” to operate in a part 238 train without certified glazing, but as a condition to the waivers require that the cars be equipped with at least four emergency windows in accordance with § 223.9(c) or § 223.15(c). The waivers make clear that the minimum of four emergency windows (two on each side) must be clearly marked. As specified in § 223.5, an “emergency window” means a segment of a side facing glazing panel that has been designed to permit rapid and easy removal from inside the car during an emergency. The waivers further make clear that any tool required to remove or break the window must be provided and be clearly marked, and legible and understandable instructions must be provided for its use. FRA proposes to revise part 223 to be consistent with the conditions of the waivers that FRA has granted, in connection with the proposed change to the application of the term “antiquated equipment.”

FRA notes that passenger cars not in themselves covered by the requirements of part 238 that are occupied for an excursion, educational, recreational, or private purpose and operate in a passenger train covered by the requirements of part 238 will be subject to the same conditions as the train to which they are coupled. Such cars will be exposed to high speeds over long distances in the same manner as the other cars in the passenger train. In addition, the end frame doors of such cars may not line up with the end frame doors on some passenger cars subject to the requirements of part 238 to which they are coupled (*e.g.,* a National Railroad Passenger Corporation (Amtrak) Superliner). Consequently,

during an accident or incident, emergency windows may be required as a primary means of egress, due to a lack of end-of-car egress. Yet, passenger cars occupied for an excursion, educational, recreational, or private purpose that are not equipped with part 223 compliant glazing and emergency windows might only be equipped with safety glass that cannot easily shatter or otherwise be easily removed without the use of a tool or other instrument, and therefore may not permit effective egress for occupants during an accident or incident. For such occupied cars that are built after 1945 and more than 50 years old that operate in a part 238 train, emergency windows are needed to maintain the level of safety currently provided.

Consequently, in clarifying the application of part 223 to “antiquated equipment” by proposing to use a rolling 50-year date, rather than a fixed date, FRA believes it necessary to continue requiring passenger cars built after 1945 that are more than 50 years old to comply with the requirements for emergency windows contained in § 223.9(c) or § 223.15(c) if they are occupied and operate in an intercity or commuter passenger train subject to part 238. FRA does not believe it appropriate to remove the current requirement that such cars be equipped with these emergency windows, especially as the number of such cars considered “antiquated” would be enlarged by this rulemaking. However, consistent with the conditions of the waivers that FRA has granted, a tool or other instrument may be used to remove or break the window if the tool or other instrument is clearly marked and legible and understandable instructions are provided for its use.

#### *E. Locomotives, Passenger Cars, and Caboose That Are More Than 50 Years Old But Built After 1945 and Equipped With Compliant Glazing*

In connection with the proposed change to the application of the term “antiquated equipment,” this NPRM proposes that all locomotives, passenger cars, and cabooses that are more than 50 years old but built after 1945 and equipped with glazing that complies with the glazing test standards in appendix A to part 223 must remain in compliance with those standards. FRA does not intend to diminish the level of safety currently required in broadening the definition of the term “antiquated equipment.” Accordingly, FRA does not intend for windows that are currently in compliance with the impact test standards in appendix A to part 223 to be replaced with windows that are not. Moreover, given that such equipment

would already have in place the necessary framing arrangements to support part 223-compliant glazing, FRA expects the window panels to be replaced with like window glazing. Of course, if equipment built after 1945 that is more than 50 years old is not already fitted with compliant window glazing, then such window panels (along with their supporting, framing arrangements) do not have to be installed.

#### *F. Clarification of the Term “End Facing Glazing Location”*

Consistent with the RSAC Task Group’s recommendation and to ensure consistent application of the relevant requirements, FRA proposes to revise the definition of “end facing glazing location” to make clear that the location means an “exterior” location and by expressly identifying locations that are not to be considered “end facing glazing location[s]”—namely, the coupled ends of multiple-unit (MU) locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car of MU locomotive.

The existing definition of “end facing glazing location” in § 223.5 does not specify that “end facing” is intended to mean only a location at the exterior of a piece of equipment. As a result, the proposed rule would clarify that FRA does not consider windows that face an open end of a car but are located in the interior of the car to be end facing: They would not require Type I glazing. For example, a vestibule door that is set back from the end frame and corner structure of a passenger car and contains a window would not require Type I glazing for the window. In this example, even if the vestibule window is exposed to the outside of the car, Type I glazing is not required. Type I glazing is not needed because the angularity of attack from a projectile to that window is significantly reduced by the presence of the structures at the end of the car located ahead of the plane of the glazing material, as compared to a window aligned with the end frame of the car; therefore, the likelihood of projectile contact is minimized.

Further, the existing definition of “end facing glazing location” contains no qualification with respect to the forward or rear end or the direction of travel of the equipment. In other words, all forward and all rearward facing windows could be considered end facing. This application of the term may have resulted in some confusion related to FRA’s enforcement of relevant glazing requirements, which FRA intends to

clarify in this NPRM. Accordingly, FRA proposes to revise the definition to make clear that the term “end facing glazing location” does not apply to the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, nor does it apply to end doors at locations other than the cab end of a cab car or MU locomotive. The most notable example of an end door at a location other than the cab end of a cab car or MU locomotive is an end frame door on an Amfleet passenger car; the rule proposes to make clear that windows in such doors do not require Type I glazing.

At the same time, FRA is also proposing to revise the existing definition of “side facing glazing location” to clarify that the locations that would be clearly excluded from the definition of “end facing glazing location” would require Type II glazing. The existing safety glazing standards require that all side facing glazing locations be equipped with Type II glazing. See appendix A to part 223. Because the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and end doors at locations other than the cab end of a cab car or MU locomotive would be specifically excluded from the definition of “end facing glazing location,” those locations would not require Type I glazing. By specifically including them in the definition for “side facing glazing location,” the rule would make clear that those locations require Type II glazing at a minimum. In this regard, for example, locomotives, cabooses, and passenger cars built or rebuilt after June 30, 1980, must be equipped with certified glazing in all windows, as required by § 223.9. The term “certified glazing” refers to Type I and Type II glazing, as specified in appendix A to part 223. Accordingly, for such equipment locations where certified glazing is required, either Type I or Type II glazing must be present.

#### *G. Removal of Compliance Phase-In Dates That Have Passed and Are No Longer Applicable*

This NPRM proposes to remove outdated, compliance phase-in dates and related language to make the regulation clearer. When the Safety Glazing Standards were published on December 31, 1979, the regulation included compliance dates to phase-in its requirements for equipment in existence at the time, in addition to requirements for new equipment. See 44 FR 77328, 77353–77354. As amended by final rule on December 27, 1983, the

regulation still includes these compliance dates. *See* 48 FR 56955–56955. For example in § 223.15, “Requirements for existing passenger cars,” the regulation provides that certain passenger cars have until June 30, 1984, to comply with the requirements for certified glazing and emergency windows. Now that the compliance phase-in period has long passed, the phase-in dates can be removed without changing the substantive effect of the requirements. To make the requirements easier to understand, FRA proposes to remove such dates and related language from part 223.

### III. Section-by-Section Analysis

This section-by-section analysis of the proposed rule is intended to explain the rationale for each section of the proposed rule, together with the discussion in section II of this proposed rule. The proposed regulatory changes are organized by section number. FRA seeks comments on all proposals made in this NPRM.

#### A. Proposed Amendments to Part 223

##### Section 223.3 Application

As discussed in section II.B. of this NPRM, proposed paragraph (b)(3) would clarify the meaning of “antiquated equipment” by replacing the term “antiquated” with the phrase “more than 50 years old.” This change would clarify that the exclusion provided in this section from the application of the rule for “antiquated equipment” is available for equipment that is more than 50 years old, measured from the time of original construction. This is intended to be a rolling, 50-year calculation, and no longer the fixed date of 1945 or earlier. As such, some of the equipment that is subject to the full requirements of part 223 today (because it is not yet more than 50 years old) would be subject to exclusion from certain requirements when the equipment ages sufficiently and becomes more than 50 years old. To qualify for the available exclusion when the equipment becomes more than 50 years old, the rule would continue to require that the equipment be used only for excursion, educational, recreational, or private transportation purposes. Please note that paragraph (c), discussed below, qualifies the exclusion available under this paragraph (b)(3); both paragraphs must be read together.

In addition, paragraph (b)(4) would be revised to correct the reference to § 223.5. Paragraph (b)(4) currently contains an exclusion for “[l]ocomotives that are used exclusively in designated

service as defined in § 223.5(m).” The reference to § 223.5(m) is outdated, as paragraph lettering was removed from § 223.5, Definitions, when that section was reorganized and revised by the May 4, 1998 Passenger Train Emergency Preparedness final rule. *See* 63 FR 24630, 24642. Removing the reference to paragraph (m) of § 223.5 for internal consistency would have no substantive effect on the application of the rule, as the definition of “designated service” in § 223.5 would remain unchanged. Accordingly, FRA is proposing to remove the reference to paragraph (m) of § 223.5 so that paragraph (b)(4) would instead refer to § 223.5 generally.

Proposed paragraph (c) would be added to clarify the requirements that are applicable to equipment that would otherwise be subject to the exclusion in paragraph (b)(3) of this section for “antiquated equipment,” to maintain safety in connection with the proposed change to the application of this term for equipment built after 1945 but more than 50 years old. As discussed in sections II.D. and II.E. of this NPRM, FRA is proposing to clarify requirements for emergency windows in occupied passenger cars operated in intercity passenger or commuter trains, as well as clarify requirements for locomotives, passenger cars, and cabooses that are currently equipped with compliant glazing. Proposed paragraph (c) applies, as specified, to each locomotive, passenger car, and caboose built after 1945 that is more than 50 years old and is used only for excursion, educational, recreational, or private transportation purposes. Specifically, proposed paragraph (c)(1) would require each such passenger car to comply with the emergency window requirements contained in § 223.9(c) or § 223.15(c), as appropriate, when it is occupied and operates in an intercity passenger or commuter train subject to part 238 of this chapter. A tool or other instrument may be used to remove or break an emergency window if the tool or other instrument is clearly marked and legible and understandable instructions are provided for its use. Proposed paragraph (c)(2) would require each such locomotive, passenger car, and caboose that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of [DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], to remain in compliance with those requirements. Accordingly, the level of safety currently provided by the regulation would not be diminished.

##### Section 223.5 Definitions.

FRA is proposing to revise three terms in this section: “end facing glazing location,” “passenger car,” and “side facing glazing location.”

Specifically, FRA would revise the existing definition of “end facing glazing location” by making clear that the location means an “exterior” location and by expressly identifying locations that are not to be considered “end facing glazing location[s]”—namely, the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car of MU locomotive. FRA is also proposing to make clear that dome and observation cars are included in the category of cars subject to the application of this definition. Please see section II.F. of this NPRM for a fuller discussion of the proposed change to the definition of “end facing glazing location.”

In addition, this rule would revise the existing definition of “side facing glazing location” by including the following within the definition: The coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car or MU locomotive. Instead of considering such locations to be end facing glazing locations requiring Type I glazing, FRA is proposing that these locations be considered side facing glazing locations requiring only Type II glazing, due to the generally lower risk of an exterior projectile impacting the window surface.

This rule would also revise the existing definition of “passenger car” by removing the last sentence, which states that “[t]his term does not include a private car.” The proposed revision would clarify that a private car can be considered a passenger car. Please see section II.C. of this NPRM for a full discussion of this proposal.

##### Section 223.11 Requirements for Existing Locomotives

As discussed in section II.G. of this NPRM, the proposed amendments to this section would remove the compliance phase-in dates and related language from the glazing requirements for existing locomotives. As originally promulgated in 1979 and amended in 1983, part 223 phased in requirements for glazing standards by generally allowing the rail industry until June 30, 1984, to fit their existing locomotives with compliant glazing. The rule



included an exception for locomotives that had their windows damaged by vandalism. Windows that were damaged due to vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Proposed paragraph (c) would remove the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Proposed paragraph (d) would remove the language that requires windows that are damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed now that the compliance phase-in period has long passed and all locomotives, other than yard locomotives excluded by this section or locomotives that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing.

#### Section 223.13 Requirements for Existing Cabooses

As discussed in section II.G. of this NPRM, the proposed amendments to this section would remove the compliance phase-in dates and related language from the existing requirements related to cabooses. As noted above, the existing rule established glazing standards, but also generally allowed the rail industry until June 30, 1984, to fit their existing cabooses with compliant glazing. The rule included an exception for cabooses that had their windows damaged by vandalism. Windows that were damaged due to vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Proposed paragraph (c) would remove the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Proposed paragraph (d) would remove the language that requires windows that are damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed now that the compliance phase-in period has long passed and all cabooses, other than those that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing. In this regard, FRA invites comment whether this section needs to be retained in the final rule and specifically whether its requirements could be consolidated with those for new cabooses in § 223.9(b) in a revised or new section.

#### Section 223.15 Requirements for Existing Passenger Cars

As discussed in section II.G. of this NPRM, the proposed amendments to this section would remove the compliance phase-in dates and related language from the existing requirements related to passenger cars. As noted above, the existing rule generally allowed the rail industry until June 30, 1984, to fit their passenger cars with compliant glazing. Windows that were damaged due to vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Proposed paragraph (c) would remove the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Proposed paragraph (d) would remove the language that requires windows that are damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed now that the compliance phase-in period has long passed and all passenger cars, other than those that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing. In this regard, FRA invites comment whether this section needs to be retained in the final rule and specifically whether its requirements could be consolidated with those for new passenger cars in § 223.9(c) in a revised or new section.

#### Section 223.17 Identification of Equipped Locomotives, Passenger Cars and Cabooses

Section § 223.17 currently requires stenciling on the interior wall of each locomotive cab, passenger car, and caboose to identify that the equipment is fully equipped with glazing material that complies with the requirements of part 223. This requirement is no longer necessary, and the proposed rule would remove this entire section. As a result, this type of stenciling would no longer be required. For a full discussion of this proposal, please see section II.A. of this NPRM.

#### Appendix B to Part 223—Schedule of Civil Penalties

Appendix B to part 223 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to part 223. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance.

See 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invites comments.

## IV. Regulatory Impact and Notices

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

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule.

The analysis includes a quantitative evaluation of the benefits of this proposed rule. For entities choosing to take advantage of the new flexibilities and cost savings proposed, FRA estimates that there may be a minimal cost burden associated with this proposed rule. Specifically, small hammers or other tools may need to be purchased for occupants to use to break windows for emergency egress in passenger cars now considered “antiquated equipment” in that they are built after 1945 but are more than 50 years old, when these passenger cars are operated in intercity passenger or commuter trains. Additionally, railroads would probably modify existing specifications for new equipment orders to remove the requirement to stencil interior walls of the equipment as containing window glazing in full compliance with part 223. The present value of total voluntary costs affected entities may incur is estimated to be approximately \$6,000 over a 10-year period.

Overall, the benefits of this rule would greatly outweigh any costs that may be incurred. The revisions specified in this proposed rule would eliminate the cost of stenciling, reduce the cost of certain new passenger cars, and reduce the number of waivers requested by the railroad industry. Over a 10-year period, this analysis finds that \$993,057 in cost savings would accrue due to the proposed changes. The present value of this amount is \$747,436 (discounted at 7 percent). Therefore, accounting for the \$6,000 in voluntarily incurred costs to take advantage of the flexibilities proposed in this rule, the net savings of this rule would be approximately \$741,436.

FRA is proposing to eliminate the requirement to stencil the inside walls of locomotives, passenger cars, and cabooses as fully equipped with compliant glazing. This requirement was particularly necessary during the implementation phase-in period of part



223 (in the 1980s), when large numbers of affected equipment were not equipped with glazing required by part 223. However, the phase-in period for fitting equipment with certified glazing under part 223 has already passed and reliable information as to the window glazing's compliance with part 223 is independently required to be marked on each window panel that is installed. The total annual cost for all affected entities to comply with the current stenciling requirement is between \$74,170 and \$80,820 per year (non-discounted). This variability is due to the increase in real wages as discussed in section 6 of the accompanying analysis in the docket for this rulemaking. Over a 10-year period, the analysis finds that \$773,841 in cost savings would accrue through the elimination of this requirement. The present value of this amount is \$578,494 (discounted at 7 percent).

Definitions changed by this rule would help provide clarity for the rail industry and also greater consistency with other FRA regulations. Antiquated equipment would now be defined as equipment that is more than 50 years old. This would significantly reduce the number of waiver petitions submitted to exclude from the glazing requirements equipment that is more than 50 years old but built after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. FRA estimates that it would receive approximately 125 initial waiver requests over the next five years (25 per year) if this rule is not enacted. FRA assumes that any entity that was considering applying for a waiver would do so within the first five years, in order to avoid installing certified glazing. Therefore, no additional waiver applications are expected to be submitted after the fifth year. In years when the initial waiver petitions would have been submitted, the total annual cost for all affected entities would have been from \$14,738 to \$15,108 (non-discounted). Accordingly, \$74,610 in cost savings would accrue due to the reduction of initial waiver requests. The present value of this amount is \$65,411 (discounted at 7 percent).

FRA has approved approximately 175 waivers of glazing requirements for equipment more than 50 years old but manufactured after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. If the proposed rule is not enacted, renewal waivers would be required to be submitted every five years to continue operations. Under this proposal, these waivers would no longer be necessary, saving the labor cost of

preparing and submitting each waiver renewal request. The total annual cost for all affected entities to submit renewal waiver petitions would have increased from \$10,317 to \$18,711 (non-discounted). This increase would be due to the rise in real wages as discussed in section 6 of the accompanying analysis in the docket for this rulemaking. Over a 10-year period, \$144,606 in cost savings would accrue due to the reduction of renewal waivers. The present value of this amount is \$103,531 (discounted at 7 percent).

FRA is also proposing to revise the definition of the term "end facing glazing location" to clarify that the location means an "exterior" location and by expressly identifying locations that are not to be considered "end facing glazing location[s]"—namely, the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors at locations other than the cab end of a cab car of MU locomotive. However, FRA has not specifically evaluated the amount of any cost savings from this clarification.

FRA requests comments on all aspects of the regulatory evaluation and its conclusions.

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

The Regulatory Flexibility Act (RFA), Public Law 96–354, as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on "small entities" for purposes of the RFA. An agency must prepare 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. Pursuant to the RFA, 5 U.S.C. 605(b), the Administrator of FRA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect small entities. However, the effect on these entities would be purely beneficial other than for a nominal cost savings offset, as it would reduce their costs and labor burden particularly by narrowing the class of equipment subject to the full requirements of the Safety Glazing Standards regulation.

The term "small entity" is defined in 5 U.S.C. 601 (section 601). Section 601(6) defines "small entity" as having the same meaning as "the terms 'small

business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4), and (5) of this section." In turn, section 601(3) defines a "small business" as generally having the same meaning as "small business concern" under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Next, section 601(4) defines "small organization" as generally meaning any not-for-profit enterprise that is independently owned and operated, and not dominant in its field of operations. Additionally, section 601(5) defines "small governmental jurisdiction" in general to include governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest that a for-profit railroad business firm may be (and still be classified as a "small entity") is 1,500 employees for "Line-Haul Operating" railroads, and 500 employees for "Short-Line Operating" railroads. See "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A.

Under exceptions provided in section 601, Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a "Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws," which formally establishes small entities as including, among others, the following: (1) The railroads classified by the Surface Transportation Board as Class III; and (2) commuter railroads "that serve populations of 50,000 or less."<sup>3</sup> See 68 FR 24891 (May 9, 2003) codified at appendix C to 49 CFR part 209. Currently, the revenue requirements are \$20 million or less in

<sup>3</sup> "In the Interim Policy Statement [62 FR 43024 (Aug. 11, 1997)], FRA defined 'small entity,' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Equal Access for Justice Act 5 U.S.C. 501 *et seq.*, to include only railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous materials shippers that meet the income level established for Class III railroads (those with annual operating revenues of \$20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less." 68 FR 24892 (May 9, 2003). "The Final Policy Statement issued today is substantially the same as the Interim Policy Statement." 68 FR 24894.

annual operating revenue, adjusted annually for inflation. The \$20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment.<sup>4</sup> For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201. FRA is using this definition of "small entity" for this NPRM.

FRA estimates that there are 717 railroads that operate on standard gage track that is part of the general railroad system of transportation and that are, therefore, subject to part 223, see 49 CFR 223.3. Of these railroads, 45 are Class I freight railroads, Class II freight railroads, commuter railroads serving populations of 50,000 or more, or intercity passenger railroads (i.e., Amtrak, a Class I railroad, and the Alaska Railroad, a Class II railroad). The remaining 672 railroads are therefore assumed to be small railroads for the purpose of this assessment. However, most of these railroads would not be impacted by this proposed rule. For instance, locomotives acquired by small railroads are typically older Class I locomotives that would already be equipped with compliant glazing and stenciling; consequently, such small railroads would not be affected by the costs savings from eliminating the requirement to stencil locomotives as being equipped with compliant glazing in cab windows. Similarly, any passenger cars acquired by small railroads from intercity passenger or commuter railroads would already be equipped with compliant glazing and stenciling and, consequently, no cost savings from eliminating the stenciling requirement would accrue.

Small railroads and private car owners would likely be affected by the clarification that certain equipment that is more than 50 years old is considered to be antiquated and thereby subject to exclusion from the requirements of part 223 when operated in specified service.

As a result of this change, the economic burden of preparing and submitting waiver petitions would be reduced on railroads and private car owners for equipment that is more than 50 years old but built after 1945 and operated in a train for an excursion, educational, recreational, or private transportation purpose. As noted above, FRA estimates that it would receive approximately 125 initial requests for waiver of the glazing requirements over the next five years (25 per year) if this change is not made, and the approximately 175 approved waivers of glazing requirements would have to be renewed every five years if this change is not made. When including the avoided cost of renewing the additional 125 initial waiver requests by making this change—a total of approximately 600<sup>5</sup> avoided waiver petitions—the total cost savings is \$168,942 over 10 years, discounted at 7 percent. Of course, the individually allocated savings to each affected railroad or private car owner would be a comparatively smaller portion of the total cost savings.

Further, for entities choosing to take advantage of the regulatory relief permitted by this change to the definition of "antiquated equipment," FRA estimates that there may be a minimal cost burden associated with operation of such passenger cars in intercity passenger or commuter service, which will continue to be required to have emergency windows. Some affected entities may choose to install small hammers or other small tools or implements to allow for emergency egress from passenger car windows when operated in an intercity passenger or commuter train. Hammers would be used to break windows in case of an emergency. The population of private cars that operate in Amtrak trains is approximately 125 cars. FRA estimates that 80 percent of these cars would not have hammers or other tools already on board for emergency egress through windows. Therefore, for 100 of those private cars, car owners would have to

purchase four hammers or other tools per car. That total cost would be approximately \$5,000. Additionally, a minimal cost to copy and laminate instructions for use of the hammers or other tools would also be incurred. FRA estimates this total cost to be \$1,000 (approximately \$10 per car). All of these costs would be incurred during the first year. Therefore, the present value of all total costs is approximately \$6,000. This \$6,000 cost would easily be offset by the total cost savings of \$168,942 by the definitional change to "antiquated equipment," which itself is shared among all small entities. Consequently, FRA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities.

FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the RFA or Executive Order 13272. Although a substantial number of small entities would be affected by this rule, none of these entities would be significantly impacted. In order to determine the significance of the economic impact for the final rule's RFA requirements, FRA invites comments from all interested parties concerning the potential economic impact on small entities resulting from this proposed rule. FRA will consider the comments and data it receives in making a decision on the small entity impact for the final rule.

#### *Paperwork Reduction Act*

The information collection requirements in this proposed rule are being submitted for review and approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the information collection requirements as proposed to be revised, along with the current information collection requirements, and the estimated time to fulfill each requirement are as follows:

<sup>4</sup> In general, under 49 CFR 1201.1–1, the class into which a railroad carrier falls is determined by comparing the carrier's annual inflation-adjusted operating revenues for three consecutive years to the following scale after the dollar figures in the scale are adjusted by applying the railroad revenue deflator formula:

Class I—\$250 million or more;

Class II—more than \$20 million, but less than \$250 million; and

Class III—\$20 million or less.

49 CFR 1201.1–1(a), (b)(1). STB's General Instructions at 1–1 state that carriers are grouped into three classes for purposes of accounting and reporting. The three classes are as follows:

Class I: These carriers have annual carrier operating revenues of \$250 million or more after applying STB's railroad revenue deflator formula.

Class II: These carriers have annual carrier operating revenues of less than \$250 million but in excess of \$20 million after applying STB's railroad revenue deflator formula.

Class III: These carriers have annual carrier operating revenues of \$20 million or less after applying STB's railroad revenue deflator formula.

See also 78 FR 21007 (Apr. 8, 2013). It should be noted that there are some exceptions to this general definition of the three classes of carriers. As one important example, STB treats families of railroads as a single carrier for classification purposes when

those families operate within the United States as a single, integrated rail system. 49 CFR 1201–1.1(b)(1). As another example, STB considers all switching and terminal companies to be Class III carriers, regardless of their operating revenues. 49 CFR 1201–1.1(d).

<sup>5</sup> A total of approximately 600 waiver petitions would be avoided: 125 initial petitions in the first five years + 125 initial petitions renewed in the next five years + 175 approved waiver petitions renewed in the first five years + 175 approved waiver petitions renewed in the next five years.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
223.3(c)—Application: Passenger car emergency windows—marked tools with legible and understandable instructions near them to remove/break window for passenger cars built after 1945 that are more than 50 years old and operated in intercity passenger or commuter train (new requirement).	672 railroads (100 passenger cars with minimum of 4 emergency windows).	400 marked tools with legible & clear instructions.	30 minutes .....	200 hours.
223.11—Existing Locomotives: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all locomotive cab windows (revised requirement).	672 railroads .....	Already compliant/Already have FRA approved waivers.	N/A .....	N/A.
—Locomotives with cab windows broken or damaged—placed in designated service (revised requirement).	672 railroads .....	15 designations .....	30 seconds .....	0.125 hour.
—Locomotives removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	672 railroads .....	Certification done instantly at time of window manufacture.	N/A .....	N/A.
223.13—Existing Caboose: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows (revised requirement).	672 railroads .....	Already compliant/Already have FRA approved waivers.	N/A .....	N/A.
—Caboose removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	672 railroads .....	Certification done instantly at time of window manufacture.	N/A .....	N/A.
223.15—Existing Passenger Cars: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows plus four emergency windows (revised requirement).	672 railroads .....	Already compliant/Already have FRA approved waivers.	N/A .....	N/A.
—Passenger cars removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	672 railroads .....	Certification done instantly at time of window manufacture.	N/A .....	N/A.
Appendix A—Requests to glass/glazing manufacturers for glazing certification information (current requirement).	5 Glass/Glazing Manufacturers.	10 requests .....	15 minutes .....	3 hours.
—Identification of each individual unit of glazing material (current requirement).	5 Glass/Glazing Manufacturers.	25,000 pieces of glazing.	480 pieces per hour ...	52 hours.
—Testing of new material (current requirement).	5 Glass/Glazing Manufacturers.	1 test .....	14 hours .....	14 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering and maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package being submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad

Safety, at 202–493–6292, or Ms. Kimberly Toone, FRA Records Management Officer, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan at [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov) or Ms. Toone at [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public

comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

#### *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, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the 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.

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule would not have a substantial effect on the States or their political subdivisions; it would not impose any substantial direct compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing proposals that are addressed in this rule through the RSAC, which has as permanent members two organizations directly representing State and local interests, AASHTO and ASRSM.

However, this rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–20703. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters),

except when the State law, regulation, or order qualifies under the “local safety or security hazard” exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. See *Napier v. Atlantic Coast Line R.R.*, 272 U.S. 605 (1926) and *Kurns v. Railroad Friction Products Corp.*, 132 S. Ct. 1261 (2012).

#### *Environmental Impact*

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

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

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

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 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. The proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of such a statement is not required.

#### *Privacy Act*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of any written communications and comments received into any of our 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.). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov or interested parties may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

#### **List of Subjects in 49 CFR Part 223**

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

#### **The Proposed Rule**

For the reasons discussed in the preamble, FRA proposes to amend part 223 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

#### **PART 223 [AMENDED]**

■ 1. The authority citation for part 223 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 223.3 is amended by revising paragraphs (b)(3) and (4) and adding paragraph (c) to read as follows:

#### **§ 223.3 Application.**

\* \* \* \* \*

(b) \* \* \*

(3) Except as provided for in paragraph (c) of this section, locomotives, cabooses, and passenger cars that are historic or are more than 50 years old and are used only for excursion, educational, recreational, or private transportation purposes.

(4) Locomotives that are used exclusively in designated service as defined in § 223.5.

(c) This paragraph (c) applies, as specified, to each locomotive, passenger car, and caboose built after 1945 that is more than 50 years old and is used only for excursion, educational, recreational, or private transportation purposes.

(1) Each such passenger car must comply with the emergency window requirements contained in § 223.9(c) or § 223.15(c), as appropriate, when it is

occupied and operates in an intercity passenger or commuter train subject to part 238 of this chapter. A tool or other instrument may be used to remove or break an emergency window if the tool or other instrument is clearly marked and legible and understandable instructions are provided for its use.

(2) Each such locomotive, passenger car, and caboose that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of [DATE OF PUBLICATION OF FINAL RULE IN Federal Register], must remain in compliance with those requirements.

3. Section 223.5 is amended by revising the terms “end facing glazing location,” “passenger car,” and “side facing glazing location” to read as follows:

§ 223.5 Definitions.

\* \* \* \* \*

*End facing glazing location* means any exterior location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose, or passenger car, including a dome or observation car, except for: the coupled ends of multiple-unit (MU) locomotives or other equipment that is semi-permanently connected to each other in a train consist; and end doors of passenger cars at locations other than the cab end of a cab car or MU locomotive.

\* \* \* \* \*

*Passenger car* means a unit of rail rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express or passengers.

This term includes a passenger coach, cab car, and an MU locomotive.

\* \* \* \* \*

*Side facing glazing location* means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car. A side facing glazing location also means a location at the coupled ends of MU locomotives or other equipment that is semi-permanently connected to each other in a train consist, and a location at end doors other than at the cab end of a cab car or MU locomotive.

\* \* \* \* \*

■ 4. Section 223.11 is amended by revising paragraphs (c) and (d) to read as follows:

§ 223.11 Requirements for existing locomotives.

\* \* \* \* \*

(c) Except for yard locomotives and locomotives equipped as described in paragraphs (a) and (b) of this section, locomotives built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all locomotive cab windows.

(d) Each locomotive that has a locomotive cab window that is broken or damaged so that the window fails to permit good visibility shall be—

(1) Placed in Designated Service within 48 hours of the time of breakage or damage; or

(2) Removed from service until the broken or damaged window is replaced with certified glazing.

■ 5. Section 223.13 is amended by revising paragraphs (c) and (d) to read as follows:

§ 223.13 Requirements for existing cabooses.

\* \* \* \* \*

(c) Except for yard cabooses and cabooses equipped as described in paragraphs (a) and (b) of this section, cabooses built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows.

(d) Each caboose that has a window that is broken or damaged so that the window fails to permit good visibility shall be removed from service until the broken or damaged window is replaced with certified glazing.

■ 6. Section 223.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 223.15 Requirements for existing passenger cars.

\* \* \* \* \*

(c) Except for passenger cars described in paragraphs (a) and (b) of this section, passenger cars built or rebuilt prior to July 1, 1980, shall be equipped with certified glazing in all windows and a minimum of four emergency windows.

(d) Each passenger car that has a window that is broken or damaged so that the window fails to permit good visibility shall be removed from service until the broken or damaged window is replaced with certified glazing.

§ 223.17 [Removed and Reserved]

■ 7. Section 223.17 is removed and reserved.

Issued in Washington, DC, on September 19, 2014.

Joseph C. Szabo,  
Administrator.

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