

The documents that the EPA relied on for the partial deletion of OU1 and OU3 from the California Gulch Superfund Site are in the docket and are available to the public in the information repositories. A notice of availability of the Notice of Intent for Partial Deletion has been published in the Leadville Herald Democrat to satisfy public participation procedures required by 40 CFR 300.425 (e) (4).

The State, the Lake County Commissioners, the City of Leadville are supportive of the partial deletion of OU1 and OU3. The State signed a letter of concurrence on October 7, 2015.

#### *Determination That the Criteria for Deletion Have Been Met*

EPA has consulted with the State, Lake County Commissioners, and the City of Leadville on the proposed partial deletion of OU1 and OU3 of the California Gulch Site from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that the response actions taken are protective of public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

The implemented remedies achieve the degree of cleanup or protection specified in: for OU1, the 1988 OU1 ROD, 1989 OU1 AROD, the 1991 OU1 ESD and 2013 OU1 ESD; and for OU3, the 1998 OU3 ROD and the 2014 OU3 ESD.

All selected removal and remedial action objectives and associated cleanup goals for OU1 and OU3 are consistent with agency policy and guidance. This partial deletion meets the completion requirements as specified in OSWER Directive 9320.2-22, Close Out Procedures for National Priority List Sites. All response activities at OU1 and OU3 of the Site are complete and the two operable units pose no unacceptable risk to human health or the environment. Therefore, EPA and CDPHE have determined that no further response is necessary at OU1 and OU3 of the Site.

#### **V. Partial Deletion Action**

The EPA, with concurrence of the State through the CDPHE has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting all of OU1, Yak Tunnel/Water Treatment Plant; and OU3, D&RGW Slag Easement/Railroad Yard, of the Site.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This

action will be effective *April 11, 2016* unless EPA receives adverse comments by *March 10, 2016*. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 15, 2016.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 223**

**[Docket No. FRA-2012-0103, Notice No. 2]**

#### **RIN 2130-AC43**

#### **Safety Glazing Standards**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, FRA is revising and clarifying existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses. This final rule reduces 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 final rule also clarifies the application of the regulations to older 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. In addition, this final rule clarifies the definition of passenger car, updates the rule by removing certain compliance dates that are no longer necessary, and, in response to comments on the

proposed rule, modifies the application of the regulations to passenger cars and cabooses in a railroad's fleet that are used only for private transportation purposes and to older locomotives used in incidental freight service.

**DATES:** This final rule is effective April 11, 2016. Petitions for reconsideration must be received on or before April 11, 2016. Comments in response to petitions for reconsideration must be received on or before May 24, 2016.

**ADDRESSES:** *Petitions for reconsideration and comments on petitions for reconsideration:* Petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA-2012-0103, Notice No. 2, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the Web site's online instructions for submitting comments, to include petitions for reconsideration.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590.

- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140 on the Ground level of the West Building, 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 (2130-AC43). Note that all petitions and comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments, petitions, or materials.

*Docket:* For access to the docket to read background documents, any petition for reconsideration submitted, or comments received, go to <http://www.regulations.gov> at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steve Zuiderveen, Railroad Safety Specialist, Motive Power & Equipment Division, Office of Safety Assurance and Compliance, Mail Stop 25, Federal

Railroad Administration, 1200 New Jersey Avenue SE., Room W35-216, Washington, DC 20590 (telephone 202-493-6337); or Michael Masci, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue SE., Room W31-115, Washington, DC 20590 (telephone 202-493-6037).

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents for Supplementary Information

- I. Executive Summary
- II. NPRM Background
  - A. Executive Orders 13563 and 13610
  - B. RSAC End Facing Glazing Recommendation
- III. Discussion of Specific Comments and Conclusions
  - A. AAR's Comments
  - B. ATRRM's Comments
- IV. General Overview of the Final Rule
  - A. Removal of the Requirement To Stencil Certified Glazing Compliance on Inside Walls of Locomotive Cabs, Passenger Cars, and Caboose
  - B. Clarification of the Term "Antiquated Equipment"
  - C. Exclusion of Older Locomotives Used in Incidental Freight Service
  - D. Clarification of the Terms "Private Car" and "Passenger Car"
  - E. Modification of the Application of the Safety Glazing Standards to Passenger Cars and Caboose in a Railroad's Fleet That Are Used Only for Private Business Purposes
  - F. 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
  - G. Locomotives, Passenger Cars, and Caboose That Are More Than 50 Years Old But Built After 1945 and Equipped With Compliant Glazing
  - H. Clarification of the Term "End Facing Glazing Location"
  - I. Removal of Compliance Phase-In Dates That Have Passed and Are No Longer Applicable
- V. Section-by-Section Analysis
- VI. Regulatory Impact and Notices
  - A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures
  - B. Regulatory Flexibility Act and Executive Order 13272
  - C. Paperwork Reduction Act
  - D. Federalism Implications
  - E. Environmental Impact
  - F. Executive Order 12898 (Environmental Justice)
  - G. Executive Order 13175 (Tribal Consultation)
  - H. Unfunded Mandates Reform Act of 1995
  - I. Privacy Act

#### I. Executive Summary

Beginning on January 18, 2011, the President issued a set of Executive Orders which require Federal agencies to review existing regulations and

reduce the regulatory burden on industry, when appropriate. (See Executive Orders 13563 and 13610, discussed in more detail in section II of this preamble). During FRA's review of its Safety Glazing Standards in 49 CFR part 223<sup>1</sup> (part 223), FRA identified potential changes to requirements for stenciling and "antiquated equipment" as opportunities to reduce paperwork and other economic burdens on the rail industry without adversely impacting safety. On September 26, 2014, FRA issued its proposed changes to these requirements in a notice of proposed rulemaking (NPRM). See 79 FR 57856. After considering the comments received on the NPRM, FRA modifies these requirements in this final rule.

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

Separately, this final rule makes 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 doing so in this final rule. Specifically, FRA believes that amending application of the phrase "end facing glazing location" in part 223 reduces the economic burden on the rail industry without adversely impacting safety.

In addition, FRA is clarifying the application of requirements for private cars, and eliminating compliance phase-

in dates that are no longer necessary. Also, in response to comments on the NPRM, this final rule modifies application of the safety glazing requirements to passenger cars and caboose in a railroad's fleet used only for private transportation purposes and to older locomotives used in incidental freight service.

#### Economic Impact

FRA believes this final rule is consistent with current industry practices and reduces the regulatory burden on the rail industry.

The estimated quantified benefits or cost savings of this rule total \$1,088,489. The present value (PV), discounted at 7 percent, of the estimated quantified benefits is approximately \$819,479. FRA concludes that the industry incurs only a minimal cost of approximately \$6,000 to take advantage of the flexibilities in this rule. Therefore, FRA estimates the net benefit (cost savings) of this rule is approximately \$813,479 (PV, 7 percent).

#### II. NPRM Background

Under its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address all areas of railroad safety. See 49 U.S.C. 20103 and 49 CFR 1.89. In the area of safety glazing, FRA has issued regulations generally found at part 223. FRA continually reviews its regulations and revises them as needed to: (1) Ensure the regulatory burden on the rail industry is not excessive; (2) clarify the application of existing requirements and remove requirements that are no longer necessary; and (3) keep pace with emerging technology, changing operational realities, and safety concerns. 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 and make the regulation more clear and concise, FRA proposed to remove the dates that have passed. Further, FRA specifically proposed amending the safety glazing requirements based on FRA's detailed analyses of the requirements and a recommendation from FRA's RSAC, discussed below.

##### A. Executive Orders 13563 and 13610

On January 18, 2011, the President issued *Executive Order 13563* (Improving Regulation and Regulatory Review). *Executive Order 13563* requires agencies to periodically conduct retrospective analyses of their existing rules to identify requirements that may be outmoded, ineffective, insufficient, or excessively burdensome.

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

The *Executive Order* further requires that agencies modify, streamline, expand, or repeal any problematic regulatory provisions identified during their review. During FRA's retrospective analysis of part 223, the agency identified requirements for antiquated equipment in particular as being potentially burdensome to the regulated community. Specifically, the term "antiquated equipment" was not explicitly defined in the rule text, and FRA's interpretive guidance had the potential of imposing a progressively larger burden on a small segment of the industry over time. Accordingly, this final rule clarifies the application of these requirements and reduces their potential economic burden on the rail industry.

Further, on May 10, 2012, the President issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens). Executive Order 13610 requires agencies to take continuing steps to reassess regulatory requirements, and where appropriate, to streamline, improve, or eliminate those requirements. Executive Order 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 as appropriate. FRA conducted a comprehensive review of its regulations based on the guidance provided in Executive Order 13610 and determined that eliminating the stenciling requirement in § 223.17 was an opportunity to reduce the paperwork burden on the rail industry without adversely impacting safety. (FRA's Executive Order 13563 review also identified § 223.17 as a candidate for elimination.) This final rule eliminates this stenciling requirement.

### *B. RSAC End Facing Glazing Recommendation*

In addition to the changes FRA proposed in response to these Executive Orders, FRA's proposal was also based on an RSAC recommendation addressing the application of the regulations for the next generation of high-speed trainsets. RSAC is a forum for collaborative rulemaking and program development that FRA established in March 1996. RSAC includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other

interested parties.<sup>2</sup> When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, 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. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full Committee for a vote. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to the Administrator of FRA. FRA then determines what action to take on the recommendation.

In March 2013, after RSAC's Passenger Safety Working Group<sup>3</sup>

<sup>2</sup> A list of RSAC member groups includes the following: American Association of Private Railroad Car Owners (AAPRCO); American Association of State Highway and Transportation Officials (AASHTO); American Chemistry Council; American Petroleum Institute; American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRRA); American Train Dispatchers Association (ATDA); Association of American Railroads (AAR); Association of State Rail Safety Managers (ASRSM); Association of Tourist Railroads and Railway Museums (ATRRM); Brotherhood of Locomotive Engineers and Trainmen (BLET); Brotherhood of Maintenance of Way Employees Division; Brotherhood of Railroad Signalmen (BRS); Chlorine Institute; Federal Transit Administration (FTA); \* Fertilizer Institute; Institute of Makers of Explosives; International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Labor Council for Latin American Advancement; \* League of Railway Industry Women; \* National Association of Railroad Passengers (NARP); National Association of Railway Business Women; \* National Conference of Firemen & Oilers; National Railroad Construction and Maintenance Association (NRCMA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB); \* Railway Supply Institute (RSI); Safe Travel America (STA); Secretaria de Comunicaciones y Transporte; \* Sheet Metal Workers International Association (SMWIA); Transport Canada; \* Transport Workers Union of America (TWU); Transportation Communications International Union/BRC (TCIU/BRC); Transportation Security Administration (TSA); \* and United Transportation Union (UTU).

\* Indicates associate, non-voting membership.

<sup>3</sup> Members of the Working Group, in addition to FRA, include the following: AAR, including members from BNSF Railway Company, CSX Transportation, Inc., and Union Pacific Railroad Company; AAPRCO; AASHTO; Amtrak; APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), Long Island Rail Road (LIRR), Maryland Transit Administration, Metro-North Commuter Railroad

accepted a task related to high-speed rail safety, the Working Group's Engineering Task Force<sup>4</sup> established the Tier III Cab Glazing Task Group (Task Group) to focus on issues concerning safety glazing. The Task Group discussed glazing during four meetings held between March and May 2013. During the Task Group's last meeting, the Group reached consensus on a recommendation to apply FRA's 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 Committee adopted the Task Group's recommendation and presented it to FRA for consideration. Based on FRA's experience enforcing glazing requirements, FRA believes that the RSAC Task Group's approach to identifying end facing glazing locations is appropriate to adopt generally for all equipment, not only high-speed trainsets, and is therefore doing so in this final rule. FRA believes it is helpful to clarify for equipment operating at conventional speeds what exterior locations are end facing glazing locations, to reduce the economic burden on the rail industry without adversely impacting safety.

### **III. Discussion of Specific Comments and Conclusions**

The NPRM solicited written comments from the public under the Administrative Procedure Act (APA) (5 U.S.C. 553). FRA also invited comment on a number of specific issues related to the proposed rule to develop the final

Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation, Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA); ASLRRRA; BLET; BRS; FTA; NARP; NTSB; RSI; SMWIA; STA; TCIU/BRC; TSA; TWU; and UTU.

<sup>4</sup> Members of the Engineering Task Force, in addition to FRA, include the following: AAR; AAPRCO; AASHTO, including California Department of Transportation, and Interfleet; APTA, including Alstom, Ansaldo Breda, Bombardier, Central Japan Railway Company, China South Locomotive and Rolling Stock Corporation, Denver Regional Transportation District, East Japan Railway Company, Faiveley Transport, GE Transportation, Japan International Transport Institute, Japan's Ministry of Land, Infrastructure, Transport and Tourism, Kawasaki, Keolis, KPS N.A., LIRR, LTK Engineering Services, Marsh, Metrolink, Metro-North, Nippon Sharyo, Parsons Brinckerhoff, PS Consulting, Safetran Systems, SEPTA, Sharma & Associates, Siemens, Stadler, STV, Talgo, Texas Central Railway, Veolia, Voith Turbo, and Wabtec; Amtrak; ASLRRRA; BLET; European Railway Agency; International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), including SMWIA and UTU; NTSB; RSI, including Battelle Memorial Institute, and ENSCO; TCIU/BRC; and Transport Canada.

rule. Consideration of public comment is valuable, as it allows FRA to access additional viewpoints from interested parties and include them in the final rule when appropriate. By the close of the comment period on November 25, 2014, FRA received two sets of comments. AAR and ATRRM each submitted comments.

#### A. AAR's Comments

AAR requested two changes in the final rule: (1) Confirm and clarify the glazing requirements do not apply to business cars; and (2) remove the noise emissions testing decal requirement in part 210. In response to AAR's first comment, this final rule excludes certain cars in a railroad's fleet that are used only for private transportation purposes from the glazing requirements. After reviewing favorable safety data, FRA believes the glazing requirements should not apply to these cars used only for private transportation. A fuller discussion of this issue is provided in section IV.E. of this final rule.

AAR's request to remove the noise decal required in part 210 is outside the scope of this rulemaking. Therefore FRA cannot properly adopt it in this final rule. Under the APA, a final rule must be based on the subjects and issues identified in the NPRM. See 5 U.S.C. 553. The purpose for this requirement is to provide sufficient notice and opportunity for meaningful public participation in the rulemaking. The subjects and issues raised in the NPRM alert interested parties that rule changes are being considered so they can take full advantage of the opportunity to comment on them. The NPRM did not raise any issues related to existing noise emissions testing requirements. Because FRA did not provide sufficient notice for this issue, FRA cannot make any changes in the final rule based on this comment. Nevertheless, FRA continues to consider the merits of AAR's comment and will evaluate how to best address this issue in the future.

#### B. ATRRM's Comments

ATRRM expressed support for FRA's proposal and requested two modifications in the final rule: (1) Exclude historic or antiquated locomotives that are used primarily in excursion, educational, recreational, or private passenger service and also used in other limited types of service from the glazing requirements; and (2) confirm and clarify that § 223.3(c)(1) would not require an "open window" passenger car with windows that open wide enough to permit egress to also be equipped with a tool or implement to

use to break or remove a window during an emergency.

In response to ATRRM's first comment, this final rule excludes from the glazing requirements a small number of primarily excursion locomotives that are used in incidental freight service when no other power is available. Based on its thorough review of the issue, FRA believes it can provide this relief without having an adverse impact on rail safety. A fuller discussion of this issue is provided in section IV.C. of this final rule.

In response to ATRRM's second comment, FRA confirms that § 223.3(c)(1) does not require a passenger car with windows that open wide enough to permit egress to be equipped with a tool or implement to use to break or remove a window during an emergency. FRA believes the plain language of § 223.3(c)(1) is clear, and read in conjunction with §§ 223.9(c) and 223.15(c), communicates that no tool or implement is required in such a case. Therefore, FRA believes that no change is necessary and is adopting § 223.3(c)(1) as proposed. Nevertheless, FRA takes this opportunity to clarify the language and intent of this paragraph to avoid any confusion. The purpose for requiring an emergency window exit is to help ensure passengers are not sealed inside the car during an emergency when they need to exit rapidly. If the window is open or can be opened wide enough to permit egress, passengers should be able to exit the car through that window as rapidly as they would if the window were removed by a tool or other implement. Specifically, if a window frame does not contain glass, as in an "open air car," there is no need for a tool or implement to clear the space inside the window frame where the glass would otherwise be. Therefore, no tool or implement is required.

FRA carefully considered both sets of comments on the NPRM while developing this final rule. To further clarify written comments, FRA discussed the comments with the RSAC Tourist and Historic Railroads and Private Passenger Car Working Group<sup>5</sup> during a meeting on December 3, 2014. The discussion, although limited in scope, helped FRA understand the written comments. FRA added a copy of the meeting minutes to the docket for this proceeding. The final rule text differs from the NPRM text in part because of issues AAR and ATRRM raised in their comments. For changes to

the rule text, FRA addresses each of the relevant comments in the corresponding regulatory paragraphs of the section-by-section analysis provided below.

### IV. General Overview of the Final Rule

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

As noted above, FRA's review of its regulations under Executive Order 13563 and Executive Order 13610 identified as a candidate for elimination § 223.17, which provided 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, Executive Order 13610 requires agencies to take continuing steps to reassess regulatory requirements and, where appropriate, to streamline, improve, or eliminate those requirements. Executive Order 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 in Executive Order 13610 and determined 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 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 discussion below on removing compliance phase-in dates from part 223.) Moreover, in practice, FRA has found 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 required by part 223, appendix A. Each window that is equipped with certified glazing must be permanently marked by the manufacturer to indicate the type of glazing applied, which remains unchanged for each glazing panel's service life. Appendix A requires

<sup>5</sup> Members of the Working Group, in addition to FRA, include the following: AAR; AAPRCO; Amtrak; ASLRRRA; ATRRM; NRCMA; NTSB; Railway Passenger Car Alliance; and SMART.

glazing to be tested and then marked according to the tests passed as either “FRA Type I” or “FRA Type II” glazing, depending on its location. 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 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. Therefore, FRA concludes that the § 223.17 stenciling requirement is no longer necessary, and this rule eliminates the requirement for a certified glazing stencil located inside locomotive cabs, passenger cars, and cabooses.

#### *B. Clarification of the Term “Antiquated Equipment”*

Part 223 uses the term “antiquated equipment” to identify equipment excluded from the application of part 223, if the equipment is operated in only specified types of service (excursion, educational, recreational or private transportation). However, part 223 did not define the term “antiquated equipment” and the context in which the term was used in the regulation did not clearly indicate its meaning. During implementation of part 223, FRA identified the need to clarify the term “antiquated equipment” to ensure its consistent application. FRA developed guidance interpreting the term in 1989, and FRA’s Associate Administrator for Safety provided it to the agency’s regional safety management. Subsequently, FRA made the interpretation part of a 1990 FRA technical bulletin. For purposes of this final rule, FRA references the 1990 FRA technical bulletin (1990 Technical Bulletin) and has included it in the public docket for this rulemaking.

The 1990 Technical Bulletin stated “antiquated equipment,” as used in part 223, meant equipment built in 1945 or earlier. However, FRA did not explain why it distinguished between equipment built in 1945 or earlier from equipment built after 1945. FRA believes it chose 1945 as the cut-off date because it was the end of World War II, the date was approaching approximately 50 years before the date the guidance was issued, and the approaching 50-year difference in time was consistent with FRA’s treatment of other older 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, FRA uses this distinction in the Freight Car Safety Standards in 49 CFR part 215. Part 215 restricts the operation of freight cars that are more than 50 years old, measured by the date of original construction, 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, it should not treat freight equipment the same as newer equipment when used in certain types of service. As an industry practice, cars more than 50 years old are generally used only in limited freight service. However, passenger cars more than 50 years old have been successfully used for commuter service, which, to be clear, is not the type of service identified in part 223 as service for an educational, excursion, recreational, or private transportation purpose.

FRA has applied the term “antiquated equipment” in the enforcement of part 223 consistent with FRA’s 1990 Technical Bulletin without significant opposition until industry’s response to FRA’s implementation of 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>6</sup> to conduct a study of 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 that technical bulletin could conclude FRA intended for the year 1945 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, filed approximately 175 petitions for waiver from the relevant requirements contained in part 223 with FRA for

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 FRA’s enforcement history (*i.e.*, they had not previously received notice of non-compliance from FRA), they believed their equipment was antiquated and therefore not subject to part 223. Many of the petitioners were represented by AAPRCO, which submitted a letter to FRA in 2009, on behalf of its members expressing concern over FRA’s interpretation of the term “antiquated equipment.” FRA responded to AAPRCO, explaining that use of the fixed date of 1945 to determine whether equipment was antiquated was consistent with the guidance in FRA’s 1990 Technical Bulletin.

Subsequently, Executive Order 13563 was issued requiring agencies to conduct a retrospective analysis of their existing rules. As noted above, that 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 based on that analysis. During FRA’s retrospective analysis of the Safety Glazing Standards, FRA identified the application of its existing interpretation of “antiquated equipment” as potentially creating an unnecessary burden on the industry. The cost of retrofitting all non-compliant equipment built more than 50 years before 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 modifying the term “antiquated equipment” to reduce the burden on the rail industry. FRA believes the use of a rolling 50-year period to determine whether equipment is antiquated significantly reduces the burden on the rail industry by eliminating the cost of fitting equipment that is more than 50 years old and used only for certain purposes with compliant glazing. 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 also better aligns FRA’s Safety Glazing Standards with other Federal rail safety requirements that address older equipment. For example, because of its age and

<sup>6</sup> The Secretary delegated the responsibility to carry out this mandate to FRA. See 49 CFR 1.89(b).

technology, a caboose built more than 50 years ago receives special treatment as older equipment under § 215.203 of the Freight Car Safety Standards, but that same caboose was essentially treated by the Safety Glazing Standards the same as newer equipment. This rule helps classify equipment more consistently because of its age and ATTRM believes this will eliminate the need for most waivers of the glazing requirements, and waiver renewals, and remove a substantial burden on the industry.

#### *C. Exclusion of Older Locomotives Used in Incidental Freight Service*

In addition to clarifying the term “antiquated equipment,” in its comments, ATTRM also states FRA should clarify that the service historic or antiquated equipment operates in may exclude that equipment from the glazing requirements. Specifically, rather than exclude historic or antiquated locomotives used only for excursion, educational, recreational, or private transportation purposes, ATTRM requested that FRA exclude historic or antiquated locomotives that are used primarily in excursion, educational, recreational, or private passenger service and also in other limited types of service. For example, ATTRM stated that a steam locomotive normally used exclusively in mainline excursion service will sometimes be “broken in” in freight service after major mechanical work, to allow problems to be identified and corrected before the locomotive is used for a passenger train. According to ATTRM, a general system tourist railroad might also occasionally use a passenger locomotive on a non-excursion freight train if the railroad’s normal freight power is temporarily out of service or unavailable. ATTRM made clear it is not seeking exclusion for locomotives used regularly in freight service but rather for “occasional and irregular” use.

FRA understands that all locomotives (except for a handful of newly built steam locomotives, less than ten total) currently used in excursion service would be considered antiquated based on the revised definition because they are more than 50 years old. However, many locomotives more than 50 years old used in excursion service are also used in other limited types of service but would not be excluded under the proposed rule. As a result, to comply with the proposed rule, affected railroads would need to either equip these locomotives with compliant certified glazing at a significant cost, or forgo using the locomotives for certain types of service and risk losing revenue.

FRA believes the Safety Glazing Standards should not apply to these small number of excursion locomotives that are used for limited non-excursion service when no other power is available. This is a current industry practice for approximately 120 locomotives. FRA’s review of its enforcement data confirms that FRA has used its enforcement discretion consistently to permit limited use of such excursion locomotives in non-excursion service without compliant certified glazing. It also reveals that no accidents or incidents have been reported to FRA for the lack of compliant certified glazing materials in these locomotives. Based on a thorough review of this issue, FRA believes the rule can allow this current industry practice without having an adverse impact on rail safety. Therefore, this final rule provides the relief needed to permit these excursion locomotives to operate in incidental freight service, which includes the two specific scenarios ATTRM’s comments identified for “antiquated” locomotives otherwise used only for excursion, educational, recreational, or private transportation purposes.

In this final rule, FRA makes clear that incidental freight service would include when an excursion locomotive that is more than 50 years old has finished hauling an excursion train for the day, a couple of freight cars need to be switched on the railroad’s property, and no other locomotive is ready to switch the cars. Current industry practice is for the excursion locomotive to switch the freight cars. The alternative would be to start a freight locomotive not in use, conduct the required safety inspection to run it in service, and then use it to switch the freight cars. FRA believes this alternative is too burdensome for industry compared to the low safety risk incurred by using such an excursion locomotive to switch the freight cars—typically short moves conducted at fairly low speeds. This final rule allows the flexibility to use these small number of excursion locomotives as additional power in freight service under such limited circumstances. However, FRA emphasizes that these circumstances are limited. If a freight locomotive is in use and available for service on the property, the exception would not apply. Moreover, FRA expects railroads to have a sufficient number of locomotives available to satisfy their operational needs under ordinary circumstances.

FRA also makes clear that another example of incidental freight service would be breaking-in a steam

locomotive more than 50 years old in freight service after major repairs are completed as described by ATTRM. This conditioning service is an opportunity to stress the steam locomotive to ensure the repairs are effective. Excursion operations provide few opportunities for conditioning such locomotives in higher tonnage trains. Moreover, these operations typically have fairly regimented schedules due to seasonal considerations and customer demands. Using these excursion locomotives in freight service for conditioning in this limited manner is also advantageous because freight service is more frequently available. Consequently, FRA is excluding this conditioning service for these older locomotives from the glazing requirements in this final rule. However, FRA intends for the period to be limited to only the time necessary to condition the locomotive for excursion service.

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

Previous amendments to part 223, which revised the definition of “passenger car” to clarify contemporaneous revisions to the regulation, may have caused some unintentional confusion regarding 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 for 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. FRA intended for this revision of the term “passenger car” 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 they apply

to “passenger cars,” which by a literal reading of the definition of “passenger car” in § 223.5 would have seemingly excluded 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. *See* 63 FR 24675. FRA believes that the rail industry has the same understanding. The application of the glazing requirements to private cars is clear, as provided in § 223.3. Section 223.3(a) states that the requirements in part 223 apply to any railroad rolling equipment operated on standard gauge track that is a part of the general railroad system of transportation. Section 223.3(b) excludes equipment used for private transportation purposes, but only if it is historical or antiquated. Nonetheless, to alleviate any confusion, FRA is amending the definition of “passenger car,” in § 223.5 by removing the last sentence of the existing definition that indicates “[t]his term does not include a private car.”

*E. Modification of the Application of the Safety Glazing Standards to Passenger Cars and Caboose in a Railroad’s Fleet That Are Used Only for Private Transportation Purposes*

As discussed above, AAR’s comments request FRA to confirm the glazing requirements in part 223 do not apply to railroad private business cars. Part 223 has not specifically used the term “railroad private business cars,” and AAR’s comment does not provide a definition for the term. Based on FRA’s experience and discussions with AAR during the Working Group meeting on December 3, 2014, FRA understands that a railroad private business car is a specially modified passenger car or caboose a railroad uses to conduct business and entertain colleagues and guests during transport. Further, FRA understands all but a small handful of railroad private business cars are more than 50 years old. Therefore, based on their age and use, almost all these cars will be excluded from the glazing requirements because of this final rule’s clarification of the term “antiquated equipment” discussed in section IV.B, above. Nonetheless, FRA understands AAR’s comment to also request that the remaining small handful of cars be excluded from the glazing requirements.

FRA agrees that the remaining railroad private business cars should be excluded from the glazing requirements due to the limited safety risk. Only a small number of invited guests and

employees ride these cars and FRA has no record of any accidents or incidents (including injuries) due to the lack of certified glazing materials in these cars. FRA has exercised its discretion to allow railroad private business cars that are not antiquated to operate without certified glazing. Its use of discretion has not had an adverse impact on safety.

Based on a thorough review of this issue, FRA agrees with AAR’s comment and in this final rule is excluding from the glazing requirements the remaining small handful of private business cars currently held by railroads that are not equipped with certified glazing. However, railroad private business cars that are currently equipped with certified glazing are required to continue to be equipped with certified glazing to maintain the current level of safety. In addition, all new railroad private business cars must be equipped with certified glazing. Furthermore, if a railroad’s private car is used in public service, the exclusion does not apply and the car must be equipped with certified glazing. FRA continues to believe the cost of equipping a new car with certified glazing is worth the safety benefit, including new railroad private business cars.

*F. 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 clarifies application of the emergency window requirements in part 223 to passenger cars more than 50 years old, but built after 1945, by incorporating provisions in waivers FRA’s Railroad Safety Board granted (*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 for 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.” Under § 238.5, the definition of “passenger car” is a subset of “passenger equipment” and must comply with the emergency window exit requirements in § 238.113. By contrast, the part 238 emergency window exit requirements 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, must be equipped with emergency windows as

provided in § 223.9(c) or § 223.15(c), as appropriate. In this rule, the application of the emergency window requirements to passenger equipment and passenger cars in part 238 is unchanged. However, a change to part 223 is needed to incorporate existing waivers of the requirements of part 223 that require emergency windows, in light of the change concerning “antiquated equipment,” discussed above.

Specifically, in connection with the change to the application of the term “antiquated equipment,” FRA is revising the language in § 223.3(b) to expressly state the exclusion provided in § 223.3(b)(3) for “antiquated equipment,” for purposes of emergency windows, does not apply to occupied passenger cars built after 1945 when they operate in intercity passenger or commuter train service covered by part 238 (part 238 train). *See* 49 CFR 238.3. An occupied private car 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 must be equipped with emergency windows under § 223.9(c) or § 223.15(c) of part 223, if they are not “historical or antiquated equipment” and are not 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. As a condition to the waivers, such cars must be equipped with at least four emergency windows consistent 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 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 clearly marked, with legible and understandable instructions for its use. This final rule revises part 223 to be consistent with the conditions of the waivers FRA has granted and the proposed change to application of the term “antiquated equipment.”

FRA notes that passenger cars that are not covered by the requirements of part 238 but are occupied for an excursion, educational, recreational, or private purpose, and operate in a passenger train covered by the requirements of part 238, are subject to the same conditions as the train to which they are



coupled. Such cars are exposed to high speeds over long distances the same 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., an 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 use 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 emergency. Such occupied cars, built after 1945, and more than 50 years old, that operate in a part 238 train, must have emergency windows to maintain the level of safety currently provided.

Consequently, in clarifying the application of part 223 to “antiquated equipment” by using a rolling 50-year date, rather than a fixed date, FRA believes it must continue requiring passenger cars built after 1945 and more than 50 years old to comply with the emergency window requirements 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 is appropriate to remove the current requirement that such cars be equipped with these emergency windows, especially as the number of such cars considered “antiquated” will increase due to this rulemaking. However, consistent with the conditions of the waivers 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. Nonetheless, as discussed in section III.B in response to ATRRM’s comment, this final rule does not require a passenger car with windows that open wide enough to permit egress to also be equipped with a tool or implement to use to break or remove a window during an emergency.

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

In connection with the changes to application of the term “antiquated equipment,” all locomotives, passenger cars, and cabooses 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 continue to comply with those standards. Broadening the definition of the term “antiquated equipment” in this rule does not diminish the level of safety currently required. Accordingly, FRA does not intend for windows currently complying 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 the necessary framing arrangements in place 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.

*H. 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, this rule revises the definition of “end facing glazing location” to clarify that the location means an “exterior” location. It also expressly identifies locations not considered to be “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 or MU locomotive.

The former definition of “end facing glazing location” in § 223.5 does not specify that “end facing” means only a location at the exterior of a piece of equipment. As a result, the final rule clarifies that FRA does not consider windows facing an open end of a car, but located in the interior of the car, to be end facing. Thus, they do not require Type I glazing. For example, a vestibule door set back from the end frame and corner structure of a passenger car that contains a window does 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 angle of incidence of 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, compared to a window aligned with the end frame of the car.

Therefore, the likelihood of projectile contact is minimized.

Further, the former definition of “end facing glazing location” contains no qualification on 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 about FRA’s enforcement of relevant glazing requirements, which FRA intends to clarify in this final rule. Accordingly, this rule revises the definition to clarify 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 makes clear that windows in such doors do not require Type I glazing.

At the same time, this rule also revises the existing definition of “side facing glazing location” to clarify those locations are excluded from the definition of “end facing glazing location” and require Type II glazing. The former 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 are specifically excluded from the definition of “end facing glazing location,” those locations do not require Type I glazing. By specifically including them in the definition for “side facing glazing location,” the rule makes clear those locations require Type II glazing at a minimum. Thus, for example, locomotives, cabooses, and passenger cars built or rebuilt after June 30, 1980, must be equipped with certified glazing in all windows under § 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.

This final rule also clarifies that any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location shall be considered an end facing location. This is a



clarification that FRA identified when preparing the final rule, noting that FRA had inadvertently omitted this longstanding rule text from the proposed rule. The revised language clarifies the continued application of the regulation to equipment that contains curved glazing material that extends beyond its side or end.

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

This final rule removes 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 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 included those compliance dates. *See* 48 FR 56955–56955. For example in § 223.15, “Requirements for existing passenger cars,” the regulation provided that certain passenger cars have until June 30, 1984, to comply with the requirements for certified glazing and emergency windows. Because the compliance phase-in period has long passed, FRA can remove the phase-in dates from part 223 without changing the substantive effect of the requirements.

#### **V. Section-by-Section Analysis**

This section-by-section analysis of this final rule explains the rationale for each section of the rule, together with the above discussion. The regulatory changes are organized by section number.

##### *Section 223.3 Application*

As discussed in section IV.B of this final rule, FRA is revising paragraph (b)(3) to clarify the meaning of the term “antiquated equipment.” Paragraph (b)(3)(i) clarifies the meaning of “antiquated equipment” by replacing the term “antiquated” with the phrase “more than 50 years old.” This change clarifies that the exclusion from the application of the rule for “antiquated equipment” in this section applies to equipment more than 50 years old measured from the time of original construction. This is a rolling, 50-year calculation, and no longer the fixed date of 1945 or earlier. As such, some of the equipment that was subject to the full requirements of part 223 before this final rule takes effect (because it is not yet more than 50 years old) is excluded from certain requirements when the

equipment becomes more than 50 years old. To qualify for the exclusion under paragraph (b)(3)(i), when the equipment becomes more than 50 years old, the rule continues to require that the equipment be used only for excursion, educational, recreational, or private transportation purposes.

As discussed in section IV.C of this final rule, FRA is also revising paragraph (b)(3) to provide some flexibility in application of the glazing requirements to older locomotives used primarily in excursion service. Paragraph (b)(3)(i) also excludes from the glazing requirements locomotives that are historical or more than 50 years old and are used in incidental freight service. Incidental freight service includes operating a steam locomotive for conditioning purposes following major mechanical work and limited use of a passenger locomotive in freight service only when no other locomotive is available. Please note that paragraph (c), discussed below, qualifies the exclusion available under this paragraph (b)(3); both paragraphs must be read together.

As discussed in section IV.E of this final rule, FRA is also revising paragraph (b)(3) to allow existing “business cars” to continue to operate without certified glazing. Paragraph (b)(3)(ii) is added to exclude existing cabooses and passenger cars in a railroad’s fleet on April 11, 2016 that are used only for private transportation purposes and are not currently equipped with certified glazing. This change effectively makes the exclusion in paragraph (b)(3)(i) for cabooses and passenger cars that are historic or more than 50 years old and used only for the railroad’s private transportation purposes available to all of the railroad’s existing cabooses and passenger cars used only for private transportation purposes.

In addition, as FRA proposed in the NPRM, FRA is revising paragraph (b)(4) to correct the reference to § 223.5. Paragraph (b)(4) formerly contained 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 has no substantive effect on the application of the rule, as the definition of “designated service” in § 223.5 remains unchanged. Accordingly, this final rule removes the

reference to paragraph (m) of § 223.5 so that paragraph (b)(4) instead refers to § 223.5 generally.

FRA is adding paragraph (c) to clarify the requirements applicable to equipment subject to the exclusion in paragraph (b)(3) of this section for “antiquated equipment,” to maintain safety in connection with the change to the application of this term for equipment built after 1945 but more than 50 years old. As discussed in sections IV.F and IV.H of this final rule, FRA is clarifying requirements for emergency windows in occupied passenger cars operated in intercity passenger or commuter trains, as well as clarifying requirements for locomotives, passenger cars, and cabooses currently equipped with compliant glazing. Paragraph (c) applies, as specified, to each locomotive, passenger car, and caboose built after 1945 more than 50 years old and used only for excursion, educational, recreational, or private transportation purposes. Specifically, paragraph (c)(1) requires 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. Paragraph (c)(2) requires 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 February 9, 2016, to remain in compliance with those requirements. Accordingly, the final rule will not diminish the level of safety the regulation currently provides.

##### *Section 223.5 Definitions*

FRA is revising three terms in this section: “end facing glazing location,” “passenger car,” and “side facing glazing location.” FRA is also defining “incidental freight service.”

Specifically, FRA is revising the definition of “end facing glazing location” by making clear the location means an “exterior” location and that dome and observation cars are included in the category of cars subject to the application of this definition, and by expressly identifying locations not considered “end facing glazing location[s].” The definition clearly excludes 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. Instead of considering such locations to be end facing glazing locations requiring Type I glazing, these locations are considered side facing glazing locations requiring only Type II glazing, as noted below. Please see section IV.H of this final rule for a fuller discussion of the change to the definition of “end facing glazing location.”

FRA is adopting the changes to this definition as proposed in the NPRM but also makes clear the definition continues to provide that any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location is considered an end facing location. This provision applies unless the location is otherwise excluded from this definition. FRA also notes that in the final rule this provision uses the more general term “end facing” location rather than “front facing” location consistent with the use of “end facing” glazing location in this final rule.

In addition, this rule revises the definition of “side facing glazing location.” The definition now includes 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, these locations are considered side facing glazing locations requiring only Type II glazing due to the generally lower risk of an exterior projectile impacting the window surface.

In addition, this rule revises the definition of “passenger car” by removing the statement that “[t]his term does not include a private car.” The revision clarifies that a private car can be considered a passenger car. Please see section IV.D of this final rule for a full discussion of this change.

Finally, FRA is adding the term “incidental freight service” to mean the occasional and irregular use of a locomotive in freight service that is more than 50 years old and used primarily for excursion, educational, recreational, or private transportation purposes. Please see the discussion in section III.B and IV.C of this final rule, above.

#### *Section 223.11 Requirements for Existing Locomotives*

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements for existing

locomotives. As noted above, 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 damaged due to vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed because the compliance phase-in period has long passed and all existing 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.

No comments were received on this section and FRA accordingly adopts the changes to this section as proposed but further clarifies that existing yard locomotives continue to be excluded from the section’s requirements. FRA’s proposal may have inadvertently created an ambiguity whether this section’s longstanding exception for existing yard locomotives continues to apply.

#### *Section 223.13 Requirements for Existing Cabooses*

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements related to existing cabooses. As noted above, part 223 phased in requirements for glazing standards by generally allowing 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 damaged by vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed

because the compliance phase-in period has long passed and all cabooses, other than yard cabooses excluded by this section or those that satisfy the limited exclusions provided in § 223.3, are required to be equipped with compliant glazing.

FRA expressly invited comment on the NPRM on whether it needed to retain this section 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. No comments were received on this issue and this final rule makes no change to § 223.9(b). No comments were received on § 223.13 and FRA accordingly adopts the changes to § 223.13 as proposed but clarifies that existing yard cabooses continue to be excluded from § 223.13’s requirements. FRA’s proposal may have inadvertently created an ambiguity whether § 223.13’s longstanding exception for existing yard cabooses continues to apply.

#### *Section 223.15 Requirements for Existing Passenger Cars*

As discussed in section IV.I of this final rule, the amendments to this section remove the compliance phase-in dates and related language from the glazing requirements for existing passenger cars. As noted above, before these changes the rule generally allowed the rail industry until June 30, 1984, to fit their existing passenger cars with compliant glazing. Windows damaged by vandalism were required to be replaced with compliant glazing sooner than the 1984 compliance phase-in date.

Paragraph (c) removes the compliance phase-in date, June 30, 1984. This date is no longer needed now that it has long passed. Paragraph (d) removes the language that required windows damaged by vandalism to be replaced with compliant glazing sooner than the 1984 compliance phase-in date. This requirement is no longer needed because 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.

FRA expressly invited comment on the NPRM on whether it needed to retain this section needed 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. No comments were received on this issue and this final rule makes no change to § 223.9(c). No comments were received on § 223.15 and FRA

accordingly adopts the changes to § 223.15 as proposed.

*Section 223.17 Identification of Equipped Locomotives, Passenger Cars and Caboose*

Section § 223.17 required 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 part 223. This requirement is no longer necessary, and the final rule removes this entire section. As a result, this type of stenciling is no longer required. For a full discussion of this change, please see section IV.A of this final rule.

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

Appendix B to part 223 contains a schedule of civil penalties for FRA to use to enforce this part. FRA is revising the schedule of civil penalties in this final rule to reflect revisions made to part 223. Because such penalty schedules are statements of agency policy, notice and comment are not required before they are issued. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invited comments on the penalty schedule in the NPRM. However, FRA did not receive any comments. Accordingly, FRA is revising the penalty schedule to reflect the removal of § 223.17, Identification of Equipped Locomotives, Passenger Cars and Caboose, from this part.

## VI. Regulatory Impact and Notices

*A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated consistent with Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT policies and procedures. FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this final rule. FRA believes this final rule is consistent with current industry practices and reduces the regulatory burden on the rail industry.

The analysis includes a quantitative evaluation of the benefits of this final rule. For entities choosing to take advantage of the new flexibilities and cost savings provided in this final rule, FRA estimates there may be a minimal cost burden associated with this rule. Specifically, railroads or car owners or operators may need to purchase small hammers or other tools for occupants to use to break windows for emergency

egress in passenger cars now considered “antiquated equipment,” because they were built after 1945 and are more than 50 years old, when these passenger cars are operated in intercity passenger or commuter trains. Additionally, railroads will 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 greatly outweigh any costs that may be incurred. The revisions specified in this final rule 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 \$1,088,489 in cost savings will accrue due to the changes. The present value of this amount is \$819,479 (discounted at 7 percent). Therefore, accounting for the \$6,000 in voluntarily-incurred costs to take advantage of the flexibilities provided in this final rule, the net savings of this rule is approximately \$813,479.

FRA is eliminating the requirement to stencil the inside walls of locomotives, passenger cars, and cabooses as fully equipped with compliant glazing. This requirement was 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. The stencil was a clear and easy way to determine whether compliant glazing was installed. Because the phase-in period for fitting equipment with certified glazing under part 223 has long passed, the required certification markings on the window panels have become more useful and reliable for FRA to determine compliance with part 223. The total annual cost for all affected entities to comply with the stenciling requirement is from \$74,170 (Year 1) to \$80,820 (Year 10) (non-discounted). This variability is due to the increase in real wages discussed in section 6 of the accompanying analysis in the docket for this rulemaking. Consequently, over a 10-year period, the analysis finds that a total of \$773,841 in cost savings will accrue through the elimination of this requirement. The present value of this amount is \$578,494 (discounted at 7 percent).

This rule revises definitions to help provide clarity to the rail industry and also greater consistency with other FRA

regulations. Antiquated equipment will now be defined as equipment that is more than 50 years old. This significantly reduces 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. Based on past practice, FRA estimates it would have received approximately 140 initial waiver requests over the next five years (28 per year) if this rule were not issued. FRA is estimating the potential waivers that will no longer be needed over a five-year period because renewal waivers would have been needed every five years to avoid installing certified glazing. Therefore, no additional waiver applications would be expected after the fifth year. In years when the initial waiver petitions would have been submitted if this rule were not issued, the total annual cost for all affected entities would have been from \$16,507 (Year 1) to \$16,921 (Year 10) (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. Accordingly, a total of \$83,563 in cost savings will accrue over 10 years due to the reduction of initial waiver requests. The present value of this amount is \$73,260 (discounted at 7 percent).

FRA has approved approximately 310 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 final rule was not issued, renewal waivers would be required to be submitted every five years to continue operations. Under this final rule, these waivers are no longer 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 \$18,275 (Year 1) to \$28,066 (Year 10) (non-discounted) if this rule were not issued. This variability is due to the rise in real wages discussed in section 6 of the accompanying analysis in the docket for this rulemaking's docket. Over a 10-year period, a total of \$231,084 in cost savings will therefore accrue due to the reduction of renewal waivers. The present value of this amount is \$167,725 (discounted at 7 percent).

FRA notes it is revising the definition of the term “end facing glazing location” to clarify the location means

an “exterior” location and expressly identify locations not 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 did not evaluate any cost savings as a result of this clarification, because FRA has generally enforced the regulation consistent with this clarification.

FRA expressly requested comments on all aspects of the regulatory evaluation and its conclusions. No comments were received in response to FRA’s request.

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

The Regulatory Flexibility Act of 1980 (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 final rule will not have a significant economic impact on a substantial number of small entities. This rule will affect small entities. However, the effect on these entities will be purely beneficial other than for a nominal cost savings offset, as it will 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. A for-profit railroad business firm may be considered a small entity if it has less than 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. Under 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>7</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 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>8</sup>

<sup>7</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.

<sup>8</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

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 final rule.

FRA estimates that there are 726 railroads that operate on standard gage track that is part of the general railroad system of transportation and are, therefore, subject to part 223, see 49 CFR 223.3. Of these railroads, 44 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 681 railroads are therefore assumed to be small railroads for the purpose of this assessment. However, this final rule will not impact most of these railroads because locomotives acquired by small railroads are typically older Class I locomotives already equipped with compliant glazing and stenciling. Similarly, any passenger cars acquired by small railroads from intercity passenger or commuter railroads will already be equipped with compliant glazing and stenciling.

Small railroads and private car owners will likely be affected by the clarification that certain equipment more than 50 years old is considered antiquated and thereby excluded from part 223’s requirements when operated in specified service. As a result of this change, the economic burden of preparing and submitting waiver petitions will be reduced for 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

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).

receive approximately 140 initial requests for waiver of the glazing requirements over the next five years (28 per year) if this change were not made, and the approximately 310 approved waivers of glazing requirements would also have to be renewed every five years if this change were not made. When including the avoided cost of renewing the additional 140 initial waiver requests by making this change—a total of approximately 900<sup>9</sup> avoided waiver petitions—the total cost savings is \$240,985 over 10 years, discounted at 7 percent. Of course, the individually allocated savings to each affected railroad or private car owner will 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, because they 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 may be used to break these 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 will not have hammers or other tools already on board to facilitate emergency egress through windows. Therefore, for 100 of those private cars, car owners will have to purchase four hammers or other tools per car. That total cost will be approximately \$5,000. Additionally, a minimal cost to copy and laminate instructions to use the hammers or other tools will also be incurred. FRA estimates this total cost to be \$1,000 (approximately \$10 per car). All these costs will be incurred during the first year. Therefore, the present value of all total costs is approximately \$6,000. This \$6,000 cost will easily be offset by the total cost savings of \$240,985 from changing the definition of “antiquated equipment,” which is shared among all small entities. Consequently, FRA concludes this final rule will not have

a significant economic impact on a substantial number of small entities.

FRA certifies that this final 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 will be affected by this rule, none of these entities will be significantly impacted. In order to determine the significance of the economic impact for the final rule's RFA requirements, FRA expressly invited comments on the NPRM from all interested parties concerning the potential economic impact on small entities resulting from the rule. FRA did not receive comments on this issue.

#### *C. Paperwork Reduction Act*

FRA is submitting the information collection requirements in this final rule 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 new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

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).	673 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).	673 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).	673 railroads .....	15 designations .....	30 seconds ..	0.125 hour.
—Locomotives removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	673 railroads .....	Certification done instantly at time of window manufacture.	N/A .....	N/A.
223.13—Existing Cabooses: Built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows (revised requirement).	673 railroads .....	Already compliant/Already have FRA approved waivers.	N/A .....	N/A.
—Cabooses removed from service until broken/damaged windows are replaced with certified glazing (revised requirement).	673 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).	673 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).	673 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.

<sup>9</sup> A total of approximately 900 waiver petitions will be avoided: 140 initial petitions in the first five

years + 140 initial petitions renewed in the next five years + 310 approved waiver petitions renewed

in the first five years + 310 approved waiver petitions renewed in the next five years.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden 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 or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, FRA, at 202–493–6292, or Ms. Kimberly Toone, FRA Records Management Officer, Office of Information Technology, FRA, at 202–493–6132, or via email at the following addresses: [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov); [Kim.Toone@dot.gov](mailto:Kim.Toone@dot.gov).

Organizations and individuals desiring to submit comments on the collection of information requirements should send them directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this final 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.

FRA cannot 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 new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

#### D. 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, an agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this rule under the principles and criteria in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions, and it will 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. In addition, FRA determined this regulatory action will not impose substantial direct compliance costs on States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, State and local officials were involved in developing recommendations that are addressed in this rule through the RSAC, which has as permanent members two organizations directly representing State and local interests, AASHTO and ASRSRM.

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, 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. Section 20106 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 “essentially local safety or security hazard” exception to section 20106. Moreover, the Supreme Court has interpreted the former LIA to preempt the field of 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).

#### E. Environmental Impact

FRA has evaluated this final rule under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999). FRA has determined this final rule is categorically excluded from detailed environmental review under section 4(c)(20) of FRA’s Procedures, “Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.” *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Under section 4(c) and (e) of FRA’s Procedures, FRA has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to revise and clarify existing regulations related to the use of glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA does not anticipate any environmental impacts from these requirements and finds that there are no

extraordinary circumstances present in connection with this final rule.

*F. Executive Order 12898  
(Environmental Justice)*

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this final rule under Executive Order 12898 and the DOT Order and determined it will not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

*G. Executive Order 13175 (Tribal Consultation)*

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

*H. Unfunded Mandates Reform Act of 1995*

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State,

local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics, the equivalent value of \$100,000,000 in year 2014 dollars is \$155,000,000.<sup>10</sup> The final rule will 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.

*I. Privacy Act*

FRA wishes to inform all interested parties 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 Final Rule**

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

**PART 223 [AMENDED]**

- 1. Revise the authority citation for part 223 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. In § 223.3, revise paragraphs (b)(3) and (4) and add paragraph (c) to read as follows:

**§ 223.3 Application.**

\* \* \* \* \*

<sup>10</sup> See DOT guidance “2015 Threshold of Significant Regulatory Actions Under the Unfunded Mandates Reform Act of 1995,” May 6, 2015 (update), available electronically at <http://www.transportation.gov/office-policy/transportation-policy/2015-threshold-significant-regulatory-actions-under-unfunded>.

(b) \* \* \*

- (3) Except as provided in paragraph (c) of this section:

- (i) Locomotives, cabooses, and passenger cars that are historic or more than 50 years old and, except for incidental freight service, are used only for excursion, educational, recreational, or private transportation purposes; and
- (ii) Cabooses and passenger cars in a railroad’s fleet on April 11, 2016 that are used only for the railroad’s private transportation purposes. Each such railroad caboose or car that is equipped with glazing that complies with the glazing requirements contained in appendix A to this part as of February 9, 2016, must remain in compliance with those requirements.

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

(c) Except as provided in paragraph (b)(3) of this section, 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 February 9, 2016, must remain in compliance with those requirements.

■ 3. In § 223.5, revise the definitions for “End facing glazing location”, “Passenger car”, and “Side facing glazing location” and add the definition for “Incidental freight service” in alphabetical order 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. Any location which, due to curvature of the glazing material, can meet the criteria for either an end facing location or a side facing location shall be considered an end facing location.

\* \* \* \* \*

*Incidental freight service* means the occasional and irregular use of a locomotive in freight service that is more than 50 years old and used primarily for excursion, educational, recreational, or private transportation purposes.

\* \* \* \* \*

*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 any 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. In § 223.11, revise 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) Except for yard locomotives, 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. In § 223.13, revise 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) Except for yard cabooses, 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. In § 223.15, revise 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. Remove and reserve § 223.17.

**Appendix B to Part 223—[Amended]**

■ 8. In appendix B to part 223, remove the entry for § 223.17.

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**Sarah Feinberg,**

*Administrator.*

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