

RAIL

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FRA REGULATORY UPDATES

HM-263 Final Rule Briefing and Overview

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Rulemaking Drivers for This Regulation

- 2015 FAST (*Fixing America's Surface Transportation*) Act mandate, as modified by the 2021 Infrastructure, Investment, and Jobs Act.
- NTSB Safety Recommendation R-07-04 issued following the 2005 Anding, MS incident.
- Re-iterated several times, including following the accident in 2012 Paulsboro, NJ.

Presentation Structure for HM 263

Key Provisions of the new Final Rule for Real-Time Train Consist Information

- Highlight and summarize the content of the Final Rule
- Focus on Class III Railroads Alternative Compliance Method/s
- This Rule affects 49 CFR Part 174, Subpart B
- This Final Rule was Published June 24, 2024

The Compliance Dates for this regulation change are;

- June 24, 2025, for Class I Railroads, and
- June 24, 2026, for Class II and Class III railroads.

Substantive Provision

Re-Defining Train Consist Information

Final rule: “Updated Requirements for Train Consist Information” includes;

- Must show the railroad designated emergency response point-of-contact,
- Must provide origin/destination of the train,
- Must provide hazardous shipping paper information,
- Must provide emergency response information, and
- Must show the position and contents of each hazardous materials rail car by reporting mark and number.

Definition of a Train Consist- Point of Contact

Final rule: Emergency response point of contact must include phone number.

Reasoning: 24/7-365 nationwide rail operations do not have a single individual that fulfills this role at all times. It is much more reasonable and effective to provide a contact phone number that will not change.

Additional Train Consist Information Requirements

Origin/Destination Information Origin/Destination Information

Final rule: O/D information must identify the origin and destination of the train.

Reasoning: Information on the ultimate O/D of each rail car is often not available for intermodal shipments, and not necessary for initial emergency response. Providing O/D of the train aligns with the FAST Act mandate and provides direction of travel information, which is important for initial emergency response.

Train Crews must maintain a Copy of Train Consist

Final rule: Train crew must maintain a physical, paper document containing up-to-date train consist information that includes all the applicable hazardous materials descriptions for every rail car carrying hazardous materials and their specific locations within the train.

Reasoning: We are adopting as proposed in the NPRM. The physical crew copy provides a redundant backup to the electronic train consist.

***Note:** Existing Special Permits (or SP's) that authorize the train crew to maintain the train consist (on an electronic device and on authorized routes) are not affected and may continue to be used.*

This Rule Requires each Railroad to Provide and Maintain their Electronic Train Consist as follows

Railroads must maintain electronic the most updated train consist information off the train.

Railroads must make electronic train consist information immediately accessible at all times to the railroads designated emergency response point of contact so they can communicate train consist information to Federal, State, and local first responders, emergency response officials, and law enforcement personnel seeking assistance.

This Rule requires each Railroad to provide and maintain their Electronic Train Consist contd..

Biggest Change!

Railroads must provide, using electronic communication (*e.g.*, a software application or electronic data interchange, etc.), electronic train consist information to authorized Federal, State, and local first responders, emergency response officials, and law enforcement personnel along the train route that could be or are involved in the response to, or investigation of, an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials such that the information is immediately available for use at the time it is needed.

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Emergency Notification Requirements

Final rule: Railroads must telephonically notify the 9-1-1 call center having jurisdiction in the area where the accident occurred and the track owner (if different than the railroad operating the train), and transmit train consist information to them electronically.

Reasoning: 9-1-1 call centers are the best available focal point for notification of emergency situations. Focusing the emergency notification to the 9-1-1 center removes confusion and unnecessary self-deployments into the incident site.

Timing of Update to Electronic Consist System

Final rule: Any update to the train consist information must be made and reflected in the electronic train consist information required pursuant to 49 CFR § 174.28 of this subpart prior to continued movement of the train.

Reasoning: We are adopting as proposed in the NPRM. Allowing train movement without updating the electronic train consist information system creates risks that accidents or incidents will occur before the update is made. The 2007 Anding, MS incident is a key example of this type of situation.

Notification System Test Requirement

Final rule: Railroads must annually test their emergency notification system to ensure reliability across their network

Reasoning: A test program will ensure railroads have practiced sending emergency notifications and identified failures in the system before an actual emergency event.

Scope of Rule for Class III Railroads

Final rule: Class III railroads have an alternative compliance method that allows them to continue using paper train consist information documents. Class I railroads have a 1-year compliance period, Class II and III railroads have 2 years.

Reasoning: Class III railroads have small track networks which allows them to effectively work with local emergency response organizations to develop effective emergency communication plans. This lowers burdens on small businesses to build out an electronic framework. The longer compliance period for Class II and III railroads allows these smaller railroads time to modify electronic systems and change and implement procedures to comply with the rule.

Alternative Method on Class III Railroads

Applicability: Class III railroads, as defined by the STB, that transport hazardous materials in commerce.

Contents of the Plan:

- Develop a written plan that identifies the procedures for emergency notification and how the railroad will provide accurate train consist information in the event of an incident or accident involving hazmat requiring response from local emergency response agencies.
- This may be accomplished via the primary PSAP (e.g., 9-1-1 call center) responsible for the area where the accident or incident occurred.
- The written plan must assign at least one person not on board the locomotive with the responsibility to provide accurate train consist information in addition to the train crew onboard the locomotive, unless there are no employees of the Class III railroad capable of fulfilling this function.

Alternative Method of Compliance on Class III

Testing: Each Class III railroad using the alternative method must test their plan to provide emergency notification and train consist information least annually. Each test must be documented to include:

- The date of the test;
- A brief description of the method of emergency notification and transmission of train consist information;
- The name and location of the recipient of the emergency notification and train consist information;
- Whether or not the test was successful in providing emergency notification and train consist information to the intended recipient;
- For unsuccessful tests, an analysis of the contributing factors to the failure and corrective actions taken by the railroad to prevent such a failure from recurring.
- Test records must be retained for at least five years.

Alternative Method of Compliance on Class III

Notification: Each Class III railroad using the alternative method must notify emergency response organizations and primary PSAPs along their route about the contents of the written plan and any material changes to the plan made after the initial notification.

Follow the Plan: When an incident/accident involving hazmat occurs, enact the plan, notify emergency responders, and protect the lives of the crew, the community, and responders.

Retain a Copy: Keep a copy of your plan at your primary place of business and provide a copy to representatives of the Department of Transportation upon request.

Any questions please feel free to contact me!

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