

**Draft Text for Critical Incident Working Group Vote: 8-1-2012**

**§ XXX.1 Definitions.**

As used in this part—

Accident/incident means an accident or incident reportable under part 225 of this chapter.

Critical incident means either—

(1) An accident/incident that results in a fatality, loss of limb, or a similarly serious bodily injury; or

(2) A catastrophic accident/incident that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely.

Directly-involved employee means a railroad employee covered under

§ XXX.5—

(1) Whose actions are closely connected to the critical incident;

(2) Who witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person; or

(3) Who is charged to directly intervene in, or respond to, the critical incident.

FRA means the Federal Railroad Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

**§ XXX.3 Application.**

This part applies to each—

(a) Class I railroad, including the National Railroad Passenger Corporation;

(b) Intercity passenger railroad; and

(c) Commuter railroad.

**§ XXX.4 General duty.**

A railroad subject to this part shall adopt a written critical incident plan approved by the Federal Railroad Administration under § XXX.9 and shall comply with that plan. Should a railroad subject to this part make a material modification to the approved plan, the railroad shall adopt the modified plan approved by the Federal Railroad Administration under § XXX.9 and shall comply with that plan, as revised.

**§ XXX.5 Coverage of a critical incident plan.**

The critical incident plan of a railroad subject to this part shall state that it covers, and shall cover, the following individuals employed by the railroad if they are directly involved in a critical incident:

(a) Railroad employees who are subject to the hours of service laws at—

(1) 49 U.S.C. 21103 (that is, train employees not subject to subpart F of part 228 of this chapter regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(2) 49 U.S.C. 21104 (signal employees); or

(3) 49 U.S.C. 21105 (dispatching service employees);

(b) Railroad employees who are subject to the hours of service regulations at subpart F of part 228 of this chapter (regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(c) Railroad employees who maintain the right-of-way or structures; and

(d) Railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars.

**§ XXX.7 Content of a critical incident plan.**

Each critical incident plan under this part shall include, at a minimum, provisions for—

(a) Informing each directly-involved employee as soon as practicable that he or she may request relief;

(b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident;

(c) Offering timely transportation to each directly-involved employee's home terminal, if necessary;

(d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee;

(e) Permitting relief from the duty tour(s) subsequent to the critical incident, if requested by a directly-involved employee; and

(f) Permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both.

**§ XXX.9 Submission of critical incident plan for approval by the Federal Railroad Administration.**

(a) Each railroad subject to this part shall submit to the Federal Railroad Administration, Office of Railroad Safety, 1200 New Jersey Avenue, SE., Washington, DC 20590, for approval, the railroad's critical incident plan no later than 12 months after the effective date of the final rule.

(b) Each railroad subject to this part shall—

(1) Simultaneously with its filing with FRA, serve, either by hard copy or electronically, a copy of the submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section on the

international/national president and general chairperson of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section a statement affirming that the railroad has complied with the requirements of paragraph (1), together with a list of the names and addresses of the persons served.

(c) Not later than 90 days after the date of filing a submission pursuant to paragraph (a) of this section or a material modification pursuant to paragraph (e) of this section, a labor organization representing a class or craft of the railroad's employees subject to this part, may file a comment on the submission or material modification.

(1) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590; and

(2) The commenter shall certify that a copy of the comment was served on the railroad.

(d) A critical incident plan is considered approved for purposes of this part if and when FRA notifies the railroad in writing that the critical incident plan is approved, or 120 days after FRA has received the railroad's critical incident plan, whichever occurs first.

(e) After FRA's initial approval of a railroad's critical incident plan, if the railroad makes a material modification of the critical incident plan, the railroad shall submit to

FRA for approval a copy of the critical incident plan as it has been revised to reflect the material modification within 30 days of making the material modification.

(f) Upon FRA approval of a railroad's critical incident plan and any material modification of the critical incident plan, the railroad must make a copy of the railroad's plan and the material modification available to the railroad's employees identified in § XXX.5.