Determination That the Criteria for Deletion Have Been Met

More specifically for OU8, EPA and the State have determined that the responsible parties completed all appropriate response actions required by the OU8 Record of Decision, the 1995 Action Memorandum, 1998 Action Memorandum and the 1994 Consent Decree. Additionally Resurrection has continuing obligations to perform operation and maintenance of the remedies under the OU4, OU8, and OU10 Operation and Maintenance Plan. Furthermore, institutional controls are in place. EPA has consulted with the State, Lake County Commissioners, and the City of Leadville, Colorado on the proposed partial deletion of OU8 from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that all response actions have been completed such that any release from the contaminated media contained in place poses no significant threat to public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA will conduct the next five-year review in 2012 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure.

V. Deletion Action

The EPA, with concurrence of the State of Colorado through the Colorado Department of Public Health and Environment 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 OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *January 12, 2010* unless EPA receives adverse comments by *December 14, 2009.* 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: October 22, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 1987 Comp., p. 193.

APPENDIX B—[AMENDED]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under ''California Gulch, CO'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
* * *	* * *	* * *	*
CO	California Gulch	Leadville	P
* * *	* * *	* * *	*

(a) * * *
*P = Sites with partial deletion(s).

[FR Doc. E9–26952 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2009–0032; Notice No. 2]

RIN 2130–AC05

State Highway-Rail Grade Crossing Action Plans

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

ACTION: Removal of direct final rule provisions.

SUMMARY: On September 2, 2009, FRA published a direct final rule in the **Federal Register** requiring the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. FRA received one adverse comment regarding the direct final rule. Under FRA regulations, FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the **Federal Register;** however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn before its effective date. As a result, FRA is now publishing this removal of the direct final rule provisions, which removes the changes effected by the direct final rule. In a separate document publishing elsewhere in this issue of the **Federal Register,** FRA is publishing a Notice of Proposed Rulemaking (NPRM).

DATES: This removal of the direct final rule becomes effective on November 13, 2009.

Docket Information: Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC

between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1200 New Jersey Ave., SE., RRS–23, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6299), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTAL INFORMATION:

I. Withdrawal of Direct Final Rule

Pursuant to FRA's direct final rulemaking procedures set forth at 49 CFR 211.33, FRA published a direct final rule in the **Federal Register** on September 2, 2009 (74 FR 45336). FRA received one adverse comment regarding the direct final rule. Pursuant to 49 CFR 211.33(d), FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the **Federal Register;** however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn before its effective date. As a result, FRA is now publishing this removal of the direct final rule provisions, which removes the changes effected by the direct final rule. In addition, in a separate document, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register.**

As discussed, this removal returns the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect. As noted, pursuant to 49 CFR 211.33(d), the direct final rule could have been removed with a notice of withdrawal; however, due to time constraints, such a notice was not published prior to the direct final rule going into effect. Moreover, FRA is contemporaneously publishing a proposed rule providing notice and comment regarding these same revisions in this issue of the **Federal Register.** Consequently, FRA believes that it is appropriate for this removal to become effective on the date of its publication, and that notice and comment in this instance is unnecessary.

II. Section-by-Section Analysis

FRA believes that a section-by-section analysis is not necessary in this document. As noted, FRA's direct final rulemaking procedures set forth at 49 CFR 211.33 require FRA to withdraw a direct final rule where an adverse comment is submitted. In order to comply with these procedures, FRA is now publishing this removal in order to return the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect (November 2, 2009). In addition, as noted, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register** regarding these same provisions.

III. Regulatory Impact and Notices

FRA likewise believes that a regulatory impact and notices discussion is not necessary in this document. Again, in order to comply with its direct final rulemaking procedures, FRA is now publishing this removal in order to return the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect (November 2, 2009). Moreover, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register,** which provides notice of the changes originally existing in the direct final rule, while also including a complete discussion regarding regulatory impact.

List of Subjects in 49 CFR Part 234

Highway safety; Penalties; Railroad safety; and Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. The heading for part 234 is revised to read as set forth above.

■ 3. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

■ 4. Section 234.3 is revised to read as follows:

§ 234.3 Application.

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; *i.e.,* its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, *i.e.,* its operations are within 30 feet of those of any railroad.

■ 5. Section 234.4 is revised to read as follows:

§ 234.4 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

■ 6. Section 234.6 is revised to read as follows:

§ 234.6 Penalties.

(a) *Civil Penalty.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation,

except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal Penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Subpart B—Reports

■ 7. The heading to Subpart B—Reports and Plans is revised to read as set forth above.

§ 234.11 [Removed]

■ 8. Section 234.11 is removed.

Issued in Washington, DC, on November 5, 2009.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–27241 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0175]

RIN 2127–AK62

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final Rule; partial response to petitions for reconsideration.

SUMMARY: On July 27, 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance. In response, the agency received eight petitions for reconsideration. This document responds to those petitions by correcting errors in a table published in the final rule, removing a testing specification, and adjusting the compliance date for a small number of vehicles the agency had not fully accounted for in the final rule. This document provides a partial response to the submitted petitions for reconsideration.

DATES: This final rule is effective November 24, 2009.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than December 28, 2009.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Jeff Woods, Office of Crash Avoidance Standards (NVS–121), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–0098) (*Fax:* (202) 366–7002).

For legal issues: Ari Scott, Office of the Chief Counsel (NCC–112), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–2992) (*Fax:* (202) 366–3820).

SUPPLEMENTARY INFORMATION:

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I. Background

On July 27, 2009, NHTSA published a final rule [1] in the **Federal Register** (74 FR 37122) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems,* to require improved stopping distance performance for heavy truck tractors. This rule reduced the maximum allowable stopping distance, from 60 mph, from 355 feet to 250 feet for the vast majority of heavy truck tractors. For a small minority of very heavy tractors, the maximum allowable stopping distance was reduced from 355 feet to 310 feet. Having come to the conclusion that modifications needed for "typical three-axle tractors," to meet the improved requirements were relatively straightforward, NHTSA provided two years lead time for those vehicles to comply with the new requirements. These typical three-axle tractors comprise approximately 82 percent of the total fleet of heavy tractors. The agency concluded that other tractors, which are produced in far fewer numbers and may require additional work to ensure stability and control while braking, would require more lead time to meet the requirements. Due to extra time needed to design, test, and validate these vehicles, which included two-axle tractors and severe service tractors, the agency allowed four years lead time for these tractors to meet the improved stopping distance requirements.

[1] Docket # NHTSA–2009–0083.