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Wednesday, January 3, 2018

FRA Issues Notice of Proposed Rule Making Seeking Comments as to Whether it May Delay Certain Implementation Deadlines for Training Standards and Programs of Safety-Related Railroad Employees.

FRA has issued a Notice of Proposed Rule Making (“NPRM”) to consider delaying the implementation deadlines of certain training standards and programs for safety-related railroad employees by an additional year. On November 7, 2014, FRA published a final rule (“2014 Final Rule”) that established minimum training standards for safety-related railroad employees and also required railroad carriers, contractors, and subcontractors to submit training programs to FRA for approval. The 2014 Final Rule noted the importance of establishing implementation dates and providing incentives for the early filing of model programs to improve the review process.

The 2014 Final Rule provided model program developers time to file their model programs by May 1, 2017. However, based on concerns from both the American Short Line and Regional Railroad Association (“ASLRRA”) and the National Railroad Construction and Maintenance Association, Inc. (“NRC”) about their inability to submit their model training programs before the May 1 deadline, FRA issued the 2017 final rule (“2017 Final Rule”) extending the implementation dates in the 2014 Final Rule by one year. On May 22, 2017, ASLRRA filed a petition for re-consideration of the 2017 Final Rule, stating that it still has a significant number of model programs left to develop and will need the rule extended by another year. FRA believes that all regulated entities can benefit from having additional time to implement the rule’s requirements.

FRA proposes to delay each of the implementation dates in the 2017 Final Rule by an additional year, thereby delaying each of the implementation dates in the 2014 Final Rule by a total of two years. Comments are due by January 19, 2018. The full text of the NPRM is attached.

Please contact Christie Welsh at Fletcher & Sippel LLC, (312) 252-1513, or by email at cwelsh@fletcher-sippel.com, if you have any questions.

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

D. Filing Procedures

28. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be

addressed to 445 12th Street SW, Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

III. Ordering Clauses

29. *It is ordered*, pursuant to the authority found in sections 1, 4, 7, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 157, 301, 303, 307, 308, 309, 316, 319, 325(b), 336, 338, 399b, 403, 534, and 535, this Report and Order and Further Notice of Proposed Rulemaking *is hereby adopted*, effective thirty (30) days after the date of publication in the **Federal Register**.

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017-27433 Filed 12-19-17; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA-2009-0033, Notice No. 5]

RIN 2130-AC70

Training, Qualification, and Oversight for Safety-Related Railroad Employees

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to a petition for reconsideration of a final rule, FRA proposes to amend its regulations (Training, Qualification, and Oversight for Safety-Related Railroad Employees) by delaying certain implementation dates an additional year. FRA previously delayed the regulations' implementation dates for one year in a

final rule published May 3, 2017 (May 2017 Final Rule).

DATES: Written comments on this proposed rule must be received by January 19, 2018. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Comments related to Docket No. FRA-2009-0033 may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for submitting comments;

- **Mail:** Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE, W12-140, Washington, DC 20590;

- **Hand Delivery:** The Docket Management Facility is located in Room W12-140, West Building Ground Floor, U.S. DOT, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- **Fax:** 202-493-2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130-AC70). All comments received will be posted without change to <http://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents, petitions for reconsideration, or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket or visit the Docket Management Facility described above.

FOR FURTHER INFORMATION CONTACT: Robert J. Castiglione, Staff Director—Human Performance Division, Federal Railroad Administration, 4100 International Plaza, Suite 450, Fort Worth, TX 76109-4820 (telephone: 817-447-2715); or Alan H. Nagler, Senior Trial Attorney, Federal Railroad Administration, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202-493-6038).

SUPPLEMENTARY INFORMATION: On November 7, 2014, FRA published a final rule (2014 Final Rule) that established minimum training standards for each category and subcategory of safety-related railroad employees and required railroad carriers, contractors, and subcontractors to submit training programs to FRA for approval. See 79

FR 66459. The 2014 Final Rule was required by section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator. 49 CFR 1.89(b).

In the preamble to the 2014 Final Rule, FRA noted the importance of establishing implementation dates and providing incentives for the early filing of model programs to improve the efficiency and effectiveness of the review process. FRA recognized it was paramount to give model program developers sufficient time to develop programs and receive FRA approval. FRA also recognized that employers would not use those model programs unless the employers were given reasonable time to consider those programs before the employers' deadline for implementation. Consequently, the 2014 Final Rule provided model program developers with an incentive to file all model programs by May 1, 2017—eight months before the first employers were required to submit model programs and two years before smaller employers (*i.e.*, those employers with less than 400,000 total employee work hours annually) were required to submit their model programs. *See* 79 FR 66459, 66503–66504. The incentive to submit early was a guarantee from FRA that the model program would be considered approved so it could be implemented within 180 days after the date of submission unless FRA identified that all or part of the program did not conform to the rule's requirements.

After publishing the 2014 Final Rule, FRA took significant steps to educate the regulated community on its requirements and assist with the development of model training plans. For example, on March 20, 2017, FRA added information to its website to more broadly disseminate information about the 2014 Final Rule's requirements. *See* <https://www.fra.dot.gov/Page/P1023>.¹ Moreover, when ASLRRRA requested FRA's help in developing its model programs for its members, FRA shared training documents it uses to train the agency's personnel on Federal rail safety requirements. FRA then made those same FRA training documents available on FRA's website because others in the

regulated community would likely find them useful.

During FRA outreach on the 2014 Final Rule, FRA heard concerns from ASLRRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC), which were two of the associations identified in the 2014 Final Rule's Regulatory Impact Analysis (RIA) as likely model program developers. These two associations represent most of the 1,459 employers FRA projected would adopt model training programs rather than develop their own.² Although ASLRRRA had submitted several model training programs to FRA, and had made significant strides towards completing some programs, ASLRRRA still had a significant number of training programs left to develop and submit.

Based on ASLRRRA and NRC's concerns about their ability to submit their model training programs by the May 1, 2017, deadline, and the significant impact that not meeting the deadline would have on the costs associated with the rule and FRA's approval process, FRA issued the May 2017 Final Rule extending each of the implementation dates in the 2014 Final Rule by one year.

Petition for Reconsideration

On May 22, 2017, ASLRRRA filed a petition for reconsideration of the May 2017 Final Rule. ASLRRRA's petition was the only petition FRA received, and FRA did not receive any comments on the May 2017 Final Rule or ASLRRRA's petition.

In the petition, ASLRRRA stated that the association will need more than a one-year delay on each of the implementation dates in the 2014 Final Rule and requested that the one-year extension be extended further by another year. In the petition, ASLRRRA stated that it represents over 500 Class II and III railroads and has assumed the responsibility for preparing model training programs for its member railroads' use. ASLRRRA asserts that it still has a significant number of model programs left to develop and submit.

ASLRRRA states in its petition that it is utilizing a large group of volunteer safety professionals from the ranks of its Safety and Training Committee to develop the model programs. ASLRRRA is using these volunteers because the

association asserts it would not otherwise have the resources to complete the task. With the commitments it received from volunteers, ASLRRRA has mapped out a schedule to complete the model training programs by fall 2018.³ ASLRRRA's estimated completion date would mean that many of its model programs would likely not be completed by the May 1, 2018, deadline afforded by the May 2017 Final Rule.

Further, ASLRRRA's petition states that extending the one-year delay will allow adequate time to comply with FRA's review and approval process and thereby assure its members that its model programs have been approved by FRA. According to ASLRRRA the additional one-year extension will also allow each railroad adequate time to consider how it will implement each of the model programs it will adopt and whether it will need to adapt the programs to address any unique aspects of its operations.

FRA's Response

FRA delayed each of the implementation dates in the 2014 Final Rule by one year largely because if both ASLRRRA and NRC cannot submit most or all of their model training programs by the model program developer deadline, there would be significant cost impacts associated with the rule and it would complicate the approval process. Indeed, even if the ASLRRRA alone were unable to submit its model programs for its more than 500 member railroads, the cost impacts would still be substantial.

The 500 or more railroad employers that rely on ASLRRRA to produce model programs would bear significantly higher costs developing personalized training programs, rather than adopting model programs that are generic enough to apply to the gamut of railroads. Further, FRA's resources would be stretched thin reviewing potentially 500 or more individual Class II and Class III railroad employer programs, rather than a relatively small number of model programs. Moreover, by providing ASLRRRA additional time to produce model programs, FRA expects the quality of those model programs will be much better than those separately prepared by a large number of individual small or medium-sized railroads. Of course, FRA does not see the value in limiting the extension only to ASLRRRA and its member railroads. FRA believes all regulated entities can

¹ Additional details about each of those steps are contained in the May 2017 Final Rule. *See* 82 FR 20549 (May 3, 2017).

² The RIA for the 2014 Final Rule provided the estimated costs and benefits, and explained FRA based this analysis on the premise that "most small railroads and contractors will use consortiums or model training programs developed by industry associations . . . thereby minimizing costs." RIA at 15. In the RIA, FRA estimated that 1,459 railroads and contractors would use model programs.

³ Interested parties can view that schedule at <https://www.regulations.gov/document?D=FRA-2009-0033-0039>.

benefit from having additional time to implement the rule's requirements.

Overall, the additional one-year delay of the implementation dates should allow all model training program developers and other regulated entities to meet the rule's deadlines. FRA understands that many regulated entities were on schedule to meet the original deadlines in the 2014 Final Rule, or were preparing to meet the deadlines delayed by the May 2017 Final Rule. For those regulated entities that are prepared to move forward in advance of any deadline, there is certainly no prohibition against doing so and implementing a more robust training program should benefit the overall safety of those employers who are early adopters.

In consideration of the foregoing, FRA proposes to delay each of the implementation dates in the May 2017 Final Rule by an additional year, thereby delaying each of the implementation dates in the 2014 Final Rule by a total of two years.

Section-by-Section Analysis

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

The implementation dates in this proposed section would be cumulatively delayed by two years from the 2014 Final Rule so all employers have additional time to develop and submit training programs. Specifically, as previously amended by the May 2017 Final Rule, in paragraphs (a)(1) and (b) the January 1, 2019, implementation dates would be changed to January 1, 2020. Likewise, in paragraph (a)(2) the May 1, 2020, implementation date, as previously amended by the May 2017 Final Rule, would be changed to May 1, 2021.

Section 243.105 Optional Model Program Development

The implementation date in proposed paragraph (a)(3) of this section would be cumulatively delayed by two years from the 2014 Final Rule so that all model program developers have additional time to submit model programs, while also potentially benefiting from an expedited FRA review process. Under the May 2017 Final Rule, each model program submitted to FRA before May 1, 2018, would be considered approved and may be implemented 180 days after the date of the submission, unless FRA otherwise advises that all or part of the program does not conform to the rule's requirements. This NPRM proposes to extend that date until May 1, 2019.

Section 243.111 Approval of Programs Filed by Training Organizations or Learning Institutions

FRA proposes that each training organization or learning institution that has provided training services to employers covered by this part would cumulatively have an additional two years from the 2014 Final Rule to continue to offer such training services without FRA approval. As previously amended by the May 2017 Final Rule, a training organization or learning institution that has provided training services to employers covered by this part before January 1, 2018, may continue to offer such training services without FRA approval until January 1, 2019. FRA proposes to amend paragraph (b) of this section so that both dates are delayed by an additional year. Accordingly, the proposed requirement states that a training organization or learning institution that has provided training services to employers covered by this part before January 1, 2019, may continue to offer such training services without FRA approval until January 1, 2020.

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

The implementation dates in this section would be cumulatively delayed by two years from the 2014 Final Rule so all employers have additional time to designate each of their existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in such occupational category or subcategory. In paragraph (a)(1), the September 1, 2019, implementation date, as previously amended by the May 2017 Final Rule, would be changed to September 1, 2020. Likewise, in paragraph (a)(2) the January 1, 2021, implementation date, as previously amended by the May 2017 Final Rule, would be changed to January 1, 2022.⁴ Further, the dates used for referencing total employee work hours for purposes of applying both paragraphs would be modified accordingly.

In proposed paragraph (b), the January 1, 2019, implementation date, as previously amended by the May 2017

⁴ FRA notes that while the May 2017 Final Rule correctly amended the implementation date in paragraph (a)(2), the section-by-section analysis contained an incorrect statement that the paragraph (a)(2) deadline in the 2014 Final Rule was May 1, 2019; that date was January 1, 2020, calculated as four years and eight months from the date of issuance of FRA's Interim Final Compliance Guide.

Final Rule, would change to January 1, 2020.

In proposed paragraphs (e)(1) and (2), the implementation dates for refresher training would also be cumulatively delayed by two years from the 2014 Final Rule. Thus, the January 1, 2021, implementation date in paragraph (e)(1), as previously amended by the May 2017 Final Rule, would change to January 1, 2022, and the proposed completion of that refresher training for each employee would be required no later than December 31, 2024, instead of the previously amended date of December 31, 2023. In proposed paragraph (e)(2), each employer with less than 400,000 total employee work hours annually would be required to implement a refresher training program by May 1, 2023, rather than the previously amended date of May 1, 2022, and complete that refresher training for each employee by no later than December 31, 2025, instead of the previously amended date of December 31, 2024.

Regulatory Impact and Notices

Executive Orders 12866, 13563, 13771, and DOT Regulatory Policies and Procedures

This proposed rule is a non-significant regulatory action within the meaning of Executive Order 12866 and DOT policies and procedures. See 44 FR 11034 (Feb. 26, 1979). The proposed rule also follows the direction of Executive Order 13563 which emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Finally, the proposed rule follows the guidance of Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs") which directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process." FRA identified this proposed rule as a deregulatory effort to comply with E.O. 13771. For more information on Executive Order 13771, see OMB's April 5, 2017 "Memorandum: Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'"

In 2014, FRA published a Final Rule which established minimum training standards for each category and subcategory of safety-related railroad employee, as required by section 401(a) of the RSIA. FRA believes that this proposed rule will reduce the regulatory

burden on the railroad industry by delaying the implementation dates of the 2014 Final Rule. In May 2017, FRA issued a Final Rule which delayed each of the implementation dates in the 2014 Final Rule by one year. This proposed rule will extend the implementation deadlines by a total of two years from the 2014 Final Rule, one year of which has already been granted in the May 2017 Final Rule. This proposed rule would be beneficial for regulated entities by adding time to comply with the 2014 Final Rule.

The costs arising from part 243 over the 20-year period include: The costs of revising training programs to include “hands-on” training where appropriate, as well as the costs of creating entirely new training programs for any employer that does not have one already; the costs of customizing model training programs for those employers that choose to adopt a model program rather than create a new program; the costs of annual data review and analysis required in order to refine training programs; the costs of revising programs in later years; the costs of additional time new employees may have to spend in initial training; the costs of additional periodic oversight tests and inspections; the costs of additional qualification tests; and the costs of additional time all safety-related railroad employees may have to spend in refresher training.

FRA believes that additional hands-on and refresher training found in the 2014 Final Rule will reduce the frequency and severity of some future accidents and incidents. Expected safety benefits were calculated using full accident costs, which are based on past accident history, the values of preventing future fatalities and injuries sustained, and the cost of property damage. (Full accident costs are determined by the number of fatalities and injuries multiplied by their respective prevention valuations, and the cost of property damage.)

By delaying the implementation dates of the 2014 Final Rule, railroads will realize a cost savings. Railroads will not incur costs during the first two years of this analysis. Also, costs incurred in future years will be discounted an extra two years, which will decrease the present value burden. The present value of costs would be less than if the original implementation dates were adhered to. FRA has estimated this cost savings to be approximately \$40.6 million, at a 3% discount rate, and \$37.2 million, at a 7% discount rate. The table below shows the costs estimated at the final rule stage as well as the costs with the two-year implementation delay.

	Present value (3%)	Present value (7%)
Total costs (2-year delay)	\$250,309,438	\$169,902,295
Final rule costs	290,932,418	207,068,184
Two-year-delay cost savings	40,622,980	37,165,889

Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

FRA has determined and certifies that this proposed rule is not expected to have a significant impact on a substantial number of small entities. The requirements of this proposed rule would apply to employers of safety-related railroad employees, whether the employers are railroads, contractors, or subcontractors. Although a substantial number of small entities would be subject to this proposed rule, it would provide relief by extending all of the implementation dates in the 2014 Final Rule, as amended by the May 2017 Final Rule. Thus, the economic impact of this proposed rule would not be significant because it would only provide additional time for all entities to comply with the 2014 Final Rule.

This proposed rule would have no direct impact on small units of government, businesses, or other organizations. State rail agencies are not required to participate in this program. State owned railroads would receive a positive impact by having additional time to comply.

Paperwork Reduction Act

There are no new collection of information requirements contained in this proposed rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the record keeping and reporting requirements already contained in the 2014 Final Rule have been approved by the Office of Management and Budget. The OMB approval number is OMB No. 2130-0597. Thus, FRA is not required to seek additional OMB approval under the Paperwork Reduction Act.

Federalism Implications

This proposed rule would not have a substantial effect 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. Thus in accordance with Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Environmental Impact

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

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

Unfunded Mandates Reform Act of 1995

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

\$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule would not result in such an expenditure, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). FRA evaluated this proposed rule in accordance with Executive Order 13211, and determined that this regulatory action is not a “significant energy action” within the meaning of the Executive Order.

Executive Order 13783, “Promoting Energy Independence and Economic Growth,” requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (March 31, 2017). FRA determined this proposed rule would not burden the development or use of domestically produced energy resources.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

List of Subjects in 49 CFR Part 243

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

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

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

■ 1. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart B—Program Components and Approval Process

■ 2. Revise § 243.101(a) and (b) to read as follows:

§ 243.101 Employer program required.

(a)(1) Effective January 1, 2020, each employer conducting operations subject to this part with 400,000 total employee work hours annually or more shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(2) Effective May 1, 2021, each employer conducting operations subject to this part with less than 400,000 total employee work hours annually shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations subject to this part after January 1, 2020, shall submit a training program for its safety-related railroad employees before commencing operations. Upon commencing operations, the employer shall adopt and comply with the training program.

■ 3. Revise § 243.105(a)(3) to read as follows:

§ 243.105 Optional model program development.

(3) Each model training program submitted to FRA before May 1, 2019, is considered approved and may be implemented 180 days after the date of submission unless the Associate Administrator advises the organization, business, or association that developed and submitted the program that all or part of the program does not conform.

■ 4. Revise § 243.111(b) to read as follows:

§ 243.111 Approval of programs filed by training organizations or learning institutions.

(b) A training organization or learning institution that has provided training services to employers covered by this part before January 1, 2019, may continue to offer such training services without FRA approval until January 1, 2020. The Associate Administrator may extend this period at any time based on a written request. Such written requests for an extension of time to submit a

program should contain any factors the training organization or learning institution wants the Associate Administrator to consider before approving or disapproving the extension.

* * * * *

Subpart C—Program Implementation and Oversight Requirements

■ 5. Revise § 243.201(a)(1) and (2), (b), and (e)(1) and (2) to read as follows:

§ 243.201 Employee qualification requirements.

(a) * * *
 (1) By no later than September 1, 2020, each employer with 400,000 total employee work hours annually or more in operation as of January 1, 2020, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(2) By no later than January 1, 2022, each employer with less than 400,000 total employee work hours annually in operation as of January 1, 2021, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that occupational category or subcategory. The Associate Administrator may extend this period based on a written request.

(b) Except for an employer subject to the requirement in paragraph (a)(2) of this section, an employer commencing operations after January 1, 2020, shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory before beginning operations, and only permit designated employees to perform safety-related service in that category or subcategory. Any person designated shall have met the requirements for newly hired employees or those assigned new safety-related duties in accordance with paragraph (c) of this section.

(e) * * *

(1) Beginning January 1, 2022, each employer with 400,000 total employee work hours annually or more shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee’s last training event, except where refresher training is specifically required more frequently in

accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2024. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(2) Beginning May 1, 2023, each employer with less than 400,000 total employee work hours annually shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. If the last training event occurs before FRA's approval of the employer's training program, the employer shall provide refresher training either within 3 calendar years from that prior training event or no later than December 31, 2025. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

Juan D. Reyes III,
Chief Counsel.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA-2017-0360]

Hours of Service of Drivers of Commercial Motor Vehicles; Proposed Regulatory Guidance Concerning the Transportation of Agricultural Commodities

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed regulatory guidance; request for public comment.

SUMMARY: FMCSA announces regulatory guidance to clarify the applicability of the "Agricultural commodity" exception to the "Hours of Service of Drivers" regulations, and requests public comments. This regulatory guidance is being proposed to ensure consistent understanding and application of the exception by motor carriers and State officials enforcing hours of service rules identical to or compatible with FMCSA's requirements.

DATES: Comments must be received on or before January 19, 2018. This guidance would expire no later than 5 years after it is finalized.

ADDRESSES: You may insert comments identified by Federal Docket Management System Number FMCSA-2017-0360 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, phone (614) 942-6477, email MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number listed above, indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery. FMCSA recommends that you include your name and a mailing address, an email address, or a phone

number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2017-0360, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this guidance based on your comments.

B. Viewing Comments and Documents

To view comments, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2017-0360, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Legal Basis

The National Highway System Designation Act of 1995, Public Law 104-59, 345, 109 Stat. 568, 613 (Nov. 28, 1995), provided the initial exception for drivers transporting agricultural commodities or farm supplies for agricultural purposes. This Act limited the exception to a 100 air-mile radius from the source of the commodities or distribution point for the farm supplies