

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than an hour daily for 47 days that would prohibit entry within 500 yards of an explosive dredging operation. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T17-0838 to read as follows:

#### § 165.T17-0838 Safety Zone for Explosive Dredging Operations; Tongass Narrows, Ketchikan, AK.

(a) *Location*. The following area is a safety zone: All navigable waters of the Tongass Narrows, from shoreline to shoreline, within a 500-yard radius of Pinnacle Rock (located at approximately latitude 55°20'37" N, longitude 131°38'96" W) before, during, and after the scheduled operation between December 16, 2019 and January 31, 2020.

(b) *Definitions*. As used in this section:

(1) *Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Juneau.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been

authorized by the Captain of the Port Southeast Alaska to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations*. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. All vessels underway within this safety zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP's designated representative by telephone at 907-463-2980 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement*. This safety zone may be enforced during the period described in paragraph (f) of this section. Contract Drilling & Blasting LLC will have two safety vessels on-scene near the location described in paragraph (a) of this section.

(f) *Enforcement period*. This section may be enforced from 30 minutes after sunrise to one hour before sunset between December 16, 2019, and January 31, 2020, during explosive dredging operations by Contract Drilling & Blasting LLC.

Dated: November 18, 2019.

**Stephen R. White,**

*Captain, U.S. Coast Guard, Captain of the Port Southeast Alaska.*

[FR Doc. 2019-25350 Filed 11-21-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 243

[Docket No. FRA-2019-0095, Notice No. 1]

RIN 2130-AC86

#### 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 rulemaking, FRA proposes amending its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees by delaying the regulation's implementation dates for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.

**DATES:** Written comments on the proposed rule must be received by December 23, 2019. FRA will consider comments received after that date to the extent practicable.

**ADDRESSES:** You may send comments, identified by docket number FRA-2019-0095 and RIN 2130-AC86, 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:* Docket Management Facility, 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 (Federal Railroad Administration, FRA-2019-0095) or Regulatory Identification Number (RIN) for this rulemaking (2130-AC86). 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

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).

On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the American Short Line and Regional Railroad Association's (ASLRRA) request to delay the implementation dates by an additional year.

#### Petition for Rulemaking

On June 27 and July 12, 2019, ASLRRA and the National Railroad Construction and Maintenance Association, Inc. (NRC) (collectively Associations) filed petitions for rulemaking that were docketed in the U.S. DOT's Docket Management System as FRA-2019-0050. In the June 27, 2019 petition, ASLRRA and NRC request that FRA make several substantive changes to the part 243 regulation. In that petition, ASLRRA and NRC assert that as the regulation currently exists, it presents short line and regional railroads and contractors with "substantial and unnecessary regulatory burdens" and therefore additional regulatory flexibility should be afforded to short line and regional railroads and contractors. In the July 12, 2019 petition ASLRRA and NRC request that FRA initiate a rulemaking to delay the implementation dates in part 243 as applicable to Class II and III railroads and contractors for two years while FRA considers its June 27, 2019 petition. In the alternative, ASLRRA and NRC ask that FRA suspend the current implementation dates as applied to Class II and III railroads and contractors.

ASLRRA and NRC take the position that even though some of their members are not small entities by FRA's

definition of fewer than 400,000 total employee work hours annually, these other entities will likely implement model programs in the same way as the small entities, rather than develop their own programs as is expected for Class I railroads. In the June 27, 2019 petition, the Associations state that Class II regional railroads are more like Class III shortlines in terms of structure, resources, and operations than Class I railroads. For example, Class II regional railroads operate trains for shorter distances and at lower speeds than Class I railroads. Class II regional railroads also were described in the June 27, 2019 petition as typically having fewer managerial layers and without their own training facilities, which would further differentiate them from Class I railroads. That petition also asserts that even large contractors are often not comparable to Class I railroads considering that a contractor's workforce is likely to be more spreadout, resulting in the contractor incurring greater implementation costs and stretched resources than a Class I railroad. Further, the June 27, 2019 petition states that FRA's regulation treats medium and large contractors the same as a Class I railroad even if the contractor's railroad-related work is only a small percentage of its work and is equal to that of a small entity contractor.

#### FRA's Response

In the 2014 Final Rule's Regulatory Impact Analysis (2014 RIA), FRA made certain assumptions. For instance, FRA assumed that all seven Class I freight railroads, all 26 commuter railroads, and two intercity passenger railroads would not rely on model programs. Another assumption in the 2014 RIA was that 10 other entities (5 Class II railroads, 2 Class III railroads, and 3 contractors) would not rely on model programs. Thus, FRA agrees with the premise in ASLRRA and NRC's June 27, 2019 petition that, except for the approximately 45 employers who FRA estimated would develop their own programs, it is likely that the remainder will implement model programs because doing so would minimize costs for each employer. Treating this remainder group of employers in the same manner as the small entities would therefore reflect a more consistent approach to those employers adopting model programs.

In responding to the petitions for rulemaking, FRA is proposing to delay the implementation dates in the rule for all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours

annually or more. However, FRA does not agree with the request in ASLRRRA and NRC's petition to propose delaying all the implementation dates for an additional two years or to suspend the rule indefinitely while FRA considers the other requests in the June 27, 2019 petition.

FRA's proposed response is specifically targeted to equalize the implementation dates for those employers most likely to adopt model programs rather than develop their own programs as FRA identified in the 2014 RIA. The reason for this specifically targeted proposed rule is that FRA is considering whether to initiate a separate rulemaking which would be limited to amending FRA's training regulation so that the regulatory text includes the latest guidance that is intended to help small entities and other users of model training programs. Thus, without any changes to the implementation dates, the targeted employers might not understand that the regulation contains more flexibility than is commonly understood or they may not feel comfortable following the guidance believing there is regulatory uncertainty.

FRA understands that many regulated entities are on schedule to meet the deadlines in the part 243 regulation. 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 compliant training program earlier than required should benefit the overall safety of those employers' operations.

In consideration of the foregoing, FRA is proposing to reclassify those employers that FRA anticipates will likely adopt a model program so that they have the same implementation deadlines as the small entities. For purposes of this proposed rule, the Class II and III railroads and the contractors who would get relief provide training and operations in a manner more similar to that of a small entity than a Class I railroad thereby justifying delays in the implementation schedule. The proposed implementation date delays will not impact the Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more.

### Section-by-Section Analysis

#### Subpart B—Program Components and Approval Process

##### *Section 243.101 Employer Program Required*

FRA proposes to amend the implementation date in § 243.101(a)(1)

so that it is limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA proposes to amend this section so that all employers not covered by § 243.101(a)(1) will now be covered by § 243.101(a)(2), unless the employer is commencing operations after January 1, 2020 and would be covered by § 243.101(b). In other words, § 243.101(a)(1) would specifically except all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more from complying with the January 1, 2020 training program submission implementation deadline. Instead, under proposed § 243.101(a)(2), all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, will be required to comply with a training program submission deadline of May 1, 2021. Thus, those entities that benefit from the proposed rule will have an additional 16 months to submit a training program for their safety-related railroad employees.

#### Subpart C—Program Implementation and Oversight Requirements

##### *Section 243.201 Employee Qualification Requirements*

FRA proposes to amend the implementation dates in paragraphs (a)(1) and (e)(1) of this section so that they are limited to Class I railroads, and those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. Also, FRA proposes to amend this section so that all employers not covered by § 243.201(a)(1) and (e)(1) will now be covered by § 243.201(a)(2) and (e)(2). Please note that an employer commencing operations after January 1, 2020 would still be covered by § 243.201(b) and would be expected to implement a refresher training program upon commencing operations.

#### Regulatory Impact and Notices

##### *Executive Order 12866 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 has followed the guidance of Executive Order 13771, 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.” This rulemaking is a deregulatory action under Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs.” See 82 FR 9339, Jan. 30, 2017.

As explained in the Supplementary Information section, FRA published the 2014 Final Rule to fulfill a statutory mandate. On May 3, 2017, FRA delayed implementation dates in the 2014 Final Rule by one year. On April 27, 2018, FRA responded to a petition for reconsideration of that May 2017 rule by granting the ASLRRRA's request to delay the implementation dates an additional year. FRA is issuing a proposed rulemaking targeted to equalize the implementation dates for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more. With adoption of this proposed rule, the targeted employers will have until May 1, 2021 to submit a training program to FRA instead of the previous January 1, 2020 deadline which was applicable to railroads (regardless of whether they were Class II or III railroads), and contractors with 400,000 annual employee work hours or more.

FRA believes that the proposed rule will reduce the regulatory burden on the railroad industry by delaying the implementation dates. This proposed rule will extend the implementation deadlines for some regulated entities by a total of 16 months from the 2018 request. This proposed rule would be beneficial for regulated entities by adding time for some railroads and contractors to comply.

The costs arising from the training rule in 49 CFR part 243 over the 20-year period considered 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 improve 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 is proposing to reclassify those employers that FRA anticipated in the 2014 RIA would likely adopt a model program so that the regulation would reflect a more consistent approach to those employers adopting model programs. Until the petitions for rulemaking were filed, FRA did not appreciate that the Class II and III railroads and the contractors who were not identified as small entities could be expected to encounter the same types of obstacles to training program implementation as that of a small entity. The proposed implementation date delay will not impact Class I railroads, and those commuter and intercity passenger railroads with 400,000 total employee work hours annually or more. However, this rule proposes to provide all contractors, and those Class II and III railroads that are not currently identified as small entities in part 243 or commuter or intercity passenger railroads with 400,000 total employee work hours annually or more, with an additional 16 months to submit a training program for their safety-related railroad employees. FRA is also proposing that those same employers get an additional 16 months 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 that occupational category or subcategory. Finally, FRA proposes that those same employers get one additional year to complete refresher training for each of their safety-related railroad employees. With this proposed rule, the training program submission date for Class II railroads, Class III railroads, and contractors regardless of their annual employee work hours, with the exception of those intercity or commuter passenger railroads with 400,000 total employee work hours annually or more, would be delayed from January 1, 2020, to a new implementation date of May 1, 2021; the designation of employee date would be delayed from September 1, 2020, to a new implementation date of January 1, 2022; and, the deadline for the first refresher training cycle would be delayed from December 31, 2024, to a new deadline of December 31, 2025.

FRA believes that additional hands-on and refresher training 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, all contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more will realize a cost savings. All contractors, and those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more will not incur costs during the first 16 months of this analysis. Also, costs incurred in future years will be discounted an extra 16 months, which will decrease the present value burden. The present value of costs would be less than if the original implementation dates were maintained. FRA has estimated this cost savings to be approximately \$3.0 million, at a 7% discount rate, for impacted railroads and contractors that will experience relief as a result of this proposed rule.

#### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, and Executive Order 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “linehaul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than 15 million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as

“small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The \$20-million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

The requirements of this proposed rule would apply to employers of safety-related railroad employees that FRA previously determined were not small entities. 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. Therefore, the proposed rule would not impact any small entities. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. FRA requests comments on all aspects of this certification.

#### *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 recordkeeping and reporting requirements already contained in the 2014 Final Rule have been approved by OMB. 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 will 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 will 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 (Mar. 31, 2017). FRA determined this proposed rule will 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, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or

confidential information, please contact the agency for alternate submission instructions.

### **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 part 243 of 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 [AMENDED]**

- 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 paragraph (a) to read as follows:

#### **§ 243.101 Employer program required.**

(a)(1) Effective January 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad 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 not covered by paragraph (a)(1) of this section shall submit, adopt, and comply with a training program for its safety-related railroad employees.

\* \* \* \* \*

### **Subpart C—Program Implementation and Oversight Requirements**

- 3. Revise § 243.201 paragraphs (a)(1) and (2), and (e)(1) and (2) to read as follows:

#### **§ 243.201 Employee qualification requirements.**

(a) \* \* \*

(1) By no later than September 1, 2020, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this part 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 conducting operations subject to this part not covered by paragraph (a)(1) of this section 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.

\* \* \* \* \*

(e) \* \* \*

(1) Beginning January 1, 2022, each Class I railroad, and each intercity or commuter passenger railroad conducting operations subject to this

part 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 conducting operations subject to this part not covered by paragraph (e)(1) of this section 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.

Issued in Washington, DC.

**Ronald L. Batory,**  
*Administrator, Federal Railroad Administration.*

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