



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[Docket No. FRA-2020-0017, Notice No. 2]

RIN 2130-AC87

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

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

ACTION: Final rule.

SUMMARY: In response to petitions for rulemaking, FRA is issuing this final rule to amend its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees (Training Rule) to codify agency guidance and clarify existing requirements.

DATES: This regulation is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

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SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

ANSI—American National Standards Institute

APTA—American Public Transportation Association

ASLRRA—American Short Line and Regional Railroad Association

ASSP—American Society of Safety Professionals

BMWED—Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters

BRS—Brotherhood of Railroad Signalmen

EO—Executive Order

FRA—Federal Railroad Administration

MTA—Metropolitan Transportation Authority

NEPA—National Environmental Policy Act

NPRM—Notice of proposed rulemaking

NRC—National Railroad Construction and Maintenance Association, Inc.

OJT—On-the-job

OMB—Office of Management and Budget

OSHA—U.S. Occupational Safety and Health Administration

PHMSA—Pipeline and Hazardous Materials Safety Administration

RSIA—Rail Safety Improvement Act of 2008

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I. Executive Summary

Purpose of the Regulatory Action and Legal Authority

On November 7, 2014, in response to a mandate in section 401(a) of the Rail Safety Improvement Act of 2008 (RSIA),¹ and following a notice of proposed rulemaking (NPRM) published on February 7, 2012 (2012 NPRM),² FRA published a final rule (2014 Final Rule) establishing regulations at 49 CFR part 243—Training, Qualification, and Oversight for Safety-Related Railroad Employees (part 243). The rule established minimum training standards for safety-related railroad employees and required railroad carriers, contractors, and subcontractors to develop and submit certain training programs to FRA for approval.³ FRA subsequently issued final rules in 2017 and 2018 that delayed the implementation dates in the 2014 Final Rule for two years.⁴

On June 27, 2019 and July 31, 2019, FRA received joint petitions for rulemaking filed by the American Short Line and Regional Railroad Association (ASLRRA) and the National Railroad Construction and Maintenance Association, Inc. (NRC) (together, “the

¹ Pub. L. 110-432, 122 Stat. 4883 (Oct. 16, 2008), codified at 49 U.S.C. 20162. The Secretary of Transportation delegated the authority to carry out this mandate to the Federal Railroad Administrator. 49 CFR 1.89(b).

² 77 FR 6412 (Feb. 7, 2012).

³ 79 FR 66459 (Nov. 7, 2014).

⁴ On May 3, 2017, FRA published a final rule (2017 Final Rule) that delayed implementation dates in the 2014 Final Rule by one year. 82 FR 20549. On May 22, 2017, the ASLRRA filed a petition for reconsideration of the 2017 Final Rule, and FRA responded by publishing a final rule on April 27, 2018 (2018 Final Rule) that granted ASLRRA’s request to delay the implementation dates by an additional year. 83 FR 18455.

Associations”) requesting additional delays to the implementation dates and other changes to the 2014 Final Rule; these petitions were docketed in DOT’s Docket Management System as FRA-2019-0050. On January 2, 2020, FRA responded to the Associations’ petitions for rulemaking by issuing a final rule further delaying the regulation’s implementation dates for all contractors and for those Class II and III railroads that are not intercity or commuter passenger railroads with 400,000 total employee work hours annually or more.⁵

With respect to the Associations’ remaining requests in the petitions for rulemaking, FRA’s January 2, 2020 final rule stated that FRA was considering addressing these requests in a separate rulemaking.⁶ FRA initiated a rulemaking to address these remaining petition requests by issuing an NPRM on October 3, 2022.⁷ After considering comments received on the NPRM (discussed below), and in response to the Associations’ remaining petition requests, FRA is issuing this final rule to revise part 243 to clarify current requirements, codify existing guidance, and remove regulatory provisions that are obsolete.

Costs and Benefits

FRA estimates the final rule will provide cost savings of \$1.1 million based on a one-year relief period to small entities for annual refresher training requirements. FRA also expects that this final rule will provide the railroad industry and FRA with several qualitative benefits. These benefits are discussed in Section V (Regulatory and Statutory Requirements) and include: (1) providing clarity to the regulated community, thereby

⁵ 85 FR 10 (Jan. 2, 2020).

⁶ *Id.* (stating FRA’s intent to initiate a separate rulemaking that would be limited to amending FRA’s training regulation so that the regulatory text includes the latest guidance intended to help small entities and other users of model programs). Addressing the Associations’ remaining requests in a separate rulemaking was consistent with FRA’s previous statement on the subject. 84 FR 64447, 64449 (Nov. 22, 2019).

⁷ 87 FR 59749.

facilitating compliance with the regulatory requirements; and (2) making it easier for FRA to administer the requirements of part 243.

II. Background

In the 2014 Final Rule, FRA stated its intention to issue a compliance guide with a primary emphasis on assisting small entities, but which could also be used by any employer.⁸ FRA anticipated that the compliance guide would also help model program developers in drafting programs to be adopted by small railroads and contractors. On May 1, 2015, FRA issued an interim compliance guide that was made available for immediate effectiveness in the 2014 Final Rule docket.⁹ FRA sought comments on the interim compliance guide for potential modification.¹⁰

On May 25, 2016, FRA responded to comments and posted its first version of the final compliance guide.¹¹ On November 30, 2016, FRA posted a second version of the final compliance guide,¹² largely to publish FRA's answers to questions received from the regulated community that would benefit from broad dissemination. When FRA amended the implementation dates with the 2017 Final Rule and 2018 Final Rule, FRA made conforming changes to the final compliance guide and posted the revised version on FRA's website at <https://railroads.dot.gov/divisions/safety-partnerships/training-standards-rule>. Additional guidance on the requirements of part 243 can also be found at that location on FRA's website.

This final rule addresses two of the overarching concerns expressed in the Associations' petitions for rulemaking: (1) that FRA provide sufficient certainty as to how the agency will apply the requirements of part 243 by converting existing part 243

⁸ 79 FR 66474.

⁹ Document number FRA-2009-0033-0031, att. 2.

¹⁰ Document number FRA-2009-0033-0031, att.1.

¹¹ Document number FRA-2009-0033-0035.

¹² Document number FRA-2009-0033-0036.

guidance into regulatory text; and (2) that FRA adopt specific regulatory text changes to facilitate compliance with part 243.¹³ Please see the NPRM for a detailed discussion of the Associations' petition requests that FRA is addressing through this rulemaking,¹⁴ as well as a summary of other part 243 guidance FRA has provided to the regulated community, but that the petitions for rulemaking did not address.¹⁵

III. Discussion of Comments and FRA's Response

FRA received eight written comments in response to the NPRM, including a joint comment submitted by the Associations. The other commenters were the American Public Transportation Association (APTA); American Society of Safety Professionals (ASSP); the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED); the Brotherhood of Railroad Signalmen (BRS); the Metropolitan Transportation Authority (MTA); and several individuals. One comment from an individual was not germane to the rulemaking¹⁶ and therefore will not be discussed further. The other three comments were from students at the Bush School of Government & Public Service at Texas A&M University (Texas A&M Students). FRA did not receive a request for a public hearing, and none was provided.

Most of the comments are discussed in this section and apply generally to the final rule as a whole. Some of these general comments are also discussed in the Section-by-Section Analysis to assist with clarity. The remaining comments that relate to specific provisions are discussed in the relevant Section-by-Section analysis. The order in which

¹³ Document number FRA-2019-0050-0001, att. 2. FRA notes that representatives of the Associations met with FRA on January 17, 2020 to discuss their requests for greater clarity pertaining to the requirements for refresher training, program submission, model program adoption, and periodic oversight. A follow-up meeting with the Associations was held by phone on December 4, 2020 so that FRA could express its continuing interest to respond to the petitions for rulemaking and the Associations could emphasize concerns of greatest interest to their members.

¹⁴ 87 FR 59750–52. The NPRM also responded to the Associations' petition requests that FRA is not addressing in this final rule, and which therefore will not be discussed further here. *Id.* at 59752–53.

¹⁵ *Id.* at 59750–53.

¹⁶ FRA-2020-0017-0003.

the comments are discussed, whether by issue or by commenter, is not intended to reflect the significance of the comment raised or the standing of the commenter.

Comments Expressing General Support

Several commenters supported the changes proposed in the NPRM. Specifically, the Associations expressed support for the proposed changes that would amend part 243 consistent with current FRA guidance to small entities. Similarly, BRS noted full support for the proposed changes, citing the importance of all safety-related employees being properly trained and qualified. BRS also encouraged FRA to end the delay in implementation of this rule. BMWED expressed general support for the proposed changes, especially those changes that: lead to consistent training requirements, require railroad workers to participate in the development of new technology for the industry, and ensure that workers are trained in new technology. The Texas A&M Students also expressed general support for the proposed changes and provided specific recommendations to ease the burden on employers.

Refresher Training

The Associations and the Texas A&M Students raised concerns about the administrative and paperwork burden associated with refresher training. For instance, the Associations expressed general concern that companies would incur administrative burdens in performing, tracking, and scheduling refresher training, and recommended ways in which the burden could be reduced. The Associations' comment requested that FRA allow railroads to provide a methodology in their part 243 submissions for assessing whether an employee needs refresher training, as opposed to the rule's current requirement to provide refresher training for all employees at least every three calendar years. The Associations assert that this change would allow Class II and III railroads to

use existing operational testing programs, under a different FRA regulation,¹⁷ to identify which employees need refresher training, thereby ensuring that employees who need refresher training receive it, while reducing the burden on railroads of providing refresher training for all employees. The Associations state that approximately two percent of short line and regional railroad workers fail such testing and thus, refresher training should be limited to only the small percentage of employees who have a demonstrated need.

Meanwhile, the Texas A&M Students commented that they are concerned about any increase in the administrative and paperwork burden for management, especially for smaller contractors, even while they expressed a conclusion that “these burdens are not significant enough to prevent the FRA from making these changes.”¹⁸ The Texas A&M Students also expressed specific support for the revised refresher training definition and refresher training requirements generally because they viewed such training as a review of important safety skills and regulations governing the railroad industry that could reasonably be expected to improve the consistent application of safety requirements and increase efficiency.

BMWED expressed support for the proposed revisions to the definition of refresher training that emphasized improving the skills and knowledge of existing employees and deleting the “to remain qualified” language in the existing rule that it alleges could be used by employers to diminish an employee’s labor or employment law rights.

FRA Response—Refresher Training

FRA agrees with some of the broad concerns raised by the Associations about the refresher training burden and the final rule addresses aspects of those concerns. For

¹⁷ 49 CFR part 217 (regulating railroad operating rules).

¹⁸ FRA-2020-0017-0010 at 3.

instance, FRA agrees with the Associations' comment that some employees may not need refresher training on longstanding requirements that are complied with regularly and that can be confirmed through testing. Therefore, FRA will include a test out option.

However, the existing operational efficiency testing, conducted under a different FRA rule, is too narrow to fully substitute for refresher training because it does not require training on new equipment and technology, topics which could be included in refresher training. Further, the existing operational efficiency testing programs may focus on certain knowledge or skills but not necessarily cover the critical duties assigned to an employee. Also, the type of testing a person receives during or at the conclusion of formal training, such as initial or refresher training required under part 243, must be part of a structured and defined curriculum that may be significantly different from the type of testing that occurs during existing operational efficiency testing. For these reasons, the test out option in this final rule will require that such testing be designed to determine that an employee has the critical knowledge and skills to perform the safety-related duties assigned and meet the equivalent standards for formal testing on the same subject matter but will not be based on existing operational efficiency testing. As further explained in the section-by-section analysis for refresher training in § 243.201(e), an employee will generally be allowed to test out of a refresher training if the employee has previously received formal training on the subject matter.

Including the test out option is a change from FRA's position in the 2022 NPRM at § 243.201(e)(3)(ii), which would have prohibited an employee from testing out of refresher training.¹⁹ In reviewing the comments on the 2022 NPRM, the 2022 NPRM itself, and the prior rulemaking on this subject in which the agency rejected allowing employees to test out of refresher training, FRA finds that it had over-emphasized the

¹⁹ 87 FR 59758, 59768.

lack of a specific statutory test out option and therefore narrowly interpreted the need for “ongoing training.” Notably, the more complete statutory phrase requires “a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures.”²⁰ Accordingly, FRA determined that, although some employers may decide to reject a test out option for the reasons FRA provided, including a test out option is more consistent with the statutory language.

Regarding the comments on the administrative and paperwork burden, this final rule does not impose any new refresher training requirements. The final rule instead makes clarifying revisions related to the existing refresher training requirements, which would not increase the costs of compliance with the regulation and the costs associated with refresher training were previously addressed for the 2014 Final Rule.²¹ To further reiterate this point, the Paperwork Reduction Act (PRA) table in the Regulatory Impacts and Notices section contains a row indicating that the paperwork burden on refresher training (§ 243.201(e)) was already accounted for under § 243.203.

Because the comments regarding the proposed revised definition of “refresher training” were positive and FRA did not find further clarification necessary, the final rule amends the definition as proposed. The revised definition explains the purpose of refresher training and distinguishes it from initial training—issues that were addressed in the proposed rule.²²

Implementation Dates

APTA and MTA raised concerns that FRA’s proposal to remove the implementation dates from § 243.201 would create ambiguity regarding whether initial and on-the-job (OJT) training requirements apply to employees whose designation was

²⁰ 79 FR 66469-70 and 49 U.S.C. 20102. In the 2014 final rule, FRA discussed that no comments were received on a test out option but provided reasons why FRA did not consider a test out option to be viable.

²¹ Section 243.201(e)(1) and (2).

²² 87 FR 59754.

declared by the implementation date. APTA and MTA asked FRA to clarify, in the preamble or regulatory text, that this proposal would not impact the initial qualification for an employee whose designation was declared by the applicable implementation date and that any such initial qualification designations remain in effect.

FRA Response—Implementation Dates

The 2014 Final Rule established specified implementation dates in § 243.201(a)(1) and (2) by which employers were required to designate existing employees who would not be required to complete initial training per the employer training program submitted under § 243.101.²³ FRA proposed removing the implementation dates in § 243.201 to remove deadlines that have already passed and are no longer necessary.²⁴ FRA understands that removal of the implementation dates, although not intended to cause a substantive change, concerned some commenters on how the proposed rule could be read to potentially invalidate the exemption provided in the 2014 Final Rule. Thus, to provide the clarity requested by APTA and MTA, FRA is including regulatory text in § 243.201(a)(3)(i) that will expressly specify that the requirements in this paragraph do not impact the designation of existing safety-related railroad employees by the removal of the implementation dates.

Further, to provide additional regulatory relief for small entities, the final rule is delaying the refresher training implementation deadline by one year to December 31, 2026, in § 243.201(e)(2).

Scope of Part 243

Comments from BMWED and ASSP suggested that FRA expand the purpose and scope section in part 243 to address certain issues. For instance, BMWED quoted the

²³ 77 FR 6412, 6434-6435 (explaining in the proposed rule why both employers and labor organizations supported exempting existing employees from initial training).

²⁴ 87 FR 59757.

preamble of the 2012 NPRM, which clarified that “FRA does not regulate employment issues and will leave those issues to be settled in accordance with any applicable collective bargaining agreement or employment and labor law,”²⁵ and requested that FRA add some similar language in the regulatory text. Specifically, BMWED suggested that a paragraph (f) be added to § 243.1 stating that “[n]othing in this part diminishes any rights, privileges, or remedies a safety-related railroad employee may have under any collective bargaining agreements or State or Federal laws.” BMWED suggested that adding such regulatory text would “recognize that disputes concerning the application of the [collective bargaining agreement] related to training, promotion and qualification, as well as allegations of illegal discrimination under State or Federal law, can and do arise.”²⁶

ASSP requested clarification on how part 243 “transcends” with the requirements administered by the U.S. Occupational Safety and Health Administration (OSHA). In addition, ASSP commented that because some railroads “seem to be lacking in hazmat knowledge” FRA ought to consider including some form of hazardous materials training under part 243 and specifically suggested including the requirements of 49 CFR part 174, which covers the transportation of hazardous materials by rail.

FRA Response—Scope of Part 243

In response to BMWED’s comment, FRA reiterates that part 243 does not impact aspects of the employment relationship defined by collective bargaining agreements or employment and labor law. Accordingly, FRA declines to add regulatory text as a clarification because it is unnecessary.²⁷

²⁵ As stated in the 2012 NPRM and quoted by BMWED, “Of course, FRA does not regulate employment issues and will leave those issues to be settled in accordance with any applicable collective bargaining agreement or employment and labor law.” 77 FR 6435 and FRA-2020-0017-0007.

²⁶ FRA-2020-0017-0007 at 2.

²⁷ See, e.g., 79 FR 66466 (explaining that it is unnecessary to add a statement such as the one recommended in the comment based on principles set forth in Executive Order 13132 and affirmed in the Presidential Memorandum regarding preemption issued on May 20, 2009).

ASSP's comment on the interaction between part 243 and OSHA requirements is beyond the scope of this rulemaking, which is limited to codifying FRA guidance and clarifying existing part 243 requirements in response to petitions for rulemaking. However, in response to ASSP's comment, FRA clarifies here that part 243 covers training on Federal railroad safety laws, regulations, and orders, as well as any railroad rules and procedures promulgated to implement those Federal requirements. Part 243 does not limit or override OSHA's jurisdiction except as explicitly noted by FRA and OSHA.²⁸

ASSP's comment regarding hazardous materials training is beyond the scope of the NPRM. The purpose of this rulemaking is to codify FRA guidance and clarify existing part 243 requirements in response to petitions for rulemaking. The NPRM did not propose any changes to part 243 involving the application of that part to hazardous materials training. Further, FRA has declined to regulate the training of hazardous materials employees through part 243 because that training is already sufficiently covered by DOT regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA).²⁹ FRA specifically stated in 49 CFR 243.1(e) that "The requirements in this part do not address hazardous materials training of 'hazmat employees' as defined in 49 CFR 171.8 as such training is required pursuant to 49 CFR part 172, subpart H." The preamble to the 2014 Final Rule contains further explanation of FRA's decision to leave hazardous materials training out of part 243. For more discussion of this issue, please refer to the preamble of the 2014 Final Rule.³⁰

²⁸ For example, part 243 may preempt a portion of OSHA's requirements related to cranes and derricks used for railroad roadway work. 85 FR 57109 (Sept. 15, 2020). OSHA's rule revised the OSHA standard for cranes and derricks in construction to provide specific exemptions and clarifications about the application of the standard to cranes and derricks used for railroad roadway work and reflected the preemption of some OSHA requirements by FRA.

²⁹ See e.g., 49 CFR part 172, subpart H.

³⁰ 79 FR 66466.

Consensus Standards

ASSP's comment stated that FRA should use national consensus standards in the regulatory process and specifically suggested that part 243 include by reference two American National Standards Institute (ANSI standards): ANSI/ASSP Z490.1-2016 Criteria for Accepted Practices in Safety, Health and Environmental Training and ANSI/ASSP Z10.0-2019 Occupational Health and Safety Management Systems.

FRA Response—Consensus Standards

ASSP's comment requesting FRA to consider incorporating by reference ANSI standards is beyond the scope of the NPRM. Further, the ANSI standards that ASSP identifies fall outside of the scope of part 243 because they establish criteria and management tools related to occupational health, safety, and environmental training programs. As required by statute, part 243 covers training regarding Federal railroad safety laws, regulations, and orders, as well as those railroad rules and procedures promulgated to implement those Federal requirements.³¹ While one effect of part 243 may be increased safety for railroad employees and railroad contractors and subcontractors, the purpose of part 243's minimum training standards is to ensure that railroad employees and contractors have the knowledge necessary to comply with Federal railroad safety laws, regulations, and orders, as well as railroad rules and procedures implementing these requirements.

³¹ 49 U.S.C. 20162(a)(1).

IV. Section-by-Section Analysis

This section describes the regulatory revisions made in this final rule. Where FRA is adopting the NPRM proposals exactly as proposed, FRA is not repeating the full section-by-section analysis for each relevant provision. Instead, FRA refers readers to the complete section-by-section analysis for those regulatory provisions in the NPRM's preamble.

Subpart A—General

Section 243.1 Purpose and Scope

Section 243.1 sets forth the purpose and scope of part 243. As proposed in the NPRM, the final rule is adding new paragraphs (f) and (g) to this section to incorporate existing guidance related to railroad bridge engineers and non-railroad employees who perform elective audits or assessments. Paragraph (f) codifies guidance in the compliance guide, which explains that part 243 does not apply when the training required under FRA's regulations is obtained through earning a college degree or certification from an accredited training organization or learning institution.³² Paragraph (g) codifies guidance in the compliance guide clarifying that employers are not required to train non-railroad employees (e.g., contractors or employees of the Short Line Safety Institute) who perform elective audits or assessments that are not required by Federal railroad safety laws, regulations, or orders.³³

Because FRA did not receive any comments regarding the proposed changes to § 243.1, the final rule adopts the language as proposed.³⁴

Section 243.3 Application and responsibility for compliance

³² Compliance Guide at 49-50 located at <https://railroads.dot.gov/elibrary/training-qualification-and-oversight-safety-related-railroad-employees-compliance-guide-0>.

³³ *Id.* at 43.

³⁴ 87 FR 59753.

Section 243.3 provides that part 243 applies to all railroads, contractors of railroads, and training organizations or learning institutions that train safety-related railroad employees (subject to specified exceptions³⁵). The section also provides that any person, including a railroad or a contractor for a railroad, that performs any duty covered by part 243 is responsible for performing that duty in accordance with part 243. In response to industry requests, FRA has allowed parent and holding companies to submit training programs on behalf of their subsidiaries if the filing thoroughly describes which companies are covered by the submission and how each company is covered.

As proposed in the NPRM, to clarify that this process conforms with the requirements of part 243, FRA is adding paragraph (c) to § 243.3 explaining how a parent or holding company may comply with the requirements of this part on behalf of one or more subsidiaries. FRA's decision to accept programs filed by parent or holding companies on behalf of their subsidiaries is based on the recognition that companies that are legally related may share company rules or operating practices that make it possible to share a training program. FRA's revisions to this section are intended to ensure that all companies covered by a submission are legally bound by and accept the submission, and that subsidiaries may opt out of a parent or holding company's submission, in whole or in part.

Because FRA did not receive any comments regarding the proposed changes to § 243.3, the final rule adopts the language as proposed.³⁶

Section 243.5 Definitions

As proposed in the NPRM, to codify existing guidance and respond to questions from industry, FRA is revising two definitions and adding one new definition to this

³⁵ Section 243.3(a) contains exceptions for the following operations when they are not part of the general railroad system of transportation: railroads (or contractors to railroads) that only operate on track inside an installation; tourist, scenic, historic, or excursion operations; and rapid transit operations in urban areas.

³⁶ 87 FR 59753–54.

section. Specifically, FRA is revising the existing definitions of the terms “designated instructor” and “refresher training,” and adding a new definition for the term “training organizations or learning institutions.”

First, as proposed in the NPRM, FRA is revising the definition of “designated instructor” to specify that a “designated instructor” is not required to be an employee of the employer and to explain that employers must ensure that employees and non-employees used as designated instructors have the necessary knowledge, skills, and abilities to provide sound coaching, mentoring, and guidance to new learners. As also proposed in the NPRM, FRA is adding a definition of “training organizations or learning institutions” to clarify which businesses that provide training to employers are “training organizations or learning institutions.” Because FRA did not receive any comments regarding either the revised “designated instructor” definition or the new “training organizations or learning institutions” definition, the final rule is adopting both as proposed.³⁷

Second, FRA is adopting the proposed revised definition of “refresher training.” The definition explains that the purpose of refresher training is to improve the job performance of existing employees by acquainting them with any changed standards, any relevant problematic issues, or new skills, methods, and processes, and also to ensure no important skills or knowledge have been lost due to lack of use. As explained in the NPRM, this explanation is intended to distinguish refresher training from initial training, which is targeted to employees who generally are new to the subject matter. The final rule clarifies that training programs or plans required elsewhere in this chapter but identified by a term other than refresher training are considered refresher training for purposes of this part, and not only subpart A, as the proposed rule could be construed.

³⁷ *Id.* at 59754-55.

Section III of this preamble discusses comments FRA received in response to the proposed revised definition of “refresher training” and explains FRA’s rationale for adopting the revisions as proposed.³⁸

Subpart B—Program Components and Approval Process

Section 243.101 Employer Program Required

As proposed in the NPRM, the final rule revises paragraphs (a) and (b) to remove certain implementation dates. Specifically, this final rule removes the implementation dates in paragraph (a) for the requirement that an employer submit, adopt, and comply with a training program for its safety-related railroad employees. These implementation dates are no longer needed because the specified deadlines have passed. The finalized paragraph (a) therefore applies to each employer conducting operations subject to part 243. Similarly, paragraph (b) is also amended to remove an implementation date that has passed for employers commencing operations after January 1, 2020. As finalized, the rule will apply any time an employer commences operations.

FRA is also revising paragraphs (c), (e), and (f) as proposed in the NPRM. The revisions to paragraph (c) clarify that employers may create training programs based on applicable CFR parts, United States Code sections, or citations to orders. The revisions to paragraphs (e) and (f) clarify contractor responsibility to provide information to railroads and the types of documents contractors and railroads must retain under part 243.

Because FRA did not receive any comments regarding the proposed changes to § 243.101, the final rule is adopting the language as proposed.³⁹

Although not proposed in the NPRM, FRA is making a minor clarifying change to the language of paragraph (d)(1). Specifically, FRA is replacing the language “If a training program has OJT...” with the language “When a training program is required to

³⁸ *Id.* at 59754.

³⁹ *Id.* at 59755.

include OJT...” to avoid creating an incorrect implication that OJT is not required. As specified in revised § 243.101(c)(5) and explained in the NPRM, OJT is required when tasks require neuromuscular coordination to learn, unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks with the ability to objectively measure task completion proficiency.⁴⁰

Section 243.103 Training Components Identified in Program

As proposed in the NPRM, FRA is adopting four revisions to § 243.103. These revisions provide clarity regarding the training components that must be identified in an employer’s program and the information an employer must submit to FRA.

Because FRA did not receive any comments regarding the proposed changes to § 243.103, the final rule adopts the language as proposed.⁴¹

Section 243.105 Optional Model Program Development

As proposed in the NPRM, FRA is revising § 243.105, which permits the optional development of model programs that can be adopted by multiple employers. As proposed, the final rule removes paragraph (a)(3) to remove an outdated compliance date, revises paragraph (b), and adds paragraph (c) to add information to the regulatory text that was previously issued as guidance regarding model programs. Because FRA did not receive any comments regarding the proposed changes to § 243.105, the final rule adopts the language as proposed.⁴²

Section 243.107 Training Program Submission, Introductory Information Required

As proposed in the NPRM, FRA is revising paragraph (a), removing and reserving paragraph (b), and removing paragraph (c). These changes reduce regulatory

⁴⁰ *Id.* FRA has published as guidance an *OJT Matrix*, which shows the minimum type of training (i.e., formal training, OJT training, or briefing only) that FRA expects to see in a program covering each specific rail safety requirement under most circumstances, available at <https://railroads.dot.gov/elibrary/ojt-matrix>.

⁴¹ *Id.* at 59755-56.

⁴² *Id.* at 59756.

burdens associated with submitting training programs by eliminating the need for employers to submit information that is unnecessary for FRA's review and approval of training programs. Because FRA did not receive any comments regarding the proposed changes to § 243.107, the final rule adopts the revisions as proposed except for a change to paragraph (a)(4) from the proposal to clarify that the employer is required to state in the submission certain information about its training practices when it uses any combination "of the practices described in" paragraphs (a)(1) through (3) of this section.⁴³

Section 243.109 Initial and Refresher Training Program Submission, Review, and Approval Process

As proposed in the NPRM, FRA is revising this section to clarify that refresher training programs must be submitted to FRA for review and approval in the same manner as an employer's initial training program. Because FRA did not receive any comments regarding the proposed changes to § 243.109, the final rule adopts the language as proposed.⁴⁴

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

As proposed in the NPRM, FRA is adopting several revisions to this section to remove unnecessary requirements and eliminate regulatory ambiguity regarding programs filed by training organizations or learning institutions. Because FRA did not receive any comments regarding the proposed changes to this section, the final rule adopts the revisions as proposed.⁴⁵

Section 243.113 Electronic and Written Program Submission Requirements

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 59756-57.

As proposed in the NPRM, FRA is revising this section to clarify that when FRA refers to electronic program or informational filings submission requirements, FRA means submission through FRA's part 243 web portal. As proposed in the NPRM, FRA is also revising this section to eliminate the written program submission option for an employer with fewer than 400,000 total employee work hours annually and to clarify that to submit a training program through the part 243 web portal, a submitter will need to register for access to the portal. Because FRA did not receive any comments regarding the proposed changes to § 243.113, the final rule adopts the revisions as proposed.⁴⁶

Subpart C—Program Implementation and Oversight Requirements

Section 243.201 Employee Qualification Requirements

As proposed in the NPRM, FRA is making several revisions and additions to paragraphs (a)(1) and (2), including the removal of outdated implementation dates for designating existing employees as qualified to perform safety-related service. As adopted, paragraph (a)(1) reiterates the existing requirement that each employer must only permit employees appropriately trained and qualified to perform safety-related service. Paragraph (a)(2) addresses the Associations' petitions by permitting an employer to limit a safety-related railroad employee's training to only the relevant Federal requirements that apply to the safety-related tasks that the employer authorizes the employee to perform, in addition to any knowledge-based training that is required. Because FRA did not receive any comments regarding the proposed changes to § 243.201(a)(1) and (2), the final rule adopts the revisions as proposed.⁴⁷

Regarding paragraph (a)(3), the NPRM proposed to move the requirement for designating existing employees by occupational category or subcategory from current paragraph (a)(1) to a new paragraph (a)(3)(i). FRA is adopting the NPRM's language in

⁴⁶ *Id.* at 59757.

⁴⁷ *Id.*

new paragraph (a)(3)(i) as proposed.⁴⁸ In addition, and for reasons discussed in Section III of this preamble, in response to comments requesting clarification regarding the impact of removing implementation dates for designating existing employees as qualified to perform certain safety-related service, FRA is adding language to new paragraph (a)(3) to clarify that the requirements in this paragraph do not impact the designation of an employer's existing safety-related railroad employees who were appropriately designated as qualified by September 1, 2020, or January 1, 2022, as applicable. The requirements in this paragraph (a)(3), as adopted in this final rule, clarify the requirements of an employer's designation responsibilities without changing the substantive requirements.

As proposed in the NPRM, FRA is also adding paragraph (a)(3)(ii) to address an issue, similar to the one addressed in § 243.101(c), concerning employers that prefer to categorize their employees by CFR parts or other legal requirements, rather than by occupational category or subcategory. For those employers who do not designate employees by occupational category or subcategory, paragraph (a)(3)(ii) requires that the employer must retain a record for each employee identifying the list of Federal railroad safety laws, regulations, and orders that cover the work the person is designated as qualified to perform.

As proposed in the NPRM, the requirements for designating safety-related railroad employees who were not required to be designated as qualified by the applicable implementation dates in former paragraphs (a)(1) and (2) are now in paragraphs (b) (for existing employees of an employer commencing operations) and (c) (for newly hired employees). These paragraphs are being adopted as proposed in the NPRM and are applicable any time an employer commences operations or hires a new employee.

⁴⁸ *Id.*

In this final rule, FRA is also revising paragraphs (c), (d), and (e), and adding a new paragraph (f). Specifically, FRA is revising paragraph (c)(2) to allow an employee, who is not yet qualified, to perform tasks during OJT under the direct, onsite observation of a qualified person and in accordance with certain conditions for the qualified person, before the employee has completed all of the formal training, including classroom training and OJT. FRA is adopting paragraph (c)(2) as proposed, except for making a minor clarifying change to language of the first sentence by replacing the language “If the training curriculum includes OJT...” with the language “When the training program is required to include OJT...” to avoid creating an incorrect implication that OJT is not required. As specified in revised § 243.101(c)(5) and explained in the NPRM, OJT is required when tasks require neuromuscular coordination to learn, unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks with the ability to objectively measure task completion proficiency.⁴⁹ This clarifying revision is consistent with the change discussed above for § 243.101(d)(1).

FRA is also amending paragraph (d), which addresses how an employer can avoid training an employee who was previously trained or qualified by an entity other than the current employer, to make it consistent with other sections of part 243 amended through this rulemaking.

In addition, in conjunction with the revised definition of “refresher training” and to clarify the minimum requirements for refresher training, FRA is making several revisions to the requirements in paragraph (e). FRA is revising the language in paragraphs (e)(1) and (e)(2), regarding implementation dates, to emphasize that refresher training is typically required within three calendar years from a prior training event while

⁴⁹ *Id.* at 59755.

continuing to recognize that there is also an exception for employers who were conducting operations as of these beginning implementation dates.

Further, FRA is extending the refresher training implementation deadline for small entities, covered under paragraph (e)(2), by one year in response to the Associations' comment requesting further consideration and to reflect FRA's observation that these small entities could generally use an additional year to develop and implement refresher training.

FRA has revised proposed paragraph (e)(3) to clarify what an employer must include in refresher training. Those refresher training requirements are now contained in paragraphs (e)(3) through (5). Paragraph (e)(3) of this final rule requires each employer to ensure that an employee's refresher training include formal training⁵⁰ if the employee did not previously receive formal training on the application of any specific Federal railroad safety law, regulation, or order the employee is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those specific Federal railroad safety laws, regulations, and orders.

In paragraph (e)(3) of the NPRM, FRA proposed that an employer must develop refresher training to address railroad-wide or industry-wide safety concerns that address an individual employee's weakness—a point of reference that may be unknown or difficult to figure out. In its place, paragraph (e)(4) of this final rule requires that each employer shall ensure that refresher training for employees charged with the inspection of track or railroad equipment address identifying defective conditions and how to initiate immediate remedial action to correct critical safety defects that are known to contribute

⁵⁰ The regulation defines *formal training* as “training that has a structured and defined curriculum, and which provides an opportunity for training participants to have questions timely answered during the training or at a later date. In the context of this part, formal training may include, but is not limited to, classroom, computer-based, correspondence, on-the-job, simulator, or laboratory training.” 49 CFR 243.5.

to derailments, accidents, incidents, or injuries. This requirement mirrors the requirement in the RSIA of 2008.⁵¹

Paragraph (e)(5), which tracks proposed paragraph (e)(3)(iii)(C), requires that each employer's refresher training, at a minimum, includes safety-related tasks that address skill gaps that the employer identified in the workforce through efficiency testing, periodic oversight, annual reviews, accident/incident data, FRA inspection data, or other performance measuring metrics. FRA expects that each employer will look to these sources of data to identify skill gaps and the safety-related tasks to cover in refresher training.

As explained in the Background under the heading "*Refresher Training Burden*," FRA is adding a requirement in paragraph (e)(6) to permit an employer to offer each employee a single test out option for any occupational category or subcategory that, if passed, will be considered an acceptable substitute for refresher training. Pursuant to paragraph (e)(6) of this final rule, an employee may be offered to test out of the requirements in paragraphs (e)(4) and (5), but not (3) (i.e., when formal training is required as part of the refresher training).

Paragraph (e)(6) also defines certain limitations and requirements for the test out option. For instance, if an employee fails such a test on the first attempt, the employer must provide the refresher training to the employee instead of another opportunity to test out. The reason for a single test out attempt is that a failure is indicative that the employee would benefit from refresher training as compared to an employee that tests out and has therefore demonstrated that they already possess the knowledge or skills

⁵¹ The Secretary of Transportation shall establish a minimum training curriculum "to ensure that safety-related railroad employees, and contractor and subcontractor employees, charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and how to initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries." 49 U.S.C. 20162(a)(3).

necessary to do the safety-related work in the occupational category or subcategory tested without refresher training.

Paragraph (e)(6)(i) requires an employer to design the test out option to determine whether an employee has the critical knowledge and skills to continue to be designated to perform safety-related service in that occupational category or subcategory, whether by craft, class, task, or other suitable terminology. Thus, each employer offering a test out option will need to determine the critical knowledge and skills for the occupational categories and subcategories created under § 243.101(c). Most likely, the critical knowledge and skills for an occupational category or subcategory is identifiable from initial training programs. Paragraph (e)(6)(ii) requires the test out option to meet the equivalent standards required for such assessment testing under formal training in that occupational category or subcategory. Thus, FRA expects the test offered for the test out option will often be identical or the equivalent to a test offered during or at the conclusion of initial training for the occupational category or subcategory, albeit that the method of delivery may be different. For instance, although initial training might have been completed in a classroom with a combination of knowledge tests and task-based observational tests, an assessment test offered for the test out option is not required to be offered in a classroom; instead, any other formal training delivery methods such as computer-based, correspondence, on-the-job, simulator, or laboratory training, may be offered. Given that refresher training will be necessary for experienced employees who do not need initial training, it is expected that most employers will opt to provide an assessment test for the test out option in the normal, railroad work environment which would produce the least disruption to the regular work routine. Paragraph (e)(6)(iii) requires an employer, offering a test out option, to keep records of the relevant information from each test as a record under § 243.203.

Paragraph (f) of this final rule requires an employer to consider ways to provide remedial training and retesting of any employee who fails to successfully pass any training or testing. Paragraph (f) also makes clear that a failure of any test or training does not bar the person from successfully completing the training or testing later. The requirement in paragraph (f) does not apply to the single test out option in paragraph (e)(6) of this section; instead, the consequence of failing that single test out option requires the employee to complete the refresher training for that occupational category or subcategory.

Section 243.203 Records

As proposed in the NPRM, FRA is revising paragraph (b)(2) of this section to clarify that an employer that designates its employees by “other suitable terminology,” i.e., other than occupational category or subcategory, is required to keep a record of that designation for each qualification of each qualified employee. FRA is also revising paragraph (b)(6)’s recordkeeping information requirement to clarify that the person determining that the employee successfully completed all OJT training necessary to be considered qualified to perform certain safety-related tasks must be a designated instructor. For consistency with 49 CFR part 217, FRA is also revising the recordkeeping requirement for records other than individual employee records and annual review records.

Because FRA did not receive any comments regarding the proposed changes to § 243.203, the final rule adopts the revisions as proposed.⁵²

Section 243.205 Periodic Oversight

As proposed in the NPRM, FRA is adopting two general changes to § 243.205. The first general change amends paragraphs (a), (c), (e)(1), (g), and (i) to allow periodic

⁵² *Id.* at 59758.

oversight to be limited to tests “or” inspections, rather than require both tests “and” inspections. In the NPRM, FRA proposed this same change to paragraph (d) but is not adopting this proposed change here as it would suggest that a railroad would never be required to conduct periodic oversight when paragraph (d) is intended to permit a railroad, that must conduct periodic oversight of a contractor, to forgo operational tests only. Thus, a railroad that must conduct periodic oversight of a contractor would still be required to conduct periodic oversight inspections and could opt to conduct periodic oversight operational tests at its discretion.

The second general change FRA proposed was intended to reflect guidance providing employers with some discretion in the administration of oversight. For instance, as proposed, FRA is revising § 243.205(h) to provide railroads and contractors the flexibility to decide which entity will be responsible for conducting periodic oversight. This revision allows the regulated entities to decide which entity is in the best position to conduct the oversight and to make any necessary arrangements to comply with the periodic oversight requirements. The final rule is adopting the revisions as proposed with only an addition in the title of the paragraph and in the paragraphs to emphasize that any alternative to the regulatory requirements must be made by written agreement (i.e., in writing, in the program required by this rule). These changes reflect FRA’s previous guidance and will eliminate any potential confusion between a railroad and a contractor about which party is expected to conduct the periodic oversight.

Because FRA did not receive any comments regarding the proposed changes to § 243.205, aside from the changes discussed herein, the final rule adopts the revisions as proposed.⁵³

⁵³ *Id.*

Each of the revisions adopted in this final rule and described above are consistent with the guidance FRA published on April 20, 2023, titled *Training Qualification, and Oversight for Safety-Related Railroad Employees; Periodic Job Oversight Job Aid*, available at <https://railroads.dot.gov/elibrary/training-qualification-and-oversight-safety-related-railroad-employees-periodic-oversight>.

V. Regulatory and Statutory Requirements

A. Executive Order 12866 (Regulatory Planning and Review) and DOT

Regulatory Policies and Procedures

Executive Order (E.O.) 12866 (“Regulatory Planning and Review”),⁵⁴ as implemented by DOT Order 2100.6B (“Policies and Procedures for Rulemaking”),⁵⁵ requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” DOT Order 2100.6B specifies that regulations generally should “not be issued unless their benefits are expected to exceed their costs.” In arriving at those conclusions, E.O. 12866 requires that agencies should consider “both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify” and “maximize net benefits . . . unless a statute requires another regulatory approach.” E.O. 12866 also requires that “agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.” DOT Order 2100.6B directs FRA and other Operating Administrations generally must choose the “least costly regulatory alternative that achieves the relevant objectives” unless required by law or compelling safety need.

⁵⁴ 58 FR 51735 (Oct. 4, 1993).

⁵⁵ DOT-2100.6B-Policies and Procedures for Rulemaking, available at <https://www.transportation.gov/regulations/dot-order-21006b-rulemaking-and-guidance-procedures>.

E.O. 12866 and DOT Order 2100.6B also require that FRA submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President’s Office of Management and Budget (OMB) for review. This final rule is a not significant regulatory action pursuant to E.O. 12866; it also has not designated this rule as a “major rule” as defined by the Congressional Review Act (5 U.S.C. 801 et seq.).

FRA is issuing this final rule to address issues raised in the Associations’ petitions for rulemaking, provide clarity to current requirements, and remove requirements that are no longer necessary. For example, FRA is removing certain requirements from § 243.111 because FRA found some of the information required to be submitted by training organizations and learning institutions unnecessary. FRA is also removing implementation dates that have passed. Overall, the changes codify existing regulatory guidance that FRA has issued or clarify and streamline the existing regulatory requirements.

The final rule provides regulatory clarity and promotes regulatory compliance by the regulated industry through, among other things: (1) clarifying that FRA will accept a training program that categorizes employees by legal requirement references rather than occupational categories; (2) eliminating certain submissions such as similar training programs or plans; (3) requiring that each employer under § 243.103(a)(2)(v) exclude the course duration of OJT for an employer’s estimate of the anticipated course duration for all formal training combined; (4) clarifying the use of model programs without requiring an entity to refer to guidance or asking FRA for assistance; (5) amending requirements for training program submissions and the introductory information required in § 243.107 due to FRA’s part 243 web portal; (6) revising § 243.109 to clarify refresher training program submission requirements; (7) requiring each training organization and learning institution provide less information in its submission than required currently by §

243.111; (8) revising the refresher training requirements and options, clarifying what employers need to include to complete minimum acceptable refresher training; and (9) allowing each railroad and contractor the flexibility to decide which entity will be responsible for conducting periodic oversight.

This final rule will delay refresher training requirements for small entities by one year. FRA assumes approximately 3,500 safety-critical employees⁵⁶ will be granted this one-year relief period, and each employee would require four hours of annual refresher training. FRA uses a wage rate of \$43.78 to represent each employee after averaging the wage rates of four categories of employees: maintenance of way and structures; maintenance of equipment and stores; transportation (other than train and engine); and transportation (train and engine).⁵⁷ FRA burdens this average wage rate by 75-percent to calculate a wage of \$76.62 for each employee. Based on these estimates, FRA calculates a cost savings of \$1.1 million⁵⁸ for the one-year delayed implementation refresher training deadline for small entities.

FRA expects the final rule will result in several, non-quantifiable benefits for the regulated industry and FRA, such as: permitting training programs that categorize employees by referencing the applicable part of the CFR, a statute, or an order, rather than occupational categories associated by craft; clarifying that an employer need not submit courseware unless FRA requests that additional documentation is needed to conduct an adequate review; and clarifying what employers need to include to complete minimum acceptable refresher training, as well as allow for tests or inspections, instead

⁵⁶ In the 2014 Final Rule (79 FR 66460), FRA estimated 35,000 employees would require refresher training annually. FRA estimated approximately 10 percent of these employees would work for small entities.

⁵⁷ Surface Transportation Board (STB), Quarterly Wage Form A&B Data (2024). Compiled from Class I railroad data reported on Wage Form A&B for year 2024. Calculated as: Wage (\$/hour) = sum of compensation for time worked and paid for straight time rates (\$) for Class I railroads ÷ sum of service hours for time worked and paid for straight time rates (hours) for Class I railroads. Available: <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>.

⁵⁸ 3,500 employees x 4 hours x \$76.62 = \$1,072,680.

of requiring both. FRA expects these clarifications will provide employers an easier means of complying with this regulation, as well as save time understanding what needs to be submitted and preparing submissions to FRA. By codifying existing regulatory guidance, FRA expects that the railroads will have greater regulatory certainty for future submissions while complying with training program requirements. FRA estimates that there will be no costs associated with this final rule.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192 (90 FR 9065, Jan. 31, 2025), Unleashing Prosperity Through Deregulation, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”⁵⁹ Implementation guidance for E.O. 14192 issued by the Office of Management and Budget (OMB) (Memorandum M-25-20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.⁶⁰

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This final rule is considered an E.O. 14192 deregulatory action. FRA estimates this rule generates a cost savings of \$1.1 million, based on the one-year refresher training extension granted to small entities.

C. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (RFA) of 1980⁶¹ and E.O. 13272⁶² require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a proposed rulemaking, the RFA requires the agency to “prepare and make

⁵⁹ Executive Office of the President. Executive Order 14192 of January 31, 2025. *Unleashing Prosperity Through Deregulation*. 90 FR 9065-9067. Feb. 6, 2025.

⁶⁰ Executive Office of the President. Office of Management and Budget. *Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.”* Memorandum M-25-20. March 26, 2025.

⁶¹ 5 U.S.C. 601 et seq.

⁶² 67 FR 53461 (Aug. 16, 2002).

available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.”⁶³ Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. FRA certified that the proposed rule would not have a significant economic impact on a substantial number of small entities in the NPRM. No comments were received in response to this certification.

This final rule directly affects all railroads, of which there are approximately 784. FRA estimates that approximately 94 percent of these railroads are small entities. This final rule also affects approximately 300 contractors of railroads and approximately 109 training organizations or learning institutions, most of which, by definition, are considered small entities.

The requirements of this final rule will apply to employers of safety-related railroad employees, whether the employers are railroads, contractors, or subcontractors. Although a substantial number of small entities will be subject to this rule, the final rule will codify agency guidance, reduce submissions to FRA, and clarify existing requirements.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,⁶⁴ FRA is seeking approval from OMB to revise the information collection estimates in previously approved OMB control number 2130-0597, corresponding to part 243. On June 18, 2024, OMB approved FRA’s last information collection request (ICR) corresponding to part 243,

⁶³ 5 U.S.C. 603(a).

⁶⁴ 44 U.S.C. 3501 et seq.

containing 16,549 burden hours.⁶⁵ With this final rule, the burden will increase by 6 hours, for a new total of 16,555 burden hours. The number of burden hours estimated in this final rule is significantly less than the 31,574 hours total burden hours estimated in the NPRM,⁶⁶ because FRA identified burden hour reductions when renewing the ICR for part 243 in June 2024.

The table below shows the sections in part 243 that contain the new and currently approved information collection requirements that will apply when this final rule becomes effective, and the estimated time to fulfill each requirement as follows:

CFR Section ⁶⁷	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours ⁶⁸	Total cost equivalent ⁶⁹
243.3(c)— Application and responsibility for compliance—A parent or holding company that submits a training program on behalf of one or more subsidiaries must initially and continually maintain in its written submission a list of the legal name of each subsidiary (<i>New requirement</i>)	The estimated paperwork burden for this requirement is covered under § 243.101(b).				

⁶⁵ For comparison with the revised burden estimates in this final rule, the supporting justification for the June 2024 ICR is available for review at: <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=2130-0597>.

⁶⁶ 87 FR 59749, 59759.

⁶⁷ FRA will be requesting to revise the previously approved OMB control number (OMB No. 2130-0597) corresponding to part 243.

⁶⁸ The modifications to the paperwork burden, particularly the adjustments made in the number of responses, resulted from the latest available data since the publication of the NPRM. As a result, FRA has updated the number of responses under §§ 243.101(e), 243.101(f), 243.103(d), 243.109(b), 243.109(c), 243.109(d)(1)(i), 243.201(a)(2), 243.201(d)(1)(i) and 243.203(a) to reflect current data. In addition, after further review it was determined that there is no additional burden to report under § 243.101(a)(2) as this requirement has been completed. The adjustments made in the number of responses resulted in a decrease in the burden, from 31,574 burden hours reported in the NPRM to 16,555 burden hours in this final rule. Supporting justification will be published under: <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=2130-0597>.

⁶⁹ The dollar equivalent cost is derived from the Surface Transportation Board’s 2022 Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

243.101(b) Each employer that has not yet commenced operations subject to this part shall submit a training program for its safety-related railroad employees before commencing operations.	10 new railroads/ 435 contractors	10 training programs	20 hours	200 hours	\$24,000
—(c) and (d) Employer's classification of its safety-related railroad employees and OJT training requirements	The burden for this requirement is included under § 243.101(b).				
—(e) Contractor's duty to validate approved program to a railroad	400 railroads/ 435 contractors	150 documents	15 minutes	37.5 hours	\$2,888
—(f) Railroad's duty to retain copies of contractor's validation document	1,046 railroads	1,046 copies	2 minutes	34.9 hours	\$2,687
243.103(a) and (c)— Training components identified in program	The burden requirements for paragraphs (a) and (c) are included under § 243.101(b). Regarding the burden for paragraph (b), FRA estimates that it will receive zero (0) supplementary documents.				
—(d) Training components identified in program; modifications to components of the training programs	1,155 railroads/ 435 contractors	10 modified training programs	5 hours	50 hours	\$3,850
243.105(a) and (b)— Optional model program development	The burden requirement for paragraph (a) has been fulfilled. The burden for paragraph (b) is included under § 243.101(b).				
—(c) Optional model program development; model program revisions: notice of FRA-approved changes to authorized users (<i>New requirement</i>)	30 model programs	10 notifications	10 minutes	2 hours	\$154
243.107(a)— Training program submission, introductory information required	The burden for this information requirement is covered under § 243.101(b).				
243.109(b)— Previously approved programs requiring an informational filing when modified	1,155 railroads/ 435 contractors/ 40 TO/LI	75 informational filings	8 hours	600 hours	\$46,200

—(c) New portions or substantial revisions to an approved training program	10 railroads/ 435 contractors	10 revised training programs	16 hours	160 hours	\$12,320
—(c) New portions or substantial revisions to an approved training program found non-conforming to this part by FRA—revisions required	50 railroads/ 435 contractors	50 revised training programs	8 hours	400 hours	\$30,800
—(d)(1)(i) Copy of additional submissions, resubmissions, and informational filings to labor organization presidents	50 railroads/ 435 contractors	50 copies	10 minutes	8.3 hours	\$639
—(d)(1)(ii) Railroad statement affirming that a copy of submissions, resubmissions, or informational filings has been served to labor organization presidents	228 railroads/ 435 contractors	76 affirming statements	10 minutes	12.7 hours	\$978
—(d)(2) Labor organization comments on railroad training program submissions, resubmissions, or informational filings	20 labor organizations	3 comments	30 minutes	1.5 hours	\$116
243.111(a) through (f)—Approval of programs filed by training organizations or learning institutions (TO/LI)	The burden requirements for paragraphs (a) and (c) are included under § 243.101(b). The burden requirement for paragraphs (b) and (d) are covered under § 243.103(d). The burden requirement for paragraphs (e) and (f) are covered under § 243.109(b).				
—(g) Safety-related railroad employees instructed by TO/LI—Recordkeeping	40 TO/LI	5,450 records	5 minutes	454.2 hours	\$34,973
—(h) TO/LI to provide student's training transcript or training record to any employer upon request by the student	40 TO/LI	545 records	5 minutes	45.4 hours	\$3,496
243.113—Electronic and written program submission requirements	The burden for paragraph this requirement is included under § 243.101(b).				

243.201(b) An employer commencing operations shall declare the designation of each of its safety-related railroad employees.	10 new railroads/ 435 contractors	10 designation lists	15 minutes	2.5 hours	\$193
—(c) Training records of newly hired employees or those assigned new safety-related duties	4,800 employees	4,800 records	15 minutes	1,200 hours	\$92,400
—(d)(1)(i) Requests for relevant qualification or training record from an entity other than current employer	4,800 employees	250 record requests	5 minutes	20.8 hours	\$1,602
—(e) Refresher training requirements and options ⁷⁰	The paperwork burden for this requirement includes recordkeeping and scheduling of the training and is covered under § 243.203.				
243.203(a) through (e) Recordkeeping— Systems set up to meet FRA requirements	10 railroads/ 435 contractors 40 TO/LI	10 recordkeeping systems	30 minutes	5 hours	\$385
—(f) Transfer of records to successor employer	1,155 railroads/ 435 contractors 40 TO/LI	3 records	30 minutes	1.5 hours	\$116
243.205(a), (b), (e) and (g) —Periodic oversight	The burden for adopting and complying with a program of periodic oversight under paragraph (a) is included above under the training program requirements in § 243.109. Furthermore, FRA estimates that zero (0) training programs will be changed as the result of the assessments under parts 240 and 242.				
—(c) Railroad identification of supervisory employees who conduct periodic oversight tests by category/subcategory	435 contractors	100 identifications	5 minutes	8.3 hours	\$639
—(f) Notification by railroad of contractor employee non-compliance with Federal laws/regulations/orders to employee and employee's employer	435 contractors	90 employee notices	10 minutes	15 hours	\$1,155
	435 contractors	270 employer notices	10 minutes	45 hours	\$3,465
—(i) and (j) Employer records of periodic oversight	1,046 railroads/ 435 contractors	150,000 records	5 minutes	12,500 hours	\$962,500

⁷⁰ This row was previously omitted from the NPRM and is now added to the table to reflect that the paperwork burden on refresher training (§ 243.201(e)) is already accounted for under § 243.203.

243.207(a)—Written annual review of safety data (Railroads with 400,000 annual employee work hours or more)	22 railroads	22 reviews	16 hours	352 hours	\$27,104
—(b) Railroad copy of written annual review at system headquarters	22 railroads	22 review copies	5 minutes	1.8 hours	\$139
—(c) Railroad notification to contractor of relevant training program adjustments	22 railroads	2 notifications	15 minutes	0.50 hours	\$39
243.209(a) and (b)—Railroad maintained list of contractors utilized	754 railroads	754 lists	30 minutes	377 hours	\$29,029
—(c) Railroad duty to update list of contractors utilized and retain record for at least 3 years showing if a contractor was utilized in last 3 years	754 railroads	75 updated lists	15 minutes	18.8 hours	\$1,444
Total	1,155 railroads 435 contractors 40 TO/LI	163,893 responses	N/A	16,555 hours	\$1,283,311

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: 757-897-9908.

OMB is required to decide concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this document. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number for this rule is 2130-0597.

D. Federalism Implications and Executive Order 13132

E.O. 13132, “Federalism,”⁷¹ requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the E.O. to include regulations that have “substantial direct effects 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.” Under E.O. 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this final rule under the principles and criteria contained in E.O. 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of E.O. 13132 do not apply, and preparation of a federalism summary impact statement for this final rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979⁷² 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

⁷¹ 64 FR 43255 (Aug. 10, 1999).

⁷² 19 U.S.C. ch. 13.

considered unnecessary obstacles.⁷³ The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final 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.

F. Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act of 1969 (NEPA).⁷⁴ In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), “[p]lanning and administrative activities not involving or leading directly to construction, such as: [p]romulgation of rules, regulations, and directives.” This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this rulemaking has no potential to affect historic properties.⁷⁵ FRA has also determined that this rulemaking would not approve a project resulting in a use of a resource protected by section 4(f).⁷⁶

G. Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

⁷³ 19 U.S.C. 2531(b).

⁷⁴ 42 U.S.C. 4321 et seq.

⁷⁵ 16 U.S.C. 470.

⁷⁶ Department of Transportation Act of 1966, as amended (Pub. L. 89-670, 80 Stat. 931); 49 U.S.C. 303.

H. Energy Impact

E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”⁷⁷ FRA evaluated this final rule under E.O. 13211 and determined that this regulatory action is not a “significant energy action” within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 6, 2000). The rule would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 243

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

The Rule

For the reasons discussed in the preamble, FRA is amending 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

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

⁷⁷ 66 FR 28355 (May 22, 2001).

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 A—General

2. Section 243.1 is amended by adding paragraphs (f) and (g) to read as follows:

§ 243.1 Purpose and scope.

* * * * *

(f) The requirements in this part do not require an employer to adopt and comply with a training program when the training required for a qualified person is obtained through earning a college degree or certification from an accredited training organization or learning institution. For example, the requirements in this part do not require the training program of an engineering firm that conducts bridge inspections to include training of railroad bridge engineers on the subjects taught as part of a professional engineering curriculum covered by 49 CFR 237.51(b).

(g) The requirements in this part do not require an employer to train contractors who are hired to perform elective audits or assessments that are not required by Federal railroad safety laws, regulations, or orders.

3. Section 243.3 is amended by adding paragraph (c) to read as follows:

§ 243.3 Application and responsibility for compliance.

* * * * *

(c)(1) A parent or holding company may comply with the requirements of this part on behalf of one or more subsidiaries if the arrangement is specified and submitted with the relevant training program(s) under subpart B of this part.

(i) The arrangement may be used to fulfill all or a portion of a subsidiary's responsibility for compliance with this part.

(ii) A parent or holding company that submits a training program on behalf of one or more subsidiaries must initially and continually maintain in its submission a list of the

legal name of each subsidiary. The submission must reflect which courses each subsidiary is adopting if a subsidiary is not adopting the parent or holding company's training program in its entirety. The submission must reflect whether each subsidiary is adopting all of a parent or holding company's training programs or identify which courses each subsidiary is adopting.

(2) A subsidiary must not duplicate a training program submission a parent or holding company has made on its behalf.

(3) A subsidiary must file a training program submission, in accordance with the requirements of subpart B of this part, if a parent or holding company does not submit one or more training programs on behalf of the subsidiary that is intended to fulfill all of the subsidiary's responsibilities under this part.

(4) A subsidiary must comply with a parent or holding company's training program submission that is filed on behalf of the parent or holding company's subsidiaries unless the subsidiary files its own submission, in accordance with the requirements of subpart B of this part.

4. Section 243.5 is amended by revising the definitions for "Designated instructor" and "Refresher training" and adding a definition for "Training organizations or learning institutions" in alphabetical order to read as follows:

§ 243.5 Definitions.

* * * * *

Designated instructor means a person designated as such by an employer, training organization, or learning institution, who has demonstrated an adequate knowledge of the subject matter under instruction and, where applicable, has the necessary experience to effectively provide formal training on the subject matter. The designated instructor is not required to be an employee of the employer. Employers are required to ensure that employees and non-employees used as designated instructors have the necessary

knowledge, skills, and abilities to provide sound coaching, mentoring, and guidance to new learners.

* * * * *

Refresher training means periodic retraining required for each safety-related railroad employee that is designed to maintain, improve, and update the skills and knowledge of existing employees to ensure they are sufficiently acquainted with any changed standards, or any relevant problematic issues or new skills, methods, and processes, and to ensure no important skills or knowledge have been lost due to lack of use. Similar training programs or plans required elsewhere in this chapter but identified by a term other than refresher training such as “recurrent training,” “re-training,” “periodic training,” “training that occurs periodically,” or “training that is required within defined intervals,” are considered refresher training for purposes of this part although they need not be submitted for review pursuant to § 243.103(b).

* * * * *

Training organizations or learning institutions mean entities that provide training services for people who are safety-related railroad employees or independent students who will rely on the training services provided to qualify to become safety-related railroad employees, but not employees of the entities providing the training. Training organizations and learning institutions include businesses that provide formal training, and colleges and universities that provide rail safety courses, necessary for a person to qualify as a safety-related railroad employee. Training organizations and learning institutions also include entities that do not maintain fixed facilities (i.e., do not have a physical location), as they may rent or lease meeting space to deliver formal training, deliver formal training at an employer’s facility, or deliver computer-based training virtually. A railroad that trains its own employees and also trains safety-related railroad employees of other employers is not a training organization or learning institution.

Subpart B—Program Components and Approval Process

5. Section 243.101 is amended by revising paragraphs (a), (b), (c)(1) through (3), (c)(5), (d)(1), (e), and (f) to read as follows:

5. Revise and republish § 243.101 to read as follows:

§ 243.101 Employer program required.

(a) Each employer conducting operations subject to this part shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) Each employer that has not yet commenced operations subject to this part 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.

(c) In the program required by this part, the employer shall:

(1) Classify its safety-related railroad employees in occupational categories or subcategories by craft, class, task, or other suitable terminology. Other suitable terminology for classifying safety-related railroad employees may include references to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order as described in paragraph (c)(2) of this section;

(2) Define the occupational categories or subcategories of safety-related railroad employees. The definition of each category or subcategory shall include a list of the Federal railroad safety laws, regulations, and orders that the employee is required to comply with, based on the employee's assignments and duties, broken down at a minimum to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order. The listing of the Federal requirements shall contain the descriptive title of each law, regulation, or order. An employer that classifies its safety-related railroad employees by direct reference to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order as

permitted in paragraph (c)(1) of this section, is not required to define the occupational categories or subcategories of its safety-related railroad employees;

(3) Create tables or utilize other suitable formats which summarize the information required in paragraphs (c)(1) and (2) of this section, separated by major railroad departments (e.g., operations, maintenance-of-way, maintenance-of-equipment, signal and communications). After listing the major departments, the tables or other formats should list the categories and subcategories of safety-related railroad employees within those departments. An employer that does not have major railroad departments and classifies its safety-related railroad employees by direct reference to the applicable part of the Code of Federal Regulations, section of the United States Code, or citation to an order, as permitted in paragraph (c)(1) of this section, is not required to summarize the information required in paragraphs (c)(1) and (2) of this section;

(4) Develop procedures to design and develop key learning points for any task-based or knowledge-based training; and

(5) Determine how training shall be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, OJT, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with, applicable Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those applicable Federal railroad safety laws, regulations, and orders. OJT is required when tasks require neuromuscular coordination to learn, unless FRA approves alternative, formal training that addresses the need to practice safety-related tasks, with the ability to objectively measure task completion proficiency.

(d) On-the-job (OJT) training requirements:

(1) When a training program is required to have OJT, the OJT portion of the training program shall consist of the following three key components:

(i) A brief statement describing the tasks and related steps the employee learning the job shall be able to perform;

(ii) A statement of the conditions (prerequisites, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(2) Prior to beginning the initial safety-related tasks associated with OJT exercises, employers shall make any relevant information or materials, such as operating rules, safety rules, or other rules available to employees involved for referencing.

(3) The tasks and related steps associated with OJT exercises for a particular category or subcategory of employee shall be maintained together in one manual, checklist, or similar document. This reference shall be made available to all employees involved in those OJT exercises.

(e) Contractor's responsibility to validate approved program to a railroad: A contractor is being utilized by a railroad when any of the contractor's employees conduct safety-related duties on behalf of the railroad and the railroad does not otherwise qualify those employees of the contractor that are allowed to perform those duties. A contractor that chooses to train its own safety-related railroad employees shall provide each railroad that utilizes it with a document proving or stating that:

(1) The contractor's training program was approved by FRA; or

(2) The contractor is not required to submit the similar training program or plan as required in § 243.103(b) but is maintaining the similar training program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter.

(f) Railroad's responsibility to retain contractor's validation of program: A railroad that chooses to utilize contractor employees to perform safety-related duties and relies on contractor-provided training as the basis for those employees' qualification to

perform those duties shall retain a document from the contractor declaring or proving that the contractor's program was approved by FRA, or that the contractor is not required to submit the similar training program or plan as required in § 243.103(b) but is maintaining the similar training program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter. A copy of the document required in paragraph (e) of this section satisfies this requirement.

6. Section 243.103 is amended by revising paragraphs (a)(1) and (2)(v), (b), and (d) to read as follows:

§ 243.103 Training components identified in program.

(a) * * *

(1) A unique name and identifier for each formal initial and refresher training course of study;

(2) * * *

(v) The anticipated course duration for all formal training combined, excluding the course duration of OJT;

* * * * *

(b) An employer that is required to adopt and comply with similar training programs or plans, pursuant to other regulatory requirements contained elsewhere in this chapter, is not required to submit those similar training programs or plans in accordance with this part. When any such similar program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter, includes OJT but does not include the OJT components specified in paragraph (a)(3) of this section and in § 243.101(d), the employer shall supplement its program to include the OJT components in accordance with this part. In addition, when any such similar program or plan, pursuant to other regulatory requirements contained elsewhere in this chapter, is amended for any reason, the employer shall amend its program without submission to FRA under § 243.109.

* * * * *

(d) FRA may require modifications to any programs, including those programs referenced in paragraph (b) of this section, if it determines essential program components, such as OJT, or arranged practice and feedback, are missing or inadequate. Unless requested by FRA, an employer is not required to submit courseware (i.e., lesson plans, instructor guides, participant guides, job aids, practical exercises, tests/assessments, and other materials used in the delivery of any course) as part of a training program submission.

7. Section 243.105 is amended by removing paragraph (a)(3), revising paragraph (b), and adding paragraph (c) to read as follows:

§ 243.105 Optional model program development.

* * * * *

(b)(1) An employer that chooses to use a model program approved by FRA is not required to submit the entire program to FRA. Instead, the employer must submit only the unique identifier associated with the program, and all other information that is specific to that employer or deviates from the model program.

(2) An employer that chooses to adopt a model program at FRA's part 243 web portal (<https://safetydata.fra.dot.gov/Part243/>) will be prompted for the required information and find each model program developer's contact information if the developer has an FRA-approved training program.

(3) An employer that chooses to adopt and implement a model program must contact the model program developer and obtain the associated course/training materials necessary for training safety-related railroad employees. FRA does not prohibit a model program developer from charging an employer a fee for the right to use a model training program it developed or requiring that each employer obtain its explicit authorization before the employer adopts one of its model programs.

(4) An employer that submits, adopts, and implements an FRA-approved model program, consistent with the operations of that employer, will be considered in compliance with the employer program requirements of § 243.101.

(c)(1) Once a model program is approved by FRA, the developer must consider when it is necessary to make revisions in accordance with § 243.109. A developer that revises its model program is required to provide notice of the FRA-approved changes to its authorized users. A model program developer is required to provide notice of any model program revisions by engaging in any form of communication that positively affirms the developer provided notice to employers likely to be impacted by the changes to the program, including posting the information at the organization's website, writing letters to the employers, and including information in periodic newsletters. Such notice must be at least as effective as the notice the developer provided to employers when it developed the model program. For example, if the developer makes its model program available to anyone with access to the developer's website, then posting a notice of any revisions to the program on its website will be sufficient. In contrast, if a model program developer requires explicit authorization to use its model programs, the developer must provide adequate notice to those entities that it has specifically authorized in a manner consistent with its authorization practices.

(2) Once notified, an employer that is adopting and complying with a model program must:

(i) Adopt and comply with the revisions to the model program made by the developer; or

(ii) Submit information explaining how the employer's training program will deviate from the model program in accordance with § 243.109.

8. Revise § 243.107 to read as follows:

§ 243.107 Training program submission, introductory information required.

(a) An employer who provides training of safety-related railroad employees shall submit its training program to FRA for review and approval. For an employer using FRA's part 243 web portal, the web portal will prompt the employer to provide the required information in this section. Each employer shall state in its submission whether, at the time of filing, it:

(1) Primarily conducts the training program of its own safety-related railroad employees, utilizing its own resources;

(2) Conducts any training for other than its own safety-related railroad employees;

(3) Implements any training programs conducted by some other entity on its behalf but adopted by that employer;

(4) Uses any combination of the practices described in paragraphs (a)(1) through (3) of this section.

(b) [Reserved]

9. Section 243.109 is amended by revising the section heading, paragraph (a) paragraph heading, and paragraph (a)(2) to read as follows:

§ 243.109 Initial and refresher training program submission, review, and approval process.

(a) *Initial and refresher programs.* * * *

* * * * *

(2) An employer's initial program, as required by § 243.101(a) or (b), or an employer's refresher program, as required by § 243.201(e), must be submitted to the Associate Administrator and is considered approved and may be implemented immediately upon submission. Following submission, the Associate Administrator will review the program and inform the employer as to whether the program conforms to this part. If the Associate Administrator determines that all or part of the program does not conform, the Associate Administrator will inform the employer of the specific

deficiencies. The deficient portions of the non-conforming program may remain in effect until approval of the revised program, unless FRA provides notification otherwise. An employer shall resubmit the portion of its program, as revised to address specific deficiencies, within 90 days after the date of any notice of deficiencies from the Associate Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Associate Administrator may extend this 90-day period upon written request.

* * * * *

10. Section 243.111 is amended by revising paragraphs (a) and (c)(3) and (4), removing paragraphs (c)(5) through (7), and revising paragraph (e) introductory text to read as follows:

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

(a) A training organization or learning institution that provides training services for safety-related railroad employees, including providing such training services to independent students who enroll with such training organization or learning institution and who will rely on the training services provided to qualify to become safety-related railroad employees, must submit its program to FRA for review and approval unless:

(1) The program is approved as a model program under § 243.105 or an employer program under § 243.101; and

(2) The training organization or learning institution submits an informational filing to its previously approved program containing the information required in paragraph (c) of this section.

* * * * *

(c) * * *

(3) The training organization or learning institution's primary telephone number and point of contact; and

(4) A listing of the training organization or learning institution's designated instructors.

* * * * *

(e) Previously approved programs require an informational filing when modified.

The training organization or learning institution shall review its previously approved training program and modify it accordingly when new safety-related Federal railroad laws, regulations, or orders are issued, or new safety-related technologies, procedures, or equipment are introduced into the workplace and result in new knowledge requirements, safety-related tasks, or in modifications of existing safety-related duties. A training organization or learning institution that modifies its training program for these described reasons shall submit an informational filing to the Associate Administrator not later than 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise. Programs modified in accordance with this paragraph are considered approved upon modification and may be implemented immediately. Any program deficiencies noted by the Associate Administrator shall be addressed as specified in this section. A training organization or learning institution may transfer an approved program to another training organization or learning institution, or an employer, and that transfer will require the acquiring entity to file an informational filing unless the acquiring entity is making substantial additions or revisions to the previously approved program, which will require FRA review under paragraph (f) of this section. The filing shall contain a summary description of sufficient detail so that FRA can associate the changes with the training organization's or learning institution's previously approved program, and shall include:

* * * * *

11. Section 243.113 is revised to read as follows:

§ 243.113 Electronic and written program submission requirements.

(a) Each employer, training organization, or learning institution to which this part applies is required to file by electronic means at FRA's part 243 web portal any program submissions required under this part in accordance with the requirements of this section. FRA's part 243 web portal will prompt users to submit all required training program information. Each organization, business, or association that develops an optional model program in accordance with § 243.105 is required to file by electronic means at FRA's part 243 web portal the program in accordance with the requirements of this section.

(b) Before any person's first program submission electronically at FRA's part 243 web portal, the person must register for access at the portal, <https://safetydata.fra.dot.gov/Part243/>. Users must provide the following information to complete registration:

(1) The name of the employer, organization, learning institution, business, or association;

(2) The names of two individuals, including job titles, who will be the person's points of contact and will be the only individuals allowed access to FRA's secure document submission site;

(3) The mailing addresses for the person's points of contact;

(4) The person's system or main headquarters address located in the United States;

(5) The email addresses for the person's points of contact; and

(6) The daytime telephone numbers for the person's points of contact.

(c) A person that electronically submits an initial program, informational filing, or new portions or revisions to an approved program required by this part at FRA's part 243 web portal shall be considered to have provided its consent for FRA to electronically

store any materials required by this part and to receive approval or disapproval notices from FRA by email.

Subpart C—Program Implementation and Oversight Requirements

12. Revise and republish § 243.201 to read as follows:

§ 243.201 Employee qualification requirements.

(a)(1) Each employer must permit only employees appropriately trained and qualified to perform safety-related service.

(2) In addition to any required knowledge-based training, an employer may limit a safety-related railroad employee's training to only the relevant Federal requirements that apply to the safety-related tasks that the employer authorizes the employee to perform.

(3) The requirements in paragraph (a) do not impact the initial designation of the existing safety-related railroad employees who were designated by September 1, 2020 (for 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) or January 1, 2022 (for each employer conducting operations subject to this part not covered by the September 1, 2020 implementation date). Each employer conducting operations subject to this part shall either:

(i) 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; or

(ii) For an employer that does not designate employees by occupational category or subcategory, retain a record for each employee identifying the list of Federal railroad safety laws, regulations, and orders that cover the work the employee is designated as qualified to perform.

(b) An employer commencing operations 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.

(c) Newly hired employees or those assigned new safety-related duty. The following requirements apply to qualifying a safety-related railroad employee who, subsequent to the employer's designation in accordance with paragraphs (a) and (b) of this section, is newly hired or is to engage in a safety-related task not associated with the employee's previous training.

(1) Prior to an employee becoming a qualified member of an occupational category or subcategory, the employer shall require a safety-related railroad employee who is newly hired or is to engage in safety-related duties not associated with the employee's previous training to successfully complete the formal training curriculum for that category or subcategory of safety-related railroad employee. Successful completion of the formal training curriculum includes passing any required examinations covering the skills and knowledge the employee will need to possess in order to perform the safety-related duties necessary to be a member of the occupational category or subcategory.

(2) When the training program is required to include OJT, the employee shall demonstrate, to the satisfaction of a designated instructor, OJT proficiency by successfully completing the safety-related tasks necessary to become a qualified member of the occupational category or subcategory. However, as part of the OJT process and before completing any of the formal training, including classroom training and OJT, and passing the field evaluation, a person may perform such tasks under the direct onsite

observation of any qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if an unsafe act or non-compliance with Federal railroad safety laws, regulations, or orders is observed. An employee designated to provide formal training to other employees, and who is not a designated instructor, shall be qualified on the safety-related topics or tasks in accordance with the employer's training program and the requirements of this part.

(d) Employees previously trained or qualified, but not by the current employer: If an employee has received relevant training or qualification for a particular occupational category or subcategory through participation in an FRA-required training program completed by an entity other than the employee's current employer, that training shall satisfy the requirements of this part:

(1) Provided that:

(i) A current record of training is obtained from that other entity; or

(ii) When a current record of training is unavailable from that other entity, an employer performs testing to ensure the employee has the knowledge necessary to be a member of that category or subcategory of safety-related railroad employee. Testing shall include an oral or written examination and demonstrating the ability to inspect, identify, and initiate corrective action necessary for compliance with Federal railroad safety laws, regulations, or orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, or orders. A designated instructor must make the final determination as to whether the employee has the knowledge, skills, and abilities to become a member of an occupational category; and

(2) When the employee, in the previous 180 days, has either not performed the safety-related duties or not received initial or periodic training for an occupational category or subcategory, the employer shall perform testing to ensure the employee has retained the knowledge necessary to remain a member of that occupational category or

subcategory. In the situation where an employee's records are unavailable and the employee is subject to testing under paragraph (d)(1)(ii) of this section, no additional testing is required.

(e) Refresher training requirements and options:

(1) 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 three 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, or occurred, before FRA's approval of the employer's training program, the employer shall provide refresher training either within three calendar years from that prior training event or, for each such employer conducting operations as of January 1, 2022, no later than December 31, 2024.

(2) 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 three 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, or occurred, before FRA's approval of the employer's training program, the employer shall provide refresher training either within three calendar years from that prior training event or, for each such employer conducting operations as of May 1, 2023, no later than December 31, 2026.

(3) Each employer shall ensure that refresher training includes formal training if the employee did not previously receive formal training on the application of any specific Federal railroad safety law, regulation, or order the employee is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those specific Federal railroad safety laws, regulations, and orders.

(4) Each employer shall ensure that refresher training for employees charged with the inspection of track or railroad equipment address identifying defective conditions and how to initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries.

(5) Each employer shall ensure that refresher training includes safety-related tasks that address skill gaps that the employer identified in the workforce through efficiency testing, periodic oversight, annual reviews, accident/incident data, FRA inspection data, or other performance measuring metrics.

(6) Except for refresher training required by paragraph (e)(3) of this section, an employer may offer each employee a single test out option for any occupational category or subcategory that, if passed, will be considered an acceptable substitute for refresher training. If the employee does not pass this single test on the first attempt, the employer may not offer the employee additional attempts to test out for the occupational category or subcategory tested and the employer must provide refresher training to the employee in compliance with paragraph (e) of this section. Each test out option must:

(i) Be designed to determine whether an employee has the critical knowledge and skills to continue to be designated to perform safety-related service in that occupational category or subcategory, whether by craft, class, task, or other suitable terminology;

(ii) Meet the equivalent standards required for such assessment testing under formal training in that occupational category or subcategory; and

(iii) Be recorded under § 243.203 of this part.

(f) Except for the single test out option in paragraph (e)(6) of this section, an employer must consider ways to provide remedial training and retesting of any employee who fails to successfully pass any training or testing. Under this part, a failure of any test or training does not bar the person from successfully completing the training or testing at a later date.

13. Section 243.203 is amended by revising paragraphs (b)(2) and (6), and (c) to read as follows:

§ 243.203 Records.

* * * * *

(b) * * *

(2) Occupational category or subcategory designations, or other suitable designations, for which the employee is deemed qualified;

* * * * *

(6) The employee's OJT performance, which shall include the unique name or identifier of the OJT program component in accordance with § 243.103, the date the OJT program component was successfully completed, and the identification of the designated instructor(s) determining that the employee successfully completed all OJT training necessary to be considered qualified to perform the safety-related tasks identified with the occupational categories or subcategories, or other suitable terminology, for which the employee is designated in accordance with the program required by this part;

* * * * *

(c) *Record accessibility for other than individual employee records.* Except for records demonstrating the qualification status of each safety-related railroad employee as described in paragraph (b) of this section or otherwise specified in this part, each annual review required by this part shall be accessible for three calendar years after the end of the calendar year to which the annual review relates, and each test, inspection, or other event record required by this part shall be accessible for one calendar year after the end of the calendar year to which the event relates. Each employer shall make these records accessible at one headquarters location within the United States, including, but not limited to, a railroad's system headquarters, a holding company's headquarters, a joint venture's headquarters, a contractor's principal place of business or other headquarters

located where the contractor is incorporated. This requirement does not prohibit an employer with divisions from also maintaining any of these records at any division headquarters.

* * * * *

14. Section 243.205 is amended by revising paragraphs (a), (c) introductory text, (e)(1), (g) introductory text, (h), and (i) to read as follows:

§ 243.205 Periodic oversight.

(a) *General.* As part of the program required in accordance with this part, an employer shall adopt and comply with a program to conduct periodic oversight tests or inspections to determine if safety-related railroad employees comply with Federal railroad safety laws, regulations, and orders particular to FRA-regulated personal and work group safety. The program of periodic oversight shall commence on the day the employer files its program with FRA pursuant to § 243.101(a) or on the day the employer commences operations pursuant to § 243.101(b). The data gathered through the testing or inspection components of the program shall be used to determine whether systemic performance gaps exist, and to determine if modifications to the training component of the program are appropriate to close those gaps.

* * * * *

(c) *Railroad oversight.* Each railroad shall identify supervisory employees, by category or subcategory, responsible for conducting periodic oversight tests or inspections for the safety-related railroad employees that it authorizes to perform safety-related duties on its property, except a railroad is not required to:

* * * * *

(e) * * *

(1) When oversight test or inspection sessions are scheduled specifically to determine if safety-related employees are in compliance with Federal railroad safety

laws, regulations, and orders particular to FRA-regulated personal and work group safety;

or

* * * * *

(g) *Contractor oversight.* Each contractor shall conduct periodic oversight tests or inspections of its safety-related railroad employees provided:

* * * * *

(h) *Oversight divided by written agreement.* (1) Notwithstanding the requirements of paragraphs (c) and (g) of this section, a railroad and a contractor may agree in writing that the contractor will provide the oversight by specifying in the program that the railroad has trained the contractor employees responsible for training and oversight; or

(2) Notwithstanding the requirements of this section that assign specific periodic oversight responsibilities to a railroad or a contractor, a railroad and a contractor may agree to a different periodic oversight responsibility arrangement in writing.

(i) *Detailed records required.* Each employer that conducts periodic oversight in accordance with this section must keep a record of the date, time, place, and result of each test or inspection. The records shall specify each person administering tests or inspections, and each person tested. The record shall also provide a method to record whether the employee complied with the monitored duties, and any interventions used to remediate non-compliance. Modifications of the program required by § 217.9 of this chapter may be used in lieu of this oversight program, provided a railroad specifies it has done so in its program submitted in accordance with this part.

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David A. Fink,
Administrator.

