

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2020-0017:
TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD
EMPLOYEES

COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION
AND
THE NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION

The American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of itself and its member railroads, and the National Railroad Construction and Maintenance Association (“NRC”), on behalf of itself and its contractor members, submit the following comments in response to the Federal Railroad Administration (“FRA”)’s Notice of Proposed Rulemaking (“NPRM”) to amend its regulation on Training, Qualification, and Oversight for Safety-Related Railroad Employees (“Training Rule”) to codify agency guidance and clarify existing requirements.¹

In November 2014, the FRA promulgated the Training Rule, establishing minimum training standards for safety-related railroad employees and requiring railroad carriers, contractors, and subcontractors to develop and submit certain training programs to FRA for

¹ ASLRRA is a non-profit trade association representing the interests of approximately 500 short line railroad members and additional railroad supply company members in legislative and regulatory matters. Operating 50,000 miles of track, or approximately 30% of freight rail in the United States, short line railroads play a vital role in the transportation network. The NRC is a non-profit trade association representing businesses from across the nation in the rail construction and maintenance field. The NRC’s nearly 200 contractor member companies range in size from small family businesses to the largest companies in the industry. NRC members perform work for transit, commuter, intercity passenger, industrial, and freight rail. 87 Fed. Reg. 59,749 (Oct. 3, 2022).

approval.² Except for establishing different compliance dates, the Training Rule largely treated Class I, II and III railroads the same. ASLRRA and NRC have consistently advocated for regulatory relief from the rule, which places an undue financial burden on small railroads and contractors. In conjunction with settlement of litigation with ASLRRA over the rule, FRA issued compliance guidance.³ Although the guidance provided some regulatory flexibility for small entities, it did not provide certainty as to how FRA would apply the Training Rule in the future, and as guidance, it is subject to change without formal rulemaking.

Due to concerns with the impermanent nature of agency guidance and the onerous training and recordkeeping regulatory requirements, on June 27 and July 31, 2019, ASLRRA and NRC submitted joint petitions for rulemaking to FRA requesting changes to the Training Rule in order to relieve small railroads and railroad contractors of substantial and unnecessary regulatory burdens and to provide those entities with a greater degree of regulatory flexibility in complying with the rule.⁴ The associations are pleased to see FRA's NPRM to amend the Training Rule consistent with current FRA regulatory guidance to small entities. However, the associations urge FRA to consider additional revisions regarding the requirement for refresher training, which FRA rejected in the NPRM without explanation.⁵

The Training Rule requires that all employees receive refresher training at least every three calendar years.⁶ This requirement applies regardless of whether or not a particular employee needs refresher training. However, most railroad employees do not need refresher

² 79 Fed. Reg. 66,459 (Nov. 7, 2014).

³ "AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION'S QUESTIONS AND THE FEDERAL RAILROAD ADMINISTRATION'S ANSWERS REGARDING FRA'S TRAINING, QUALIFICATION AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES FINAL RULE (49 CFR PART 243)," available at: <https://railroads.dot.gov/elibrary/aslr-ra-part-243-qa>

⁴ Docketed at FRA-2019-0050.

⁵ 87 Fed. Reg. at 59,752.

⁶ 49 C.F.R. § 243.201(e).

training, particularly in tasks that they perform routinely. The failure rate for short line and regional railroads workers that are already subject to oversight testing under other regulations is approximately two percent. In other words, only two percent of employees are identified as in need of refresher training annually; ninety-eight percent are determined to be proficient at performing their duties and do not require refresher training. These pass/fail rates are likely indicative of the results if testing were to be performed for other safety-related activities that railroad employees perform. Additionally, refresher training in other FRA regulations permits observation and evaluation of actual performance of duties to meet a portion of the requirement.⁷

Accordingly, the associations propose that the individual companies, within their Part 243 training programs, provide the methodology by which they propose to assess an employee's knowledge and skill to perform his or her assigned task(s). Many Class II and Class III railroad employers, for example, could choose to assess their employees through their existing operational testing programs approved by FRA pursuant to 49 C.F.R. Part 217. This revision will ensure that employees who need recurrent training receive such training and should avoid substantial unnecessary expense in terms of time, money and lost productivity providing refresher training to employees who do not require such training.

Many short line and regional railroads operate on very thin margins, and all companies have limited resources. Federally mandating that these companies expend limited resources on unnecessary training may mean foregoing actions that would have a more meaningful impact on safety. Such a mandate could even degrade safety by forcing companies to defer maintenance as resources are diverted to training. Unnecessary training also results in lost productivity as

⁷ See, e.g., 49 C.F.R. § 232.203(b)(8), stating that observation and evaluation of actual performance of duties may be used to meet the "hand-on" portion of required periodic refresher training, provided that such testing is documented.

employees that are in a training class are not available to perform their normal job responsibilities. Additionally, companies incur administrative burdens in tracking and scheduling employee retraining.

Respectfully submitted,

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