[4910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 233

[Docket No. FRA-2012-0104, Notice No. 2]

RIN 2130-AC44

Signal Systems Reporting Requirements

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

ACTION: Final rule.

SUMMARY: FRA is issuing this final rule as part of a paperwork reduction initiative. The final rule eliminates the regulatory requirement that each railroad carrier file a signal system status report with FRA every five years. FRA believes the report is no longer necessary because FRA receives more updated information regarding railroad signal systems through alternative sources. Separately, FRA is amending the criminal penalty provision in the Signal Systems Reporting Requirements by updating two outdated statutory citations.

DATES: This final rule is effective on [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Petitions for reconsideration must be received by [INSERT DATE 50 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments in response to petitions for reconsideration must be received by [INSERT DATE 95 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Petitions for reconsideration and comments on petitions for reconsideration: Any petitions for reconsideration or comments on petitions for reconsideration related to this Docket No. FRA-2012-0104, Notice No. 2 may be submitted by any of the following methods:

• Federal eRulemaking Portal: Go to www.Regulations.gov. Follow the online instructions for submitting comments.

• Mail: Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

• Hand Delivery: Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• Fax: (202) 493-2251. Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking.

Please note that all petitions for reconsideration of this final rule and comments on the petitions that are received will be posted without change to www.Regulations.gov, including any personal information provided. Please see the discussion under the Privacy Act heading in the "SUPPLEMENTARY INFORMATION" section of this document.

Docket: For access to the docket to read background documents or comments received, go to www.Regulations.gov at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Crain, Electronic Engineer, Signal and Train Control Division, Office of Railroad Safety, FRA, W35-226, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-6257), sean.crain@dot.gov, or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, W31-209, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-6001), stephen.n.gordon@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Explanation of Regulatory Action

A. Elimination of the Signal System Five-[Y]ear Report

On May 14, 2012, President Obama issued Executive Order (E.O.) 13610—Identifying and Reducing Regulatory Burdens, which seeks "to modernize our regulatory system and to reduce unjustified regulatory burdens and costs." See 77 FR 28469. The E.O. directs each executive agency to conduct retrospective reviews of its regulatory requirements to identify potentially beneficial modifications to regulations. Executive agencies are to "give priority, consistent with the law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety and our environment." See id. at 28470.

FRA initiated a review of its existing regulations in accordance with E.O. 13610 and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq., with the goal of identifying regulations that can be amended or eliminated, thereby reducing the paperwork and reporting burden on railroad carriers (railroads) that are subject to FRA jurisdiction. One area where FRA believes it can help reduce the railroad industry's

reporting burden is by eliminating the requirement to file a "Signal System Five-Year Report." 49 CFR 233.9 (§ 233.9). Accordingly, FRA proposed to do so in a notice of proposed rulemaking (NPRM) published June 19, 2013. See 78 FR 36738.

Having considered the public comments on the NPRM, FRA is issuing this final rule, which eliminates the requirement in § 233.9 that each carrier subject to the Signal Systems Reporting Requirements at 49 CFR part 233 (part 233) complete and submit a "Signal System Five-Year Report" (Form FRA F6180.47) in accordance with the instructions and definitions on the form. Part 233 applies to railroads that operate on standard gage track that is part of the general railroad system of transportation, except for rail rapid transit operations conducted over track that is used exclusively for that purpose and that is not part of the general railroad system of transportation. See 49 CFR 233.3, Application; see also 49 CFR part 209, app. A, and part 211, app. A, for discussions of the term "general railroad system of transportation[.]"

The information reported on FRA Form F6180.47 is intended to update FRA on the status of the railroad's signal system. It provides a snapshot of each reporting railroad's signal system every five years, and FRA has historically used the report as a source to monitor changes to signal systems among the Nation's railroads. In particular, the report provides information such as the total road and track mileage for each method of train operation on the reporting railroad (i.e., traffic control, automatic block, timetable and train orders, and non-automatic block) and the total number of interlockings, controlled points, and switch arrangements maintained by the reporting railroad. The report also provides information on the total road and track mileage and the total number of locomotives and motor cars (including multiple unit cars) with automatic train stop,

train control, and cab signal systems on the line of the reporting railroad, including foreign locomotives and "motor cars" that operate over these installations.

Prior to April 1, 1997, carriers were required to submit a "Signal System Annual Report" by April 15 of each year. However, based on a regulatory review, FRA extended the reporting requirement to every five years rather than annually. See 61 FR 33871 (July 1, 1996). FRA determined that a five-year reporting period would significantly reduce the reporting burden on the railroads while still meeting the informational needs of the government. Therefore, in July 1996, FRA amended § 233.9 to require that "[n]ot later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a signal system status report 'Signal System Five-[Y]ear Report' on a form to be provided by FRA in accordance with instructions and definitions provided on the report."

For the 2012 reporting period, FRA transitioned the "Signal System Five-Year Report" form into an electronic format. The electronic form required all of the same information as the paper form but could be submitted via the Internet. The form was due to be submitted by no later than April 1, 2012, and pertained to signal systems in service on or after January 1, 2012. The next five-year report is not due until April 2017. The present rulemaking eliminates the reporting requirement in its entirety for April 2017 and thereafter.

FRA is eliminating the requirement to file a "Signal System Five-Year Report" because the report is no longer necessary. The data collected in the "Signal System Five-Year Report" quickly becomes outdated. Railroads normally modify signal systems far more frequently than once every five years. Indeed, FRA has generally found that signal system modifications occur with such frequency under 49 CFR 235.5 and 235.7, that the

"Signal System Five-Year Report" often is out-of-date by the time it is received by FRA.

Moreover, FRA has other viable means to monitor a carrier's signal system. It is better able to monitor the status of a railroad signal system through the use of more frequently collected agency data—such as the Block Signal Application (BSAP), see 49 CFR 235.5, and positive train control (PTC) filings, see 49 CFR part 236, subparts H and I—which provide the agency much more detailed and useful information. The development and expansion of electronic reporting methods also allow railroads to more frequently report to FRA information similar to that which is captured in the "Signal System Five-Year Report." This ability gives FRA a better "real-time" understanding of a carrier's signal system than the agency can get from a report that is filed once every five years. As a result, FRA currently relies on the more up-to-date sources for signal system data and has little use for the information collected in the "Signal System Five-Year Report."

Finally, the railroad industry and the general public do not appear to derive any useful benefit or information from the requirement to submit a "Signal System Five-Year Report." The responses FRA has received from the industry and the general public indicate that, as expected, the data contained in the report does not provide up-to-date information about railroad signal systems. As a result, FRA is confident that eliminating the report will not result in the railroad industry's or the general public's being less informed about railroad signal systems.

B. Updating Statutory Citations in Part 233

Administrative amendments are sometimes necessary to address citations that have become outdated due to the actions of Congress. This is particularly true when the

statutory authority for a regulatory provision is moved to a different title, chapter, or section of the U.S. Code or if the statutory authority is redesignated as an entire section of the U.S. Code instead of just a subsection of the U.S. Code. Federal regulations do not "auto-correct" for these types of changes. Therefore, it is incumbent on agencies to monitor their regulations and make appropriate changes whenever feasible. FRA has identified two citations in 49 CFR 233.13(b)—referencing "section 209(e) of the Federal Railroad Safety Act of 1970, as amended (49 U.S.C. 438(e))" and "49 U.S.C. 522(a)"—that should be amended for this reason, and is making those amendments in this rulemaking.

The first of the subject statutory citations is to a section of the former Federal Railroad Safety Act of 1970 (FRSA), as amended. See Public Law 91-458 (October 16, 1970). Section 209 of the FRSA, as originally enacted, contained a civil penalty provision that was codified at 45 U.S.C. 438. Although the statute did not contain a criminal penalty provision when it was first enacted, Congress eventually determined that there may be situations where criminal penalties are warranted for violations of the law. Accordingly, the FRSA was amended on October 10, 1980. See Public Law 96-423. Among other things, the 1980 amendment added subsection (e) to section 209 of the FRSA, establishing that criminal penalties may be assessed against any person who knowingly and willfully makes a false entry in a record or report required to be made or preserved under the FRSA; destroys, mutilates, changes, or otherwise falsifies such a record or report; fails to enter required specified facts or transactions in such a record or report; makes, prepares, or preserves such a record or report in violation of a regulation or order issued under the FRSA; or files a false record or report with the Secretary of

Transportation. This revision to the FRSA was codified at 45 U.S.C. 438(e).

In 1984, FRA amended its signal and train control regulations, including 49 CFR part 233. See 49 FR 3374 (Jan. 26, 1984). Section 233.13(b) was amended at this time to read "[w]hoever knowingly and willfully—[f]iles a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e))." (Emphasis added.) The italicized language reflected the added statutory authority to impose certain criminal penalties that Congress provided in its 1980 amendment to the FRSA, which applied because FRSA was part of the statutory basis for the requirements in part 233. See 49 FR 3378-79. Subsequently, Congress made additional changes that applied to section 209(e) of the FRSA. In 1994, Congress enacted a law to "revise, codify, and enact without substantive change certain general and permanent laws, related to transportation" under title 49 of the U.S. Code. See Public Law 103-272 and H.R. Rep. 103-180. As a result, the general and permanent Federal railroad safety laws were repealed, and their provisions were revised without substantive change, enacted, and moved from title 45 (generally) to title 49. This 1994 law, commonly referred to as "recodification," included the FRSA as a whole, which was recodified primarily in 49 U.S.C. chapter 201-213, including the criminal penalty provision at section 209(e) (45 U.S.C. 438(e)), which was recodified at 49 U.S.C. 21311. Recodification rendered this statutory citation in 49 CFR 233.13(b) outdated, and FRA had not sought to amend the regulatory provision prior to the NPRM in this rulemaking. Given that FRA has begun the present rulemaking addressing part 233, the agency views now as an appropriate time to update this citation in paragraph (b) of § 233.13.

The second of the statutory citations being updated is "49 U.S.C. 522(a)," which provides an additional statutory authority for criminal penalties for violations of § 233.9. Before the enactment of the FRSA in 1970, part 233 had been issued pursuant to section 25(h) of the Interstate Commerce Act (then codified at 49 U.S.C. 26(h)), the Signal Inspection Act of 1937, commonly referred to as the Signal Inspection Act,[1] as well as other statutory provisions.[2] In particular, criminal penalties for violations of reporting requirements established by part 233 were available under the predecessor of 49 U.S.C. 522,[3] which reads as follows: "A person required to make a report to the Secretary of Transportation . . . under section 504 of this title about transportation by rail carrier, that knowingly and willfully (1) makes a false entry in the report . . . or (5) files a false report . . . with the Secretary, shall be fined not more than $5,000, imprisoned for not more than 2 years, or both." In turn, 49 U.S.C. 504 authorizes the Secretary to require periodic reports from rail carriers containing answers to questions asked by the Secretary, and is part of the statutory authority for part 233.

In 1998, Public Law 105-178, sec. 4015(c), 112 Stat. 412, struck the designation "(a)" for the first subsection of 49 U.S.C. 522 and struck former subsection (b) in its entirety. Accordingly, the current citation for the provision cited as "49 U.S.C. 522(a)" in paragraph (b) of § 233.13 is being corrected to read as "49 U.S.C. 522" instead.

FRA identified the need for this update to the citation to "49 U.S.C. 522(a)" after

[1] The Signal Inspection Act of 1937 was repealed in the 1994 recodification of the rail safety laws, and its provisions were revised and reenacted without substantive change, codified at 49 U.S.C. chapters 205 and 213. Public Law 103-272.

[2] See final rule amendments to 49 CFR part 233 at 37 FR 7096-97 (Apr. 8, 1972) citing the following: "AUTHORITY: The provisions of this Part 233 issued under secs. 12, 20, 24 Stat. 383, 386, as amended, sec. 441, 41 Stat. 498, as amended, secs. 6(e), (f), 80 Stat. 937, 49 U.S.C. 12, 20, 26, 1655."

[3] Section 522 of title 49, U.S. Code was previously codified at 49 U.S.C. 1655(f)(2) (section 6(f)(2) of the former Department of Transportation Act, Public Law 89-670 (Oct. 15, 1966)), which gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to carry out duties transferred to the Secretary of Transportation by 49 U.S.C. 1655(e).

the NPRM in this rulemaking was issued and is incorporating this change to § 233.13(b) in this final rule. For clarity FRA is also updating the authority citation for part 233 by adding explicit citations to 49 U.S.C. 504 and 522. FRA is proceeding to a final rule without providing an NPRM or an opportunity for public comment on this aspect of the final rule. Public comment is unnecessary because, in making this revision, FRA is not exercising discretion in a way that could be informed by public comment. Therefore notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

C. Responses to Public Comments

FRA received comments in response to the NPRM from a single entity, the Brotherhood of Railroad Signalmen (BRS), which were submitted on August 19, 2013. Essentially, BRS questions the basis for eliminating the requirement for each railroad to file a "Signal System Five-Year Report." BRS suggests that—rather than eliminating the five-year reporting requirement—FRA should be shifting its regulatory focus in the opposite direction by reverting back to an annual report, as was required prior to 1997.

FRA currently receives more information about the signal systems of the Nation's railroads than it has ever received in the past. The agency regularly receives and reviews signal system reports through methods such as BSAPs and the various PTC plans, like the PTC Development Plan (PTCDP) and the PTC Implementation Plan (PTCIP). The receipt of this information makes FRA more knowledgeable than ever, and it also renders certain types of other information superfluous. Given the signal system information reported to FRA through these methods, FRA does not see a need to rely on the information in the "Signal System Five-Year Report" to further its safety mission. As a

result, there is not a sufficient safety justification to continue requiring each railroad to file a "Signal System Five-Year Report" with FRA. Returning to a yearly reporting requirement would add even more regulatory costs without an offsetting safety benefit. Such a move would increase the reporting burden on the railroads, and conflict with the goals of E.O. 13610 and the Paperwork Reduction Act.

BRS also questions FRA's statement in the NPRM that the feedback from the railroad industry and the general public indicated that the data contained in the "Signal System Five-Year Report" is not useful in providing up-to-date information about railroad signal systems. BRS contends that FRA's statement in the NPRM was not supported by documentation.

The support for FRA's view of the apparent usefulness of the "Signal System Five-Year Report" comes directly from the Signal Division of FRA's Office of Railroad Safety, which is responsible for handling the reports. Over the course of the last ten years, FRA has received exactly two requests for data from the report. One of these requests came from an attorney, and the other came from a signal supplier. The attorney took a copy of the "Signal System Five-Year Report" for a railroad. The attorney later called the FRA employee responsible for handling the report and said that the information in the report was out-of-date and not useful. The signal supplier had a similar reaction when FRA explained the contents of the report and did not even bother to take a copy of the data. The supplier further informed FRA that the data collected was not specific enough to be helpful.

Finally, BRS argues that FRA should collect each railroad's signal system status in real time because it is necessary for FRA to keep abreast of upcoming technologies

railroads intend to use. FRA recognizes the importance of staying current with the changing technologies. The agency is increasingly using electronic reporting methods to gather information in a more efficient and timely manner. And, as noted above, with the various reporting requirements of PTC (both subparts H and I of part 236), FRA is being informed more frequently than ever about the latest railroad signal systems with railroads filing Product Safety Plans (PSPs), PTCDPs, PTCIPs, and PTC Safety Plans (PTCSPs) about the upcoming PTC technologies the railroads plan to use and any signal system upgrades and/or changes that are being implemented to support the installation of PTC. As technology moves forward and resources change, there may be additional opportunities for FRA to take advantage real-time information collection provided that there is a legal basis for such information collection, but that does not have any bearing on the efficacy of continuing to require railroads to file the "Signal System Five-Year Report."

In FRA's view, the "Signal System Five-Year Report" has a very limited usefulness. The feedback from the public tends to support FRA's view. Therefore, FRA has made a determination that the railroads that are subject to the Signal Systems Reporting Requirements in part 233 should not have to commit resources to the time and expense of collecting the information required by the report.

II. Section-by-Section Analysis

PART 233—SIGNAL SYSTEMS REPORTING REQUIREMENTS

Section 233.9 Reports

FRA is eliminating the "Signal System Five-Year Report" required by this section and reserving the section for future use. As stated in the NPRM, eliminating this

reporting requirement will reduce the railroad industry's paperwork burden in a way that does not endanger the public health, welfare, and safety or our environment. There are three specific reasons that support FRA's elimination of this reporting requirement. First, the information contained in the "Signal System Five-Year Report" quickly becomes obsolete. Second, FRA is better able to determine the status of a railroad's signal system through other more frequently collected types of information. Third, the "Signal System Five-Year Report" has limited usefulness to the railroad industry or the general public.

Section 233.13 Criminal Penalty

After receiving no comments on this proposed amendment, FRA is making an administrative change to paragraph (b) of this section to correct two out-of-date statutory citations. Current paragraph (b) provides that it is unlawful to knowingly and willfully file a false report or other document required by part 233. Such conduct is punishable with a fine of $5,000 and up to two years of imprisonment. The paragraph cites to "section 209(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(e))" as statutory authority for the criminal penalties; however, this statutory provision was repealed, revised without substantive change, reenacted, and recodified under a different title of the U.S. Code as part of a reorganization of the Federal railroad safety statutes by Congress. The provision is currently housed at 49 U.S.C. 21311. This final rule corrects the outdated citation in paragraph (b) by replacing "45 U.S.C. 438(e)" with the current citation, which is "49 U.S.C. 21311." Paragraph (b) also cites to "49 U.S.C. 522(a)"; however, this provision has been redesignated as simply "49 U.S.C. 522" instead. The references in paragraph (b) are updated accordingly to reflect the current statutory

citations. These updates also are reflected in changes to the "Authority" listed for part 233 to accurately state the statutory bases for this regulatory provision.

Appendix A to Part 233—Schedule of Civil Penalties

FRA is amending appendix A to part 233, which contains a schedule of civil penalties for use in connection with this part, in this final rule to remove and reserve the entry for § 233.9, in accordance with other amendments being prescribed in this rulemaking.

III. Regulatory Impact

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rulemaking eliminates the requirement in § 233.9 that each railroad subject to part 233 file with FRA a "Signal System Five-Year Report." The final rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under E.O. 12866 and E.O. 13563. This rule also is not significant under the DOT Regulatory Policies and Procedures. 44 FR 11034 (Feb. 26, 1979). A regulatory impact analysis addressing the economic impact of this final rule has been prepared and placed in the docket.

As part of the regulatory evaluation, FRA has explained the benefits of this final rule and provided monetized assessments of the value of such benefits. The final rule eliminates the cost associated with submitting a "Signal System Five-Year Report." Each railroad currently expends approximately one hour of labor to prepare and submit the report to FRA every five years. For the 20-year period analyzed, the estimated cost savings will be $234,265. The present value of this is $121,904 (using a 7 percent discount rate). This regulation only reduces the burden on railroads; it does not impose

any additional costs. Therefore, the net benefit of this final rule will be $121,904 (present value, 7 percent).

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (RFA), Public Law 96-354, as amended, and codified as amended at 5 U.S.C. 601-612, and E.O. 13272—Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on "small entities" for purposes of the RFA. An agency must prepare a final regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the RFA, 5 U.S.C. 605(b), the Administrator of FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will affect all railroads, including small railroads. However, the effect on these railroads will be purely beneficial and not significant, as it will reduce their labor burden by eliminating the need to file a "Signal System Five-Year Report."

The term "small entity" is defined in 5 U.S.C. 601. Section 601(6) defines "small entity" as having the same meaning as "the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4), and (5) of this section." In turn, section 601(3) defines a "small business" as generally having the same meaning as "small business concern" under Section 3 of the Small Business Act. This includes any a small business concern that is independently owned and operated, and is not dominant in its field of operation. Next, section 601(4) defines "small organization" as generally meaning any not-for-profit enterprises that is independently owned and

operated, and not dominant in its field of operations. Additionally, section 601(5) defines "small governmental jurisdiction" in general to include governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest that a for-profit railroad business firm may be (and still be classified as a "small entity") is 1,500 employees for "Line-Haul Operating" railroads, and 500 employees for "Short-Line Operating" railroads. See "Size Eligibility Provisions and Standards," 13 CFR part 121 subpart A.

Under exceptions provided in section 601, Federal agencies may adopt their own size standards for small entities in consultation with SBA, and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a "Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws," which formally establishes small entities as including, among others, the following: (1) the railroads classified by the Surface Transportation Board as Class III; and (2) commuter railroads "that serve populations of 50,000 or less."[4] See 68 FR 24891 (May 9, 2003) codified at appendix C to 49 CFR part 209. Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation

[4] "In the Interim Policy Statement [62 FR 43024 (Aug. 11, 1997)], FRA defined 'small entity,' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Equal Access for Justice Act 5 U.S.C. 501 et seq., to include only railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous materials shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1-1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less." 68 FR 24892 (May 9, 2003). "The Final Policy Statement issued today is substantially the same as the Interim Policy Statement." 68 FR 24894.

Board's threshold of a Class III railroad, which is adjusted by applying the railroad revenue deflator adjustment.[5] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201. FRA is using this definition of "small entity" for this final rule.

FRA estimates that there are 763 railroads that operate on standard gage track that is part of the general railroad system of transportation and therefore subject to part 233, see 49 CFR 233.3, all of which will be affected by this final rule. Of those railroads, 44 are Class I freight railroads, Class II freight railroads, commuter railroads serving populations of 50,000 or more, or intercity passenger railroads (i.e., the National Railroad

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[5] In general, under 49 CFR 1201.1-1, the class into which a railroad carrier falls is determined by comparing the carrier's annual inflation-adjusted operating revenues for three consecutive years to the following scale after the dollar figures in the scale are adjusted by applying the railroad revenue deflator formula:

- o Class I – $250 million or more;
- o Class II – more than $20 million, but less than $250 million; and
- o Class III – $20 million or less.

49 CFR 1201.1-1(a), (b)(1). STB's General Instructions at 1-1 state that carriers are grouped into three classes for purposes of accounting and reporting. The three classes are as follows:

> Class I: Those carriers having annual carrier operating revenues of $250 million or more after applying STB's railroad revenue deflator formula shown in Note A.
>
> Class II: These carriers have annual carrier operating revenues of less than $250 million but in excess of $20 million after applying STB's railroad revenue deflator formula.
>
> Class III: These carriers have annual carrier operating revenues of $20 million or less after applying STB's railroad revenue.

The STB Web site indicates that the scale for 2011 is as follows:

- o Class I -- $433,211,345 or more;
- o Class II -- more than $34,656,908, but less than $433,211,345; and
- o Class III -- $34,656,908 or less.

See also 78 FR 21007 (Apr. 8, 2013). It should be noted that there are some exceptions to this general definition of the three classes of carriers. As one important example, "[f]amilies of railroads operating within the United States as a single, integrated rail system will be treated as a single carrier for classification purposes." 49 CFR 1201-1.1(b)(1). As another example, "[a]ll switching and terminal companies, regardless of their operating revenues, will be designated Class III carriers." 49 CFR 1201-1.1(d).

Passenger Corporation (Amtrak), a Class I railroad, and the Alaska Railroad, a Class II railroad). The remaining 719 railroads are therefore assumed to be small railroads for the purpose of this assessment, all of which will be impacted by this final rule. However, the impact on these small railroads will not be significant. No other small entities will be affected by this final rule. FRA estimates that each report takes approximately one labor hour to prepare and submit to FRA. The elimination of this reporting requirement will save each railroad one hour of labor every five years. Therefore, this final rule will have a positive effect on these railroads, saving each railroad approximately $307 (non-discounted) in labor costs over the 20-year analysis. Since this amount is extremely small and entirely beneficial, FRA concludes that this final rule will not have a significant impact on these railroads.

Pursuant to the RFA, FRA certifies that this final rule will not have a significant impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by the final rule, none of these entities will be significantly impacted.

C. Federalism

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), 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, the agency consults with 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.

This final rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132. FRA has determined that the final rule will not 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. In addition, FRA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes authorizing part 233, including specifically the former FRSA, repealed and recodified at 49 U.S.C 20106, and the former Signal Inspection Act of 1937, repealed and recodified at 49 U.S.C. 20501-20505. See Public Law 103-272 (July 5, 1994). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of

Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under the Federal statutes authorizing part 233, including the former FRSA and the former Signal Inspection Act of 1937. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979, Public Law 96-39, 93 Stat. 144 (July 26, 1979), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking 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.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. FRA has carefully reviewed the final rule and any potential PRA implications. Since the

present rulemaking will eliminate the reporting requirement associated with § 233.9 in its entirety for April 2017 and thereafter, there is no change to the currently approved burden under OMB No. 2130-0006.

Organizations and individuals desiring to obtain a copy of the above currently approved collection of information should contact Mr. Robert Brogan or Ms. Kimberly Toone via mail at FRA, 1200 New Jersey Ave., SE., Third Floor, Washington, DC 20590. Copies may also be obtained by telephoning Mr. Brogan at (202) 493-6292 or Ms. Toone at (202) 493-6132. (These numbers are not toll-free.) Additionally, copies may be obtained via e-mail by contacting Mr. Brogan or Ms. Toone at the following addresses: Robert.Brogan@dot.gov; Kim.Toone@dot.gov.

F. Compliance with the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 2 U.S.C. 1531, each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act, see 2 U.S.C. 1532, further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The

final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (adjusted for inflation) in any one year, and thus preparation of such a statement is not required.

G. Environmental Assessment

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

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

H. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355 (May 22, 2001). Under the E.O., a "significant energy action" is defined as "any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed

rulemaking, and notices of proposed rulemaking: (1)(i) [t]hat is a significant regulatory action under E.O. 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." FRA has evaluated this final rule in accordance with E.O. 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a "significant energy action" within the meaning of E.O. 13211.

I. Privacy Act

FRA wishes to inform all potential petitioners for reconsideration of the final rule or commenters on any petition for reconsideration of the final rule that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000, see 65 FR 19477-78, or you may visit http://www.regulations.gov/#!privacyNotice.

List of Subjects in 49 CFR Part 233

49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 233 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 233—[AMENDED]

1. The authority citation for part 233 is revised to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501-20505, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.9—[Removed and Reserved]

2. Section 233.9 is removed and reserved.

3. Paragraph (b) of § 233.13 is revised as follows:

§ 233.13 Criminal penalty.

* * * * *

(b) Files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522 and 49 U.S.C. 21311.

Appendix A to Part 233—[Amended]

4. Appendix A is amended by removing and reserving the entry for "233.9 Annual reports".

Issued in Washington, DC on June 24, 2014.

Joseph C. Szabo,
Administrator.

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