

Draft Notice of Proposed Rulemaking 11/16/10

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Subpart A - General

§ 243.1 Purpose and scope.

(a) The purpose of this part is to ensure that any person employed by a railroad or a railroad contractor as a safety-related railroad employee is trained and qualified on any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(b) This part contains the general minimum training and qualification requirements for each category and subcategory of safety-related railroad employee, regardless of whether the employee is employed by a railroad or a contractor. Contractors shall coordinate with railroads and comply with the contents of this part, including those aspects of training that are specific to the contracting railroad's rules and procedures.

(c) The requirements in this part do not exempt any other requirement in this chapter.

(d) Unless otherwise noted, this part augments other training and qualification requirements contained in this chapter.

§ 243.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 243.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 243.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any duty covered by this part, shall perform that duty in accordance with this part.

§ 243.5 Definitions.

As used in this part—

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Calendar year means the period of time beginning on January 1 and ending on December 31 of each year.

Contractor means a person under contract with a railroad, including, but not limited to, a prime contractor or a subcontractor.

Designated instructor means a person designated as such by an employer, training organization, or learning institution, who has demonstrated, pursuant to the training program submitted by the employer, training organization, or learning institution, an adequate knowledge of the subject matter under instruction and, where applicable, has the necessary experience to effectively provide formal training.

Employer means a railroad or a contractor that employs at least one safety-related railroad employee.

Formal training means training that has a structured and defined curriculum, and which provides an opportunity for employees 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, on-the-job, simulator, or laboratory training.

Knowledge-based training is a type of formal training that is not task-based and is intended to convey information required for a safety-related railroad employee to comply with Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

On-the-job training (OJT) means job training that occurs in the workplace, i.e., the employee learns the job while doing the job.

Person means an entity of any type covered under 1 U.S.C. 1, including, but not limited to, the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means that a person has successfully completed all instruction, training, and examination programs required by both the employer and this part, and that the person, therefore, may reasonably be expected to proficiently perform his or her duties in compliance with all Federal railroad safety laws, regulations, and orders.

Safety-related duty means either a safety-related task or a knowledge-based prohibition that a person meeting the definition of a safety-related railroad employee is required to comply with, when such duty is covered by any Federal railroad safety law, regulation, or order.

Safety-related railroad employee means an individual who is engaged or compensated by an employer to:

- (1) Perform work covered under the hours of service laws found at 49 U.S.C. 21101, et seq.;
- (2) Perform work as an operating railroad employee who is not subject to the hours of service laws found at 49 U.S.C. 21101, et seq.;
- (3) In the application of parts 213 and 214 of this chapter, inspect, install, repair, or maintain track, roadbed, and signal and communication systems, including a roadway worker or railroad bridge worker as defined in § 214.7 of this chapter;
- (4) Inspect, repair, or maintain locomotives, passenger cars or freight cars;
- (5) Inspect, repair, or maintain other railroad on-track equipment when such equipment is in a service that constitutes a train movement under part 232 of this chapter;
- (6) Determine that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition;
- (7) Directly instruct, mentor, inspect, or test, as a primary duty, any person while that other person is engaged in a safety-related task; or
- (8) Directly supervise the performance of safety-related duties in connection with periodic oversight in accordance with § 243.205.

Safety-related task means a task that a person meeting the definition of a safety-related railroad employee performs, when such task is covered by any Federal railroad safety law, regulation, or order.

Task-based training means a type of formal training with a primary focus on teaching the skills necessary to perform specific tasks that require some degree of neuromuscular coordination.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track

used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

§ 243.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 243.9 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part, or causes the violation of any such requirement, is subject to a civil penalty of at least \$650 and not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this part by use of an emergency order, compliance order, or injunctive provisions of the Federal Railroad Safety Act.

§ 243.11 Information collection requirements.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and are assigned OMB control number _____.

(b) The information collection requirements are found in the following sections:

_____.

Subpart B – Program Components and Approval Process

§ 243.101 Employer program required.

(a) Effective [INSERT DATE ONE YEAR AND 120 DAYS AFTER EFFECTIVE DATE OF THIS RULE], each employer in operation shall submit, adopt, and comply with a training program for its safety-related railroad employees.

(b) An employer commencing operations after [INSERT DATE ONE YEAR AND 120 DAYS AFTER EFFECTIVE DATE OF THIS RULE] shall submit its written program and request for approval at least 90 days prior to commencing operations. The program shall be submitted in accordance with the requirements of this part.

(c) As part of 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;

(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;

(3) Create tables or utilize other suitable formats which summarize the information required in paragraphs (c)(1) and (c)(2) of this section, segregated by major railroad department (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;

(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.

(d) *On-the-Job (OJT) training requirements.*

(1) 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 that chooses to train its own safety-related railroad employees shall provide each railroad on which the contractor's employees conduct safety-related duties and rely on contractor-provided training as its basis for qualification to perform those duties with a document indicating that the contractor's program of training was approved by FRA.

(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 indicating that the contractor's program was approved by FRA. A copy of the document required in paragraph (e) of this section satisfies this requirement.

(g) Each employer, training organization, or learning institution to which this part applies is authorized to file by electronic means any program submissions required under this part [*FRA is developing a method for electronic submission, either by filing with www.regulations.gov and DOT Dockets, by email, or by uploading directly to a secure Web site*].

§ 243.103 Training components identified in program.

(a) Each employer's program shall include the following components:

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

(2) A course outline, which will include for each course:

(i) Any prerequisites to course attendance;

(ii) A brief description of the course, including the terminal learning objectives;

- (iii) A brief description of the target audience, e.g., a list of the occupational categories and subcategories of employees the course will be delivered to;
 - (iv) The method(s) of course delivery, which may include, but are not limited to, classroom, computer-based, simulator, laboratory, correspondence courses, or any combination thereof;
 - (v) The anticipated course duration;
 - (vi) A syllabus of the course to include any applicable 49 CFR parts or U.S.C. chapters covered in the training; and
 - (vii) The kind of assessment (written test, performance test, verbal test, OJT standard, etc.) performed to demonstrate employee competency.
- (3) A publication for each OJT program component, to include:
- (i) The roles and responsibilities of each category of person involved in the administration and implementation (e.g., peer trainers and first-level supervisors), guidelines for program coordination, and the progression and application of the OJT.
 - (ii) A listing of the categories and subcategories of employees for which the OJT program applies; and
 - (iii) Details of the safety-related tasks and subtasks, conditions, and standards covered by the program components.
- (4) The job title and telephone number of the employer's primary training point(s) of contact, listed separately by major department or employee occupational category if applicable.
- (5) If any other FRA- approved training organization or learning institution developed and delivered all or any part of the training, the employer must include the following.
- (i) A narrative or text table describing those portions of the training that fit into this category;
 - (ii) The business name of the organization that developed and delivered the training; and
 - (iii) The job title and telephone number of the training organization or learning institution's primary training point of contact.
- (b) Employers required to submit similar programs or plans in accordance with requirements found elsewhere in this chapter [*examples to be placed in section-by-section analysis, 49 CFR Parts 214, 217, 218 Subpart F, 236 Subpart H, 240, 242 and System Safety Rule Part 270?*] may choose to cross-reference these other programs or plans in the program required by this section rather than resubmitting that similar program or plan. When any such similar program or plan did not include the OJT components specified in paragraph (a)(3) of this section, the employer

shall supplement its program in accordance with this part by providing that additional information.

(c) If an employer arranges job-related practice and practice related feedback sessions to supplement classroom, laboratory, simulator training, or OJT, the program shall include a description of the supplemental training.

(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.

§ 243.105 Optional model program development.

(a) Any organization, business, or association that represents more than one employer may develop and submit one or more model training programs to FRA for review and approval so that the model program(s) may be used by multiple employers.

(1) Any such model program should be submitted with a unique identifier associated with the program, or FRA will assign a unique identifier.

(2) The program associated with the organization's unique identifier shall include all information required by § 243.103.

(b) 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, and all other information that is specific to that employer or deviates from the model program.

§ 243.107 Training program submission, review, and approval process.

(a) An employer who provides or is responsible for the training of safety-related railroad employees shall submit its training program to FRA for review and approval. 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) Qualifies safety-related railroad employees previously qualified by other employers;

(5) Qualifies safety-related railroad employees previously trained by training organizations or learning institutions; or

(6) Any combination thereof.

(b) An employer who utilizes any of the options specified in paragraphs (a)(2) through (a)(5) of this section shall provide in its submission:

(1) The categories of safety-related railroad employees who, at the time of filing, will receive training utilizing one or more of these options; and

(2) Whether the training delivered, utilizing one or more of these options, composes all or part of the overall training program regimen for that category of employee at the time of filing;

(c) An employer that chooses to use training organizations or learning institutions to train some or all of its safety-related railroad employees, or to hire new safety-related railroad employees that have previously received training from any training organizations or learning institutions, shall include the full name of the training organization or learning institution in its submission.

(d) *Initial Programs.* An employer's initial program, as required by § 243.101(a), must be submitted to the Administrator and is considered approved, and may be implemented immediately upon submission. Any program deficiencies noted by the Administrator shall be addressed as specified by this section.

(e) *New or Revised Programs.* Programs developed or revised after this final rule is published in the Federal Register will be considered approved and may be implemented immediately upon submission, unless:

(1) The Administrator notifies the employer in writing that the program does not conform to the criteria set forth in this part. Any program deficiencies noted by the Administrator shall be addressed as specified by this section.

(2) An employer is commencing operations in accordance with § 243.101(b).

(f) Apprenticeship or similar intern programs, that have begun prior to submission of the employer's program filed in accordance with this part, shall be described in the employer's program. Any such programs may continue, but if the Administrator advises the employer of specific deficiencies, the employer must address the deficiencies as specified by this section.

(g) The Administrator will inform the employer as to whether a program conforms to this part. If the Administrator determines that all or part of the program does not conform, the 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 Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Administrator may extend this 90-day period based on a written request.

(h) The Administrator will inform the employer as to whether a revised program conforms to this part. If the Administrator has determined that the program does not conform to this part, the 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 Administrator. A failure to resubmit the program with the necessary revisions shall be considered a failure to implement a program under this part. The Administrator may extend this 90-day period based on a written request.

(i) *Previously approved programs require an informational filing when modified.* When new safety-related railroad laws, regulations, 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, the employer must review its training program and modify it accordingly. An employer that modifies its training program after receiving initial FRA approval shall submit an informational filing to the Administrator 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise either to individual employers, or through issuance of an FRA safety advisory to a group of employers. Programs modified after the initial FRA approval are considered approved and may be implemented immediately. Any program deficiencies noted by the Administrator shall be addressed as specified in this section. The filing shall contain a summary description of sufficient detail that FRA can associate the changes with the employer's previously approved program, and shall include:

(1) Descriptions of all new or refresher training courses developed after the previous FRA approval, using the same criteria required for an initial filing;

(2) Explanations whenever OJT or arranged practice is added to, or discontinued from, a program;

(3) Explanations as to how the methods of delivering training, or qualifying employees has changed; and

(4) A statement from an organization, business, or association that represents more than one employer that submits an informational filing that the organization, business, or association has informed each employer who requested the right to use the effected training program of the changes and the need for the employer to comply with those changes that apply to its operation.

(j) *Additional submission, resubmission, or informational filing requirement for railroads.* Each railroad shall:

(1) Simultaneous with its filing with the FRA, serve a copy of any submission, resubmission, or informational filing required pursuant to this section, to the president of each labor organization that represents the railroad's employees subject to this part; and

(2) Include in its submission, resubmission, or informational filing required pursuant to this section a statement affirming that the railroad has served a copy to the president of each labor

organization that represents the railroad's employees subject to this part, together with a list of the names and addresses of persons served.

(k) Not later than 90 days from the date of filing its submission, resubmission, or informational filing required pursuant to this section, a representative designated by the president of each labor organization that represents railroad employees subject to this part, may file a comment on the submission, resubmission, or informational filing:

(1) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; and

(2) The commenter shall certify that a copy of the comment was served on the railroad.

§ 243.109 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 for review and approval.

(b) A training organization or learning institution that has provided training services to employers covered by this part prior to [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] may continue to offer such training services without FRA approval for a period not to exceed one year. The Administrator may extend this grace period at any time based on a written request. Such written requests for an extension of time to submit a program should contain any factors the training organization or learning institution wants the Administrator to consider prior to approving or disapproving the grace period.

(c) A program submitted by a training organization or learning institution must include all information required for employer programs in accordance with this part, unless the requirement could only apply to an employer filed program. The submitted program for FRA approved training organizations or learning institutions must also include the following information:

(1) The full corporate or business name of the training organization or learning institution;

(2) The training organization or learning institution's primary business and email address;

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

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

(5) A resume for each designated instructor, showing how the instructor achieved the subject-matter and training expertise necessary to develop and/or deliver training to safety-related railroad employees, unless the designated instructors are currently employed by a railroad;

(6) A list of references of employer customers the learning organization or training institution has provided services to in the past; and

(7) A brief summary statement indicating how the training organization or learning institution determined the knowledge, skills, and abilities necessary to develop the training courses it provides to employers and independent students who enroll with such training organization or learning institution in order to become safety-related railroad employees. This brief summary should be of sufficient detail so that FRA can ascertain the methodologies the training organization or learning institution used during training development.

(d) Except as specified in paragraph (b) of this section, prior approval by the Administrator is required before FRA will accept such training as sufficient to meet the requirements of this part. The Administrator will advise the training organization or learning institution in writing whether FRA has approved the program. If all or part of the program is not approved by FRA, the Administrator will inform the training organization or learning institution of specific deficiencies. At the time that the Administrator informs of any deficiencies, the Administrator will clarify whether any particular training courses shall be considered approved.

(e) A training organization or learning institution that modifies its training program after receiving initial FRA approval shall submit an informational filing to the Administrator 30 days after the end of the calendar year in which the modification occurred, unless FRA advises otherwise. Programs modified after initial FRA approval are considered approved and may be implemented immediately. Any program deficiencies noted by the Administrator shall be addressed by conforming to the Administrator's request or by the Administrator disapproving all or part of the program.

(f) Training organizations and learning institutions subject to this part are required to maintain records for each safety-related railroad employee that attend the training, in accordance with the recordkeeping requirements of this part.

(g) Training organizations and learning institutions subject to this part shall provide a student's training transcript or training record to any employer upon request by the student.

Subpart C – Program Implementation and Oversight Requirements

§ 243.201 Employee qualification requirements.

(a) *Designating existing employees.* By no later than [INSERT DATE 2 YEARS AFTER EFFECTIVE DATE OF THIS RULE] , each employer in operation shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory, and only permit designated employees to perform safety-related service in that category or subcategory. The Administrator may extend this period based on a written request.

(b) An employer commencing operations after [INSERT DATE ONE YEAR AND 120 DAYS AFTER EFFECTIVE DATE OF THIS RULE] shall declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory prior to 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 duties.* The following requirements apply to qualifying a safety-related railroad employee who, after the employer's designation in accordance with paragraphs (a) and (b), 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) If the training curriculum includes 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 prior to completing such training 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.

(d) *Employees previously qualified or trained, but not by the current employer.* If an employee has received relevant qualification or training for a particular category or subcategory from a previous FRA approved training program, or other FRA approved training organization or learning institution, that training shall satisfy the requirements of this part:

(1) Provided that:

(i) a current record of training is obtained from an employee's previous employer or other FRA approved training organization or learning institution; or

(ii) when a current record of training is unavailable from an employee's previous employer or other FRA approved training organization or learning institution, 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; 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 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.* Beginning [INSERT DATE on January 1, TWO YEARS AFTER EFFECTIVE DATE OF THIS RULE], each employer shall deliver refresher training at an interval not to exceed 3 calendar years from the date of an employee's last training event, except where refresher training is specifically required more frequently in accordance with this chapter. Each employer shall ensure that, as part of each employee's refresher training, the employee is trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.

(f) Employees designated to provide either formal training or OJT instruction to other employees shall be qualified on the safety-related topics or tasks as specified in this section.

§ 243.203 Records.

(a) *General requirements for qualification status records; accessibility.* Each employer shall maintain records to demonstrate the qualification status of each safety-related railroad employee that it employs.

(1) The records for former safety-related railroad employees, including contractors, shall be accessible for 6 years at the employer's system headquarters after the employment relationship ends.

(2) Current employee records shall be accessible at the employer's system headquarters.

(b) The records shall include the following information concerning each such employee:

(1) The name of the employee;

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

(3) The dates that each formal training course was completed;

(4) The title of each formal training course successfully completed;

(5) An indication of whether the person passed or failed any associated tests.

(6) If the safety-related railroad employee attended a safety-related training program offered by an FRA approved training organization or learning institution, a copy of the transcript from that organization or institution;

(7) A record, maintained at the employer's system headquarters, showing the employee's OJT performance, which shall include the name or other unique identifier of the OJT program (e.g.- train yard carman, freight conductor, signalman, and etc.), and identification of the person(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 for which the employee is designated in accordance with the program required by this subpart;

(8) The date that the employee's status is determined to be qualified and the employee is designated to perform the safety-related duties identified with any particular occupational categories or subcategories, in accordance with the program required by this subpart;

(9) If an employee's qualification status was transferred from another employer or FRA approved training organization or learning institution, a copy of the training record from that employer; and

(10) Any additional information required by this subpart.

(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 record required by this part shall be accessible at the system headquarters and at each division headquarters where the test, inspection, , annual review, or other event is conducted for 3 calendar years after the end of the calendar year to which the event relates.

(d) *Availability of records.* Each employer required to maintain and retain records under this part shall:

(1) Make all records available for inspection and copying/photocopying to representatives of FRA, upon request during normal business hours; and

(2) Make an employee's records available for inspection and copying/photocopying to that employee, former employee, or such person's representative upon written authorization by such employee during normal business hours.

(e) Electronic recordkeeping. Each employer to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met:

(1) The electronic system is designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(3) The employer adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access;

(4) The employer has a terminal at the system headquarters, and each railroad that has operating divisions has a terminal at each division headquarters;

(5) Each such terminal has a computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(6) The employer has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(7) The employer provides representatives of the FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

(f) *Transfer of records.* If an employer ceases to do business and its assets will be transferred to a successor employer, it shall transfer to the successor employer all records required to be maintained under this part, and the successor employer shall retain them for the remainder of the period prescribed in this part.

§ 243.205 Periodic oversight.

(a) As part of the program required in accordance with this part, an employer shall conduct periodic oversight tests and 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. The data gathered through the testing and 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.

(b) Task proficiency oversight specified in this section is not required for employees covered by parts 240 and 242 of this chapter, but a railroad shall use results of the assessments required by those parts to determine if changes in its training programs are necessary to close any proficiency gaps found during those assessments.

(c) *Railroad oversight.* Each railroad shall identify supervisory employees, by category or subcategory, responsible for conducting periodic oversight tests and 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:

(1) Provide oversight for a contractor's safety-related railroad employees if that contractor performs oversight for those employees, and the contractor meets the criteria specified in paragraph (g) of this section; or

(2) Provide oversight for categories or subcategories of a contractor's safety-related railroad employees if the railroad does not employ supervisory employees who are qualified as safety-related employees in those categories or subcategories.

(d) A railroad is not required to perform operational tests of safety-related railroad employees employed by a contractor.

(e) A railroad may choose to require supervisory employees to perform oversight inspections of safety-related railroad employees employed by a contractor either:

(1) When oversight test and 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

(2) When a qualified railroad supervisory employee's duties place them in the vicinity of safety-related railroad employees employed by a contractor and performing the oversight inspections would result in minimal disruption of their other assigned duties.

(f) Any railroad that finds evidence of contractor employee non-compliance during the periodic oversight shall, at a minimum, provide that employee and that employee's employer with details of the non-compliance.

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

(1) A contractor employs more than 15 safety-related railroad employees;

(2) A railroad does not train a contractor's safety-related employees;

(3) A contractor relies on the training in accordance with its program as the basis for qualifying those employees to perform safety-related duties on a railroad; and

(4) A contractor employs supervisory safety-related railroad employees capable of performing oversight.

(h) Notwithstanding the requirements of paragraphs (c) and (g) of this section, a railroad and a contractor may agree 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.

(i) Each employer that conducts periodic oversight and inspections 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 and 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 submission.

(j) Records required under this subpart are subject to the requirements of § 243.203.

§ 243.207 Annual review

(a) *Review of safety data and adjustments to required training programs.* The purpose of this review is to determine if knowledge or performance gaps exist in the application of Federal railroad safety laws, regulations, and orders. This section shall apply to each railroad beginning once a program has been approved by FRA in accordance with this part, provided, however, that this requirement does not apply to a railroad with less than 400,000 total employee work hours annually. This section does not apply to employers other than railroads except as specified in paragraph (g).

(b) Each railroad to which §243.205 applies shall conduct an annual review, as provided in this paragraph, and shall retain, at its system headquarters, one copy of the following written review.

(c) Each railroad shall designate a person(s) who shall conduct a written annual review. The annual review shall be designed to identify performance gaps in occupational categories and determine whether adjustments to the training component of the program are the appropriate intervention to close those gaps or otherwise improve the effectiveness of the program. Such review shall include analysis of the following data:

(1) Periodic oversight data required by § 243.205;

(2) Reportable accident/incident data as defined in part 225 of this chapter;

(3) FRA inspection report data;

(4) Employee training feedback received through a course evaluation process if such feedback is available; and

(5) Feedback received from labor representatives if such feedback is available.

(e) Based upon the results of the annual review, the designated person(s) shall coordinate any necessary adjustments to the initial and refresher training programs. At the railroad's option, the annual review required under this section may be conducted in conjunction with any periodic review required under part 217 of this chapter.

(f) If a railroad determines adjustments are necessary to any training designed to meet the requirements of 49 CFR Parts 214, 218, 220, and this chapter, any railroad that permits contractors to train its own safety-related railroad employees subject to those provisions shall provide those contractors with the information needed to make adjustments in the contractor programs.

(g) Contractors must use any information provided by railroads to adjust training specific to 49 parts 214, 218, and 220 of this chapter.

(h) Before March 1 of each calendar year, each railroad to which this section applies shall complete its annual review for the previous calendar year.

§ 243.209 Railroad maintained list of contractors utilized.

(a) Each railroad utilizing contractors to supply the railroad with safety-related railroad employees shall maintain the following information regarding each contractor utilized at its system headquarters.

(b) If a railroad either does not qualify each of the contractor's safety-related employees utilized, or maintain records for each of the contractor's safety-related employees utilized, the listing shall include:

(1) The full corporate or business name of the contractor;

(2) The contractor's primary business and email address; and

(3) The contractor's primary telephone number.

(c) If a railroad elects to train some or all safety-related railroad contractor employees, the listing shall also include the course name and unique identifier for each course so designated and a listing of all contractor employees trained.

(d) The information shall be continuously updated as additional contractors are utilized, and no contractor information shall be deleted from the list unless the contractor has not been utilized for 3 years from the end of the calendar year the contractor was last utilized.