

## Federal Railroad Administration, DOT

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(d) *Region 4* consists of Minnesota, Wisconsin, Michigan, Illinois, and Indiana. The mailing address of the Regional Headquarters is: 111 North Canal Street, Suite 655, Chicago, Illinois 60606. The E-mail address of the Regional Administrator for Region 4 is: *Laurence.Hasvold@fra.dot.gov*.

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### PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

#### Subpart A—General

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#### APPENDIX A TO PART 244—SCHEDULE OF CIVIL PENALTIES [RESERVED]

AUTHORITY: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; Sec. 31001(s)(1), Pub. L. 104-134, 110 Stat. 1321-373 (28 U.S.C. 2461 note); and 49 CFR 1.49.

SOURCE: 67 FR 11604, Mar. 15, 2002, unless otherwise noted.

#### Subpart A—General

##### § 244.1 Scope, application, and purpose.

(a) This part prescribes requirements for filing and implementing a Safety Integration Plan with FRA whenever a Class I railroad proposes to consolidate with, merge with, or acquire control of another Class I railroad, or with a Class II railroad where there is a proposed amalgamation of operations.

(b) The purpose of this part is to achieve a reasonable level of railroad safety during the implementation of transactions described in paragraph (a) of this section. This part does not preclude a railroad from taking additional measures not inconsistent with this part to provide for safety in connection with a transaction.

(c) The requirements prescribed under this part apply only to FRA's disposition of a regulated transaction filed by an applicant. The transactions covered by this part also require separate filing with and approval by the Surface Transportation Board. See 49 CFR part 1106.

##### § 244.3 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that:

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- (a) Is necessary to eliminate or reduce an essentially local safety hazard;
- (b) Is not incompatible with a law, regulation, or order of the United States Government; and
- (c) Does not unreasonably burden interstate commerce.

## § 244.5 Penalties.

- (a) Any 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 \$500, but not more than \$11,000 per day, 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 \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.
- (b) As specified in § 244.21, FRA may also exercise any of its other enforcement remedies if a railroad fails to comply with § 244.21.
- (c) Any person who knowingly and willfully makes a false entry in a record or report required by this part shall be subject to criminal penalties under 49 U.S.C. 21311.

## § 244.7 Waivers.

- (a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with any requirement of this part. The filing of such a petition does not affect that person's responsibility for compliance with that requirement pending action on such a petition.
- (b) Each petition for a waiver under this section must 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.
- (d) The procedures governing a petition for a waiver that are prescribed under this part apply only to FRA's disposition of such a petition. A person seeking a waiver of a Surface Transpor-

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tation Board regulation would need to file a petition for a waiver with the Board. (See 49 CFR 1106.5.)

## § 244.9 Definitions.

As used in this part—

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

*Amalgamation of operations* means the migration, combination, or unification of one set of railroad operations with another set of railroad operations, including, but not limited to, the allocation of resources affecting railroad operations (e.g., changes in personnel, track, bridges, or communication or signal systems; or use or deployment of maintenance-of-way equipment, locomotives, or freight or passenger cars).

*Applicant* means a Class I railroad or a Class II railroad engaging in a transaction subject to this part.

*Best practices* means measures that are tried, tested, and proven to be the safest and most efficient rules or instructions governing railroad operations.

*Class I or Class II railroad* has the meaning assigned by regulations of the Surface Transportation Board (49 CFR Part 1201; General Instructions 1-1), as those regulations may be revised by the Board (including modifications in class thresholds based on the revenue deflator formula) from time to time.

*Corporate culture* means the totality of the commitments, written and oral directives, and practices that make up the way a railroad's management and its employees operate their railroad.

*Control means* actual control, legal control, or the power to exercise control through:

(1) Common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(2) Any other means. See 49 U.S.C. 10102.

*Consolidation* means the creation of a new Class I railroad by combining existing Class I railroads or a Class I railroad and a Class II railroad where there is an amalgamation of operations, or by a railroad or a corporate parent of a Class I railroad taking over the assets or assuming the liabilities, or both, of another Class I railroad such that the

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resulting unified entity has the combined capital, powers, and subsidiaries and affiliates, if applicable, of all of its constituents.

*Environmental documentation* means either an Environmental Assessment or Environmental Impact Statement prepared in accordance with the Surface Transportation Board's environmental rules at 49 CFR part 1105.

*Merger* means the acquisition of one Class I railroad or Class II railroad where there is amalgamation of operations by a Class I railroad such that the acquiring railroad or a corporate parent of that railroad acquires the stock, assets, liabilities, powers, subsidiaries and affiliates of the railroad acquired.

*Person* means an entity of any type covered under 1 U.S.C. 1, including 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.

*Railroad* means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

*Safety Integration Plan* means a comprehensive written plan submitted to and approved by FRA in compliance with this part that demonstrates in required detail how an applicant will provide for safe railroad operations during and after any transaction covered by this part, and otherwise assure compliance with the Federal railroad safety laws.

*Section of Environmental Analysis* or "SEA" means the Section of the Sur-

face Transportation Board that prepares its environmental documentation and analyses.

*Transaction* means a consolidation, merger, or acquisition of control subject to the requirements of this part.

### Subpart B—Safety Integration Plans

#### § 244.11 Contents of a Safety Integration Plan.

Each Safety Integration Plan shall contain the following information for each subject matter identified in § 244.13 or § 244.15:

(a) A detailed description of how the applicant differs from each railroad it proposes to acquire or with which the applicant proposes to consolidate or merge, including the rules or instructions governing railroad operations of these railroads;

(b) A detailed description of the proposed manner of operations of the resulting railroad, including a reconciliation of the differing rules or instructions governing railroad operations of the railroads involved in the transaction;

(c) The measures to be taken to comply with applicable Federal railroad safety laws and regulations;

(d) The proposed specific measures, expressed step-by-step, for each relevant subject matter that the applicant believes will result in safe implementation of the proposed transaction consistent with the requirements of this part;

(e) The allocation of resources, expressed as human and capital resources within designated operating budgets, directed to complete safety-relevant operations subject to the transaction; and

(f) The timetable, targeted in specific terms from commencement to completion, for implementing paragraphs (c), (d) and (e) of this section.

#### § 244.13 Subjects to be addressed in a Safety Integration Plan involving an amalgamation of operations.

Each Safety Integration Plan involving an amalgamation of operations shall address the following subjects for railroad operations conducted on property subject to the transaction:

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(a) *Corporate culture.* Each applicant shall:

(1) Identify and describe differences for each safety-related area between the corporate cultures of the railroads involved in the transaction;

(2) Describe how these cultures lead to different practices governing rail operations; and

(3) Describe, in step-by-step measures, the integration of these corporate cultures and the manner in which it will produce a system of “best practices” when the transaction is implemented.

(b) *Training.* Each applicant shall identify classroom and field courses, lectures, tests, and other educational or instructional forums designed to ensure the proficiency, qualification, and familiarity with the operating rules and operating tasks of territory assigned of the following employees, either when these employees are assigned to a new territory or the operating rules on a given territory are changed:

(1) Employees who perform train and engine service;

(2) Employees who inspect and maintain track and bridges;

(3) Employees who inspect, maintain and repair any type of on-track equipment, including locomotives, passenger cars, and freight cars of all types;

(4) Dispatchers or operators;

(5) Employees who inspect and maintain signal and train control devices and systems;

(6) Hazardous materials personnel, including information technology personnel who affect the transportation of hazardous materials;

(7) Employees who maintain or upgrade communication systems affecting rail operations; and

(8) Supervisors of employees enumerated in paragraphs (b)(1) through (7) of this section.

(c) *Operating practices.*

(1) *Operating rules.* Each applicant shall identify the operating rules, timetables, and timetable special instructions to govern railroad operations, including yard or terminal operations and freight or passenger service.

(2) *Alcohol and drug.* Each applicant shall identify the post-accident toxicological testing, reasonable cause testing, and random alcohol and drug testing programs as required under 49 CFR part 219.

(3) *Qualification and certification of locomotive engineers.* Each applicant shall identify the program for qualifying and certifying locomotive engineers under 49 CFR part 240.

(4) *Hours of service laws.* Each applicant shall identify the procedures for complying with the Federal hours of service laws and related measures to minimize fatigue of employees covered by 49 U.S.C. chapter 211.

(d) *Motive power and equipment.* Each applicant shall identify the qualification standards for employees who inspect, maintain, or repair railroad freight or passenger cars and locomotives, and the designated facilities used, or to be used, to repair such equipment.

(e) *Signal and train control.* Each applicant shall identify the signal and train control systems governing railroad operations and maintenance, and any planned amendments or modifications to capital improvement and research and development projects for signal and train control operations.

(f) *Track Safety Standards and bridge structures.* Each applicant shall identify the maintenance and inspection programs for track and bridges, and the qualification standards for roadway workers.

(g) *Hazardous Materials.* Each applicant shall identify an inspection program covering the following areas:

(1) Field inspection practices;

(2) Hazardous materials communication standards;

(3) Emergency response procedures; and

(4) Information technology systems and personnel employed for transmitting or receiving information accompanying hazardous materials shipments. The inspection program should identify preventive measures that will be employed to respond to potential information technology integration and hazardous materials documentation deficiencies.

(h) *Dispatching operations.* Each applicant shall identify:

(1) The railroad dispatching system to be adopted;

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(2) The migration of the existing dispatching systems to the adopted system, if applicable; and

(3) The criteria used to determine workload and duties performed by operators or dispatchers employed to execute operations.

(i) *Highway-rail grade crossing systems.* Each applicant shall identify a program, including its development and implementation, covering the following:

(1) Identification of the highway-rail grade crossings at which there will be an increase in rail traffic resulting from the transaction;

(2) An applicant's existing grade-crossing programs as they apply to grade crossings identified in paragraph (i)(1) of this section;

(3) Integration of the grade crossing programs of the railroads subject to the transaction to the extent the programs may be different;

(4) Emergency response actions;

(5) Avoidance of blocked or obstructed highway-rail crossing systems by trains, locomotives, railroad cars, or other pieces of rolling equipment; and

(6) Signs employed for changes in rail traffic patterns.

(j) *Personnel staffing.* Each applicant shall identify the number of employees by job category, currently and proposed, to perform each of the following types of function when there is a projected change of operations that will impact workforce duties or responsibilities:

(1) Train and engine service;

(2) Yard and terminal service;

(3) Dispatching operations;

(4) Roadway maintenance;

(5) Freight car and locomotive maintenance;

(6) Maintenance of signal and train control systems, devices, and appliances;

(7) Hazardous materials operations; and

(8) Managers responsible for oversight of safety programs.

(k) *Capital investment.* Each applicant shall identify the capital investment program, clearly displaying planned investments in track and structures, signals and train control, and locomotives and equipment. The program shall de-

scribe any differences from the program currently in place on each of the railroads involved in the transaction.

(1) *Information systems compatibility.* Each applicant shall identify measures providing for a seamless interchange of information relating to the following subject matters:

(1) Train consists;

(2) Movements and movement history of locomotives and railroad freight cars;

(3) Dispatching operations;

(4) Emergency termination of operations; and

(5) Transportation of hazardous materials.

### § 244.15 Subjects to be addressed in a Safety Integration Plan not involving an amalgamation of operations.

If an applicant does not propose an amalgamation of operations conducted on properties subject to the transaction, the applicant shall not be required to file a Safety Integration Plan unless directed to do so by FRA.

### § 244.17 Procedures.

(a) Each applicant shall file one original of a proposed Safety Integration Plan with the Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC, 20590, no later than 60 days after the date it files its application with the Surface Transportation Board.

(b) The applicant shall submit such additional information necessary to support its proposed Safety Integration Plan as FRA may require to satisfy the requirements of this part.

(c) The applicant shall coordinate with FRA to resolve FRA's comments on the proposed Safety Integration Plan until such plan is approved.

(d) FRA will file its findings and conclusions on the proposed Safety Integration Plan with the Board's Section of Environmental Analysis at a date sufficiently in advance of the Board's issuance of its draft environmental documentation in the case to permit incorporation in the draft environmental document.

(e) Assuming FRA approves the proposed Safety Integration Plan and the Surface Transportation Board approves

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the transaction and adopts the Plan, each applicant involved in the transaction shall coordinate with FRA in implementing the approved Safety Integration Plan.

(f) During implementation of an approved Safety Integration Plan, FRA expects that an applicant may change and refine its Safety Integration Plan in response to unforeseen developments. An applicant shall communicate with FRA about such developments and submit amendments to its Safety Integration Plan to FRA for approval.

(g) During implementation of an approved Safety Integration Plan, FRA will inform the Surface Transportation Board about implementation of the plan at times and in a manner designed to aid the Board's exercise of its continuing jurisdiction over the approved transaction in accordance with an agreement that FRA and the Board will enter into and execute. Pursuant to such agreement, FRA will consult with the Board at all appropriate stages of implementation, and will advise the Board on the status of the implementation process:

(1) For a period of no more than five years after the Board approves the transaction,

(2) For an oversight period for the transaction established by the Board, or

(3) Until FRA advises the Board in writing that the integration of operations subject to the transaction is complete, whichever is shorter.

(h) *Request for Confidential Treatment.* Each applicant requesting that advanced drafts of the proposed Safety Integration Plan and information in support of the proposed and approved plan that are filed with FRA receive confidential treatment shall comply with the procedures enumerated at 49 CFR 209.11.

**§ 244.19 Disposition.**

(a) *Standard of review.* FRA reviews an applicant's Safety Integration Plan, and any amendments thereto, to determine whether it provides a reasonable assurance of safety at every step of the transaction. In making this determina-

tion, FRA will consider whether the plan:

(1) Is thorough, complete, and clear; and

(2) Describes in adequate detail a logical and workable transition from conditions existing before the transaction to conditions intended to exist after consummation of the transaction.

(b) *Approval of the Safety Integration Plan and Amendments Thereto.* FRA approves a Safety Integration Plan, and any amendments thereto, that meets the standard set forth in paragraph (a) of this section. The approval will be conditioned on an applicant's execution of all of the elements contained in the plan, including any amendments to the plan approved by FRA.

(c) *Amendment.*—(1) *By the applicant.* The applicant may amend its Safety Integration Plan, from time to time, provided it explains the need for the amendment. Any amendment is subject to the approval of FRA as prescribed in paragraph (b) of this section, and shall take effect within 20 days of approval. The applicant shall communicate with FRA to resolve any FRA comments on the proposed amendment until it is approved.

(2) *By FRA.* FRA may request an applicant to amend its approved Safety Integration Plan from time to time should circumstances warrant.

**§ 244.21 Compliance and Enforcement.**

(a) After the Surface Transportation Board has approved a transaction subject to this part, a railroad implementing a transaction subject to this part shall operate in accordance with the Safety Implementation Plan approved by FRA until the properties involved in the transaction are completely integrated into the form contemplated in the Surface Transportation Board's approval of the transaction.

(b) FRA may exercise any or all of its enforcement remedies authorized by the Federal railroad safety laws if a railroad fails to comply with paragraph (a) of this section or to execute any measure contained in a Safety Implementation Plan approved by FRA.

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APPENDIX A TO PART 244—SCHEDULE OF  
CIVIL PENALTIES [RESERVED]

**PART 245—RAILROAD USER FEES**

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- 245.5 Definitions.
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**Subpart B—Reporting and Recordkeeping**

- 245.101 Reporting requirements.
- 245.103 Recordkeeping.
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**Subpart C—User Fee Calculation**

- 245.201 User fee calculation.

**Subpart D—Collection Procedures and  
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- 245.301 Collection procedures.
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AUTHORITY: 45 U.S.C. 431, 437, 438, 446; 49  
CFR 1.49(m).

SOURCE: 57 FR 30602, July 9, 1992, unless  
otherwise noted.

**Subpart A—General**

**§ 245.1 Purpose and scope.**

(a) The purpose of this part is to implement section 216 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 446) (the "Safety Act") which requires the Secretary of Transportation to establish a schedule of fees to be assessed equitably to railroads to cover the costs incurred by the Federal Railroad Administration ("FRA") in administering the Safety Act (not including activities described in section 202(a)(2) thereof).

(b) Beginning in the fiscal year ending September 30, 1991, each railroad subject to this part shall pay an annual user fee to the FRA. For fiscal years 1992 through 1995, the user shall be calculated by FRA in accordance with § 245.101. The Secretary's authority to collect user fees shall expire on September 30, 1995, as provided for in section 216(f) of the Safety Act.

**§ 245.3 Application.**

This part applies to all railroads except those railroads whose entire oper-

ations are confined within an industrial installation.

**§ 245.5 Definitions.**

As used in this part—

(a) *Employee hours* means the number of hours worked by all employees of the railroad during the previous calendar year.

(b) *FRA* means the Federal Railroad Administration.

(c) *Industrial track* means a switching track serving industries, such as mines, mills smelters, and factories.

(d) *Light density railroad* means railroads with 1200 or less train-miles per road mile.

(e) *Main track* means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

(f) *Passenger service* means both intercity rail passenger service and commuter rail passenger service.

(g) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation (See, 45 U.S.C. 431(e)).

(h) *Responsible entity* means the railroad subject to this part as of December 31 of the applicable fiscal year (October 1 to September 30), i.e. December 31, 1991, for fiscal year 1992, December 31, 1992, for fiscal year 1993, etc.

(i) *Road miles* means the length in miles of the single or first main track, measured by the distance between terminals or stations, or both. Road miles does not include industrial and yard tracks, sidings, and all other tracks