

Federal Railroad Administration, DOT

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

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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; 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:

- (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 \$650, but not more than \$25,000 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 \$100,000 per violation may

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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.

[67 FR 11604, Mar. 15, 2002, as amended at 69 FR 30595, May 28, 2004; 72 FR 51198, Sept. 6, 2007; 73 FR 79705, Dec. 30, 2008]

§ 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 Transportation 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

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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 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.