

as well as your ability and intention will effectively convey information to the public. We ordinarily presume that a representative of the news media satisfies this consideration;

(5) How you intend to disseminate the requested information to a broad spectrum of the public; and

(6) How disclosure will lead to a significantly greater understanding of the Government by the public.

(c) After reviewing your request and determining that there is a substantial public interest in release, we also determine if the request primarily furthers your commercial interests. If it does, you are not eligible for a fee waiver.

(d) You should ask for waiver or reduction of fees when you first submit your request to HHS, and should address the criteria referenced in this section.

(e) We may waive (either partially or in full) or reduce fees for records in additional circumstances as a matter of administrative discretion.

### Subpart E—Appeals

#### § 5.51 When may I appeal HHS's FOIA determination?

In order to fully exhaust all of your administrative remedies, you must file an appeal of an adverse agency determination. You may appeal when there is an adverse determination, including:

(a) Refusal to release a record, either in whole or in part;

(b) Determination that a record does not exist or cannot be found;

(c) Determination that the record you sought was not subject to the FOIA;

(d) Denial of a request for expedited processing;

(e) Denial of a fee waiver request; or

(f) Fee category determination.

#### § 5.52 How do I file an appeal?

(a) You have the right to appeal an adverse agency determination of your FOIA request.

(b) You may submit your appeal via mail or electronically. All appeals must be in writing and received by HHS within 45 calendar days from the date of our final determination letter.

(1) Please send your appeal to the review official at the address provided in your denial letter. If you are unsure who is the appropriate review official, please contact the FOIA Service Center that processed your request to obtain that information.

(2) The addresses to mail FOIA appeals for CMS, the PSC and OS are, respectively: Centers for Medicare & Medicaid Services, Attn: Principal

Deputy Administrator, Room C5-16-03, 7500 Security Boulevard, Baltimore, MD 21244; U.S. Department of Health and Human Services (PSC), Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, 5600 Fishers Lane, Room 19-01, Rockville, MD 20857; U.S. Department of Health and Human Services, Deputy Agency Chief FOIA Officer, Office of the Assistant Secretary for Public Affairs, Room 729H, 200 Independence Avenue SW., Washington, DC 20201.

Additionally, information can be found at the following online locations for CMS, PSC, and OS: <https://www.cms.gov/Regulations-and-Guidance/Legislation/FOIA/filehow.html>; [http://www.psc.gov/psc\\_foia/guide.html](http://www.psc.gov/psc_foia/guide.html); and <http://www.hhs.gov/foia/FOIA%20Appeals/index.html>.

(3) For appeals submitted via mail, you should mark both your letter and envelope with the words "FOIA Appeal" and include your FOIA request tracking number, a copy of your initial request, and our final determination letter.

(c) Your appeal should clearly identify the agency determination that is being appealed. It would be helpful if you provide specific reasons explaining why you believe the agency's adverse determination should be reconsidered.

#### § 5.53 How does HHS process appeals?

(a) We respond to your appeal within 20 working days after the appeal official designated in your appeal letter receives it. If, however, your appeal is based on a denial of a request for expedited processing, we will act on your appeal of that decision expeditiously. Before making a decision on an appeal of an adverse determination, the designated review official will consult with the Office of the General Counsel. Also, the concurrence of the Office of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request.

(b) If we reverse or modify the initial decision, we will inform you in writing and, if applicable, reprocess your request. If we do not change our initial decision, we will respond in writing to you, explain the reasons for the decision, set out any FOIA exemptions that apply, and inform you of the provisions for judicial review. If a requester files a FOIA lawsuit in reference to an appeal, we will cease processing the appeal.

#### § 5.54 What avenues are available to me if I disagree with HHS's appeal decision?

(a) In our response letter, we notify you of your right to seek judicial review of an adverse determination as set forth in the FOIA at 5 U.S.C. 552(a)(4)(B). If you wish to seek judicial review of any adverse determination, you must first appeal it administratively as described in this subpart.

(b) We also inform you that the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. As referenced in § 5.29(b) you may contact OGIS via mail, email, or telephone for assistance.

### Subpart F—Records Retention

#### § 5.61 How does HHS retain FOIA records?

We will preserve records created in administering the Department's Freedom of Information program until disposition is authorized under an applicable General Records Schedule or other records schedule duly approved by the Archivist of the United States.

Dated: June 7, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 218

[Docket No. FRA-2014-0033, Notice No. 3]

RIN 2130-AC48

#### Train Crew Staffing

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

**ACTION:** Proposed rule; notice of public hearing and reopening of comment period.

**SUMMARY:** On March 15, 2016, FRA published a Notice of Proposed Rulemaking (NPRM) that would require establishing minimum requirements for the size of train crew staffs depending on the type of operation. FRA is announcing a public hearing to provide interested persons an opportunity to provide oral comments on the proposal. FRA is also announcing a reopening of the comment period for this proceeding to allow time for interested parties to submit written comments in response to

views or information provided at the public hearing.

**DATES:** A public hearing will be held on July 15, 2016, at 10:00 a.m. in Washington, DC. The comment period for the proposed rule published on March 15, 2016, (81 FR 13918) is open through June 15, 2016 (81 FR 30229). The comment period will reopen on July 15, 2016. Comments in response to views or information provided at the public hearing must be received by August 15, 2016.

**ADDRESSES:**

**Public Hearing.** The public hearing will be held at the National Housing Center of the National Association of Home Builders, 1201 15th Street NW., Washington, DC 20005.

**Comments.** You may submit comments identified by Docket Number FRA–2014–0033 by any of the following methods:

- **Online:** Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202–493–2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**Instructions:** All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC48). Note that FRA will post all comments received without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information about any submitted petitions, comments, or materials.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph D. Riley, Railroad Safety Specialist, Operating Practices, Operating Crew Certification, U.S. Department of Transportation, Federal

Railroad Administration, Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6318, or Mr. Alan H. Nagler, Senior Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 493–6038.

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to present oral statements and to offer information and views at the hearing. The hearing will be informal and will be conducted by a representative FRA designates under FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding. Therefore, there will be no cross examination of persons presenting statements or offering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements are completed those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. FRA will announce the additional procedures that are necessary to conduct the hearing, at the hearing. The purpose of this hearing is to receive oral comments in response to an NPRM that requested public comment on a potential train crew staffing rulemaking. See 81 FR 13918, March 15, 2016. FRA will add a transcript of the discussions to the public docket in this proceeding.

**Public Participation Procedures.** Any person wishing to make a statement at the hearing should notify Mr. Riley by telephone, email, or in writing, at least 5 working days before the date of the hearing and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, the particular subject(s) the person plans to address, and the time requested. The notification should also provide the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearing of persons who fail to provide such notification. FRA also reserves the right to limit the duration of presentations if necessary to afford all persons with the opportunity to speak.

For information on facilities or services for persons with disabilities, or to request special assistance at the hearing, contact FRA Program Analyst, Mr. Kenton Kilgore, by telephone, email, or in writing, at least 5 working days before the date of the hearing. Mr. Kilgore's can be reached at Federal Railroad Administration, Office of

Railroad Safety, Mail Stop 25, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 493–6286; or [Kenton.Kilgore@dot.gov](mailto:Kenton.Kilgore@dot.gov).

**Reopening of Comment Period.** The comment period for the proposed rule published on March 15, 2016, (81 FR 13918) is currently open through June 15, 2016 (81 FR 30229). A public hearing is scheduled after the close of this comment period. To accommodate the public hearing and to afford interested parties the opportunity to submit comments in response to views or information provided at the public hearing, FRA will reopen the comment period for the proposed rule on July 15, 2016. Comments in response to views or information provided at the public hearing must be received by August 15, 2016.

**Privacy Act**

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See <http://www.regulations.gov/#!privacyNotice> for the privacy notice of [www.regulations.gov](http://www.regulations.gov) or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**Robert C. Lauby,**

*Associate Administrator for Railroad Safety, Chief Safety Officer.*

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