BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA—2019—0050
JOINT PETITION OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION AND THE NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION TO AMEND 49 C.F.R. PART 243

JOINT PETITION OF THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION AND THE NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION TO AMEND 49 C.F.R. PART 243 TO DELAY CERTAIN IMPLEMENTATION DATES

July 31, 2019

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AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION AND THE NATIONAL RAILROAD CONSTRUCTION AND MAINTENANCE ASSOCIATION
TO AMEND 49 CFR. PART 243
TO DELAY CERTAIN IMPLEMENTATION DATES

The American Short Line and Regional Railroad Association ("ASLRRA") and the National Railroad Construction and Maintenance Association ("NRC") (collectively "Petitioners") respectfully submit this Petition seeking to amend the FRA’s regulations on Training, Qualification, and Oversight for Safety-Related Railroad Employees 49 C.F.R. Part 243 by delaying certain implementation dates applicable to Class II and III railroads and contractors for an additional two years or by suspending such dates. Petitioners seek this delay or suspension of the implementation dates while the FRA considers the amendments to Part 243 that the ASLRRA and NRC seek in their joint petition filed June 28, 2019 in the above referenced docket (the “June 28, 2019 Petition”).

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Statement of Interest

ASLRRA is a trade association that represents approximately 465 Class II and Class III railroads in the United States, Canada and Mexico as well as numerous suppliers and contractors to the short line and regional railroad industry. NRC is a trade association that represents 425 contractors who provide construction and maintenance services, among other services, to the rail industry. Many of ASLRRA’s and NRC’s members are subject to Part 243.¹

Petition

On June 28, 2019, ASLRRA and NRC jointly petitioned the FRA to amend 49 CFR Part 243 in order to relieve short line and regional railroads and railroad contractors of substantial and unnecessary regulatory burdens without reducing safety. Petitioners now seek a delay of certain implementation dates while the FRA considers the June 28, 2019 Petition. Specifically, Petitioners seek a two year delay of the implementation dates in sections 243.101(a)(2) (change the implementation date from May 1, 2021 to May 1, 2023), 243.201(a)(2) (change implementation date from May 1, 2023 to May 1, 2025), and 243(e)(2) (change implementation date from May 1, 2023 to May 1, 2025). Alternatively, Petitioners seek a suspension of these implementation dates pending the FRA’s consideration of the June 28, 2019 Petition.

As explained in the June 28, 2019 Petition, the amendments to Part 243 proposed in that petition are estimated to save the Class II and III railroads and contractors hundreds of millions of dollars annually. Among other things, the proposed changes would relieve these entities from engaging in unnecessary refresher training and overly prescriptive recordkeeping. The

¹ While ASLRRA and NRC members account for many of the short line and regional railroads and contractors subject to Part 243, there are a significant number of non-member railroads and contractors who are also subject to Part 243.
amendments also will give the railroads and contractors greater regulatory flexibility in how they implement the training requirements. However, as the implementation dates approach, these entities are incurring, or will soon incur, significant costs to prepare to implement the rules as currently written. This means that the railroads and contractors are, or soon will, incur costs to implement rules which, if the FRA grants the June 28, 2019 Petition, ultimately will not apply to them. These entities often operate on razor thin margins. By delaying the implementation deadline for the rules, the FRA will help ensure that their limited resources are not misdirected on preparing to comply with rules that are unnecessary, overly burdensome, and in a short while, may no longer be applicable.

Further, as explained in the June 28, 2019 Petition, there is insufficient support for the assumption that the current rules will reduce the accident and injury rates among Class II and III railroads and contractors. Those rates are already low. With initiatives such as the Short Line Safety Institute, the industry is continuing to focus on safety including ensuring that safety-related railroad employees are properly trained to perform safety-related tasks regardless of the regulatory training requirements. Moreover, by relieving the regulatory burden on the industry, the FRA would be providing railroads in particular the flexibility to invest in projects and activities, such as track and signal maintenance and upgrades which have a demonstrable impact on improving safety. Accordingly, providing the industry additional time to comply with the specific requirements of Part 243 should not result in a reduction in, and may even have a positive impact on, railroad safety.

This Petition is consistent with Executive Order 13563, which provides for revisiting existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective.
or less burdensome in achieving the regulatory objectives. Modifying the regulation as requested by this Petition would reduce the compliance costs of the rule significantly with little or no reduction in benefits, resulting in an increase in net benefits.

This Petition is also consistent with Executive Order 13771 which directs agencies to reduce regulation and control regulatory costs. Under EO 13771 a “deregulatory action” is an action that has been finalized and has total costs less than zero, which simply means that after the rule is imposed, costs go down. Petitioners expect the proposed revisions will lead to substantial cost savings with little or no reduction in expected benefits.

**Conclusion**

For the foregoing reasons, ASLRRA and NRC respectfully request that the FRA grant its petition to extend the 49 CFR implementation dates applicable to Class II and III railroads and to contractors.

Dated: July 31, 2019

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