

may exclude certain operators in Pennsylvania that have been sending their wastewater to POTWs. These comments are outside the scope of the proposed rule, which was specifically limited to the extension of the compliance date. *See* 81 FR 67267; September 30, 2016 (“EPA will not consider any comment submitted on the proposed rule published today on any topic other than the appropriateness of an extension of the compliance date; any other comments will be considered outside the scope of this rulemaking.”). As clarified in the preamble to the proposed rulemaking, the rule simply extends the implementation deadline for certain facilities subject to the underlying final UOG pretreatment standard rule and does not otherwise amend the final pretreatment standards rule in any way. *See* 81 FR 67266, 67267; September 30, 2016 (incorporating rationale set forth in direct final rule at 81 FR 67191, 67192; September 30, 2016). Therefore, the EPA maintains that comments regarding the applicability of the underlying pretreatment standards rule are outside the scope of the proposed rule. Any such challenges were required to be raised with respect to the underlying pretreatment standards rule, and not with this final rule, which is limited to the extension of the compliance date.

The EPA’s extension of the compliance date by three years is reasonable, as acknowledged by industry commenters on the direct final rule. *See, e.g.*, Comments from Pennsylvania Independent Oil and Gas Association (finding the three year extension to be “a reasonable, measured and appropriate accommodation.”). As noted in the proposed rule, this is consistent with the EPA’s General Pretreatment regulations, which require existing sources to meet categorical pretreatment standards within three years of the effective date of such standards, unless a shorter compliance time is specified therein. 40 CFR 403.6(b). Although commenters expressed generalized concerns about adverse impacts on facilities that have been sending UOG wastewater to POTWs, these generalized concerns are not sufficient to undermine the reasonableness of a three year timeframe for these facilities to meet the pretreatment standard—particularly when the rulemaking record for the EPA’s final UOG pretreatment standard rule demonstrates that other similarly-situated operators are currently meeting the zero discharge pretreatment standard today. EPA did not receive any comments or data attempting to explain

why the facilities subject to this final rule would need longer than three years in order to meet the requirements that are currently being met by the vast majority of the industry.

### III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. With respect to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this action will not have a significant economic impact on a substantial number of small entities—as this direct final relieves regulatory burden by extending the compliance date for any businesses (including small businesses) that were discharging UOG wastewater to POTWs at the time of issuance of the pretreatment standard. For the Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4), this action does not significantly or uniquely affect small governments. The action imposes no incremental enforceable duty on any state, local or tribal governments or the private sector. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

### Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 435

Environmental protection, Pretreatment, Unconventional oil and gas extraction, Waste treatment and disposal, Water pollution control.

Dated: November 28, 2016.

**Gina McCarthy,**  
Administrator.

Therefore, 40 CFR part 435 is amended as follows:

### PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

■ 1. The authority citation for part 435 continues to read as follows:

**Authority:** 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

### Subpart C—Onshore Subcategory

■ 2. Amend § 435.33 by adding paragraph (a)(3) to read as follows:

#### § 435.33 Pretreatment standards for existing sources (PSES).

(a) \* \* \*

(3) *Compliance deadline for existing sources.* Existing sources discharging into publicly owned treatment works on or between April 7, 2015 and June 28, 2016, shall comply with the PSES by August 29, 2019. All other existing sources shall comply by August 29, 2016.

\* \* \* \* \*

[FR Doc. 2016–29338 Filed 12–6–16; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 207

[Docket No. FRA–2016–0107, Notice No. 1]

RIN 2130–AC62

#### Railroad Police Officers

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends FRA’s regulations on railroad police officers to implement certain provisions of the Fixing America’s Surface Transportation

(FAST) Act. Consistent with the FAST Act, FRA is amending its regulations to allow: Railroads to hire contractors as railroad police officers; railroad police officers to transfer from one state to another without immediately needing to be commissioned or certified in the new state; and a state to recognize an officer's training at another state's recognized police academy or at a Federal law enforcement training center as meeting the state's basic police officer certification or commissioning requirements.

**DATES:** This final rule is effective February 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Gareth Rosenau, Office of Chief Counsel, Federal Railroad Administration, Mail Stop 10, Room W31-316, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-493-6054).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Prior to enactment of the FAST Act (Pub. L. 114-94 (Dec. 4, 2015)), 49 U.S.C. 28101 (Section 28101) authorized railroad employees commissioned or certified as police officers by any state to enforce, consistent with DOT regulations, the laws of any state where the railroad police officer's employer owns property to protect railroad property, personnel, passengers, and cargo. Section 28101 did not allow railroads to hire contractor railroad police officers or allow a railroad police officer to transfer from one state to another unless that officer was immediately commissioned or certified in the new state. Section 28101 also did not address training railroad police officers, except general references to the certification or commissioning of the officers under state law. FRA's regulations at 49 CFR part 207 implement Section 28101.

FAST Act Section 11412(b) (Section 11412) revised Section 28101 to allow: (1) Railroads to hire contractors as railroad police officers; (2) railroad police officers to transfer from one state to another without immediately needing to be commissioned or certified in the new state; and (3) a state to recognize an officer's training at another state's recognized police academy or a Federal law enforcement training center meets the state's basic police officer certification or commissioning requirements.<sup>1</sup>

<sup>1</sup> Section 11412 of the FAST Act also contained provisions modifying 49 U.S.C. 24305(e) (authorizing Amtrak to employ railroad police officers) and 18 U.S.C. 922(z)(2)(B) (excepting railroad police officers from certain restrictions

Section 11412 also requires the Secretary of Transportation (Secretary) to, within one year of enactment of the FAST Act, revise part 207 consistent with Section 11412. The authority to carry out this mandate is delegated to FRA. *See* 49 CFR 1.89(a). In issuing this final rule, neither the Secretary nor FRA is exercising any discretion in modifying part 207. Instead, this final rule merely incorporates the new Section 11412 statutory language into existing part 207 and, in certain instances, updates part 207 to ensure consistent application of the regulation, as modified by the FAST Act.

**II. The FAST Act's Specific Mandates Addressed in This Final Rule**

The FAST Act made three substantive revisions to existing Section 28101. First, the FAST Act revised Section 28101 paragraphs (a) and (b) to allow railroad police officers to be either direct employees of a railroad or contractors to a railroad (prior to the FAST Act, Section 28101 required railroad police officers to be "employed by" a railroad). Specifically, the FAST Act amended Section 28101(a) (the general authorizing provision for railroad police officers) to specify railroad police officers may be "directly employed by or contracted by" railroads. This change allows railroads to not only directly employ railroad police officers, but also to hire contractors as railroad police officers. In Section 28101(b) (which allows a railroad police officer to be temporarily assigned to assist a second railroad), the FAST Act revised the words "employed by" to "directly employed by or contracted by" and specified that a railroad police officer assisting a second railroad is an employee "or agent, as applicable" of the second railroad carrier.

Second, the FAST Act added a new paragraph (c) to Section 28101 addressing the transfer of railroad police officers from one state of employment or residence to a state other than the one where he or she is commissioned. New paragraph (c) provides a one year interim period for the officer to become commissioned in the new state, while retaining authority to enforce laws in the new state under Section 28101.

Third, the FAST Act added a new paragraph (d) to Section 28101 specifically allowing a state to allow a railroad police officer's training at another state's recognized police academy or at a Federal law

related to handguns). These provisions are self-executing and require no revision to part 207 or any other FRA regulation.

enforcement training center to meet the state's basic police officer certification or commissioning requirements.

**III. Justification for Final Rule**

FRA is proceeding directly to a final rule in this proceeding because it finds, for good cause, notice and public comment is unnecessary because the public would not benefit from such notice. *See* 5 U.S.C. 553(b)(B). In this rule, FRA is merely incorporating the new statutory language of the FAST Act into existing part 207, and, in doing so, is exercising no discretion. *See, e.g., Komjathy v. National Transp. Safety Bd.*, 832 F.2d 1294 (D.C. Cir. 1987), cert. denied, *Komjathy v. Administrator, Federal Aviation Admin.*, 486 U.S. 1057 (1988).

**IV. Section-by-Section Analysis**

*Section 207.1 Application*

Existing § 207.1 states part 207 applies to "all railroads," as defined in section 202(e) of the Federal Railroad Safety Act of 1970. FRA is updating this section to accurately reflect the current statutory cite for the term "railroad." 49 U.S.C. 20103. This only updates an outdated statutory citation and is not a substantive amendment.

*Section 207.2 Definitions*

Existing paragraph (a) of § 207.2 defines "railroad police officer" as a "peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo." Consistent with the mandate of Section 11412, this rule revises this definition by clarifying that term includes peace officers "directly employed by" or "contracted by" a railroad.

*Section 207.3 Designation and Commissioning*

Existing paragraph (b) of § 207.3 requires railroad police officers to be commissioned by the officer's state of legal residence or the officer's state of primary employment. Consistent with Section 11412's new provision providing for a one year interim period for an officer transferring from one state of employment or residence to another to become commissioned or certified in the new state, FRA is revising this paragraph to except railroad police officers from this commissioning requirement during such an interim period by referencing new § 207.6 (discussed below).

### Section 207.6 Transfers

Consistent with new Section 28101(c), FRA is adding new § 207.6 to address transferring railroad police officers from one state of employment or residence to a state other than the one where he or she is commissioned. Section 207.6(a) provides that if a railroad police officer certified or commissioned as a police officer under the laws of a state or jurisdiction transfers primary employment or residence from the certifying or commissioning state to another state or jurisdiction, then the railroad police officer must apply to be certified or commissioned as a police officer under the laws of the state of new primary employment or residence not later than one year after the date of transfer. Section 207.6(b) provides that during the period beginning on the date of transfer and ending one year after the date of transfer, a railroad police officer certified or commissioned as a police officer under the laws of a state may enforce the laws of the new state or jurisdiction in which the railroad police officer resides, to the same extent as provided in existing § 207.5(a) governing the authority of railroad police officers in states where the officer is not commissioned or certified.

### Section 207.7 Training

Consistent with new Section 28101, FRA is adding new § 207.7 specifically allowing a state to recognize a railroad police officer's training at another state's recognized police academy or at a Federal law enforcement training center meets the state's basic police officer certification or commissioning requirements. Tracking paragraph (d)(1) of Section 28101, paragraph (a) of new § 207.7 specifically allows states to recognize its basic police officer certification or commissioning requirements for qualification as a railroad police officer are met by any individual who successfully completes a program at another state's state-recognized police training academy or a Federal law enforcement training center and who is certified or commissioned as a police officer by that other state. Tracking paragraph (d)(2) of Section 28101, paragraph (b) of new § 207.7 explains the rule may not be construed to supersede or affect any state training requirements related to criminal law, civil procedure, motor vehicle code, any other state law, or state-mandated comparative or annual in-service training academy or Federal law enforcement training center.

## V. Regulatory Impact and Notices

### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this final rule under existing policies and procedures and determined it is non-significant, under both Executive Orders 12866 and 13563, and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. Because FRA determined the anticipated costs from this final rule are *de minimis*, FRA did not prepare a separate regulatory impact assessment document. Instead, FRA summarized its assessment of the cost and benefit expected to result from implementation of this final rule here.

First, FRA found this final rule will not create any additional burden on any entities. Thus, we do not expect the rule to result in any costs, either quantifiable or non-quantifiable, as the rule does not create any additional requirements entities must follow.

Second, FRA found the final rule provides benefits to entities and benefits to workers from the three provisions allowing: (1) Railroads to hire contractor police officers; (2) railroad police officers to transfer from one state to another without immediately needing to be commissioned or certified in the new state; and (3) a state to recognize an officer's training at another state's recognized police academy or at a Federal law enforcement training center meets the state's basic police officer certification or commissioning requirements.

Providing entities with the ability to employ contractor police officers more easily allows entities to adjust employment rolls based upon their business needs. Providing flexibility for railroad police officers to transfer from one state to another allows for increased mobility of railroad police officers to meet interstate business needs. Increased interstate worker mobility addresses the current geographic immobility of railroad police officers caused by existing law that typically requires railroad police officers to be commissioned within their states of residence or primary employment. Similar to how allowing railroads to employ contractor police officers will lead to increased interstate worker mobility, allowing states to recognize an officer's training completed within another state or at a Federal law enforcement training center as meeting that state's basic police officer certification or commissioning requirements will likewise increase the interstate mobility of railroad police officers.

Thus, FRA concludes this final rule will result in several non-quantifiable benefits that allow railroads to more efficiently allocate the railroad police officer workforce based upon employment needs. Therefore, the final rule benefits workers because there is increased worker mobility, and the final rule benefits railroads, because of the increased flexibility and efficiency they have to allocate railroad police officers.

It is important to note the total number of railroad police officers is not expected to change as a result of this final rule. However, this final rule may result in a more stable labor market for railroad police officers, with a lower employment turnover rate, since railroad police officers can more easily relocate.

### B. Regulatory Flexibility Act and Executive Order 13272; Certification

FRA developed this final rule under Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

This final rule will apply to all entities employing or contracting for railroad police officers. Because the final rule does not impose any substantive requirements on regulated entities (either large or small), FRA estimates this rule imposes no costs on regulated entities. Thus, because this final rule does not create any costs, it will not result in greater costs per employee for small entities as compared to large entities.

FRA estimates there are fewer than 5 railroads that are both small entities for purposes of this analysis, and that employ or contract for railroad police officers. Moreover, because there are no costs associated with this final rule, the economic impact on these small entities is not significant.

#### 1. Description of Regulated Entities and Impacts

The "universe" of entities under consideration includes only those small entities that can reasonably be expected to be directly affected by this final rule. The only small entities potentially

affected by this final rule are small railroads that employ or contract for railroad police officers.

“Small entity” is defined in 5 U.S.C. 601 (Section 601). Section 601(6) defines “small entity” as having “the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’” as defined by Section 601. Section 601(3) defines “small business” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. Section 601(4) defines “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Section 601(5) defines “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”

The U.S. Small Business Administration (SBA) stipulates “size standards” for small entities. It provides that the largest a for-profit railroad business firm may be (and still be classified as a “small entity”) is 1,500 employees for “Line-Haul Operating Railroads” and 500 employees for “Short-Line Operating Railroads.”<sup>2</sup> Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy formally establishing for FRA’s regulatory purposes “small entities” or “small businesses” as railroads, contractors, and hazardous materials

shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1 (which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less).<sup>3</sup> FRA used this definition for this rulemaking.

FRA could not exactly quantify the number of entities that could be impacted by this final rule if there was a burden. However, evidence exists that, because of resource constraints, most Class III railroads (small entities) do not employ railroad police officers. *See ASLRRA Aims to Help 560 Roads Address Hazmat Car Security*, Progressive Railroading, April 2009. Nevertheless, there may be commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less that would be considered small entities and would be impacted by this final rule with no associated burden. Although there is no associated burden, FRA conservatively estimates this final rule will impact approximately 30 railroads, five of which meet FRA’s definition of a “small entity.”

There are approximately 695 small railroads (as defined by revenue size). Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this final regulation, but there is no reason to believe that any additional small railroads are likely to employ or contract for railroad police officers.

**Significant Economic Impact Criteria**

Previously, FRA sampled small railroads and found that revenue

averaged approximately \$4.7 million (not discounted) in 2006. One percent of that average annual revenue per small railroad is \$47,000. FRA realizes that some railroads will have lower revenue than \$4.7 million. FRA estimates that this rule will not result in any additional expense to small railroads over the next ten years, as the final rule does not require entities to comply with anything. That is, while this final rule provides entities with relaxed constraints on how to employ railroad police officers, this final rule does not introduce any new requirements itself. Therefore, FRA concludes there is no expected burden for this final rule so it will not have a significant impact on the financial position of small entities, or on the small entity segment of the railroad industry as a whole.

**Substantial Number Criteria**

Because this final rule does not contain any provision requiring action on the part of entities, either large or small, this final rule will not impact a substantial number of small entities.

**2. Certification**

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies this final rule will not have a significant economic impact on a substantial number of small entities.

**C. Paperwork Reduction Act**

The information collection requirements in this final rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements are duly designated, and the estimated time to fulfill each requirement is as follows:

CFR Section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
207.4—RR Notice to State Officials—Written notice of RR police officer’s commission to each state in which the RR police officer shall protect the railroad’s property, personnel, passengers, and cargo.	763 railroads .....	35 notices .....	5 hours .....	175
—RR Copy of Written Notices to State Officials.	763 railroads .....	35 records/copies .....	10 minutes .....	6
207.6—Transfers—Application by RR police officer for new state certification/commission when transferring primary employment or residence from one State to Another (New Provision).	763 railroads .....	30 state certification applications.	1 hour .....	30

<sup>2</sup> “Table of Size Standards,” U.S. Small Business Administration, Jan. 31, 1996, 13 CFR part 121.

<sup>3</sup> See 49 CFR part 209, appendix C.

CFR Section/subject	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
207.7—Training—RR police officer training successful completion at a state’s police academy training program in one state recognized by other state (New Provision).	763 railroads .....	30 trained RR police officers.	40 hours .....	1,200

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the unchanged paperwork package submitted to OMB, contact Mr. Robert Brogan at 202-493-6292 or Ms. Kimberly Toone at 202-493-6132 or via email at the following addresses: *Robert.Brogan@dot.gov*; *Kimberly.Toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to the Office of Management and Budget at the following address: *oira\_submissions@omb.eop.gov*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

**D. Federalism**

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts state law, the agency seeks to consult with state and local officials in the process of developing the regulation.

This final rule has been analyzed consistent with the principles and criteria in Executive Order 13132. FRA has determined this rule does not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This rule does not impose substantial direct compliance costs on state and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**E. Environmental Impact**

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999). FRA has determined this final rule is categorically excluded from detailed environmental review under section 4(c)(20) of FRA’s NEPA Procedures, “Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or noise or increased traffic congestion in any mode of transportation.” *See* 64 FR 28547, May 26, 1999. Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing procedures that do not normally have a

significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4.

In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *Id.* Consistent with section 4(c) and (e) of FRA’s Procedures, the agency has further concluded no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. The purpose of this rulemaking is to conform FRA’s regulation on railroad police officers to the statutory provisions of Section 11412 of the FAST Act which provide additional flexibility for railroads to hire, employ, and train railroad police officers than previously provided. FRA does not anticipate any environmental impacts from this requirement and finds that there are no extraordinary circumstances present in connection with this final rule.

**F. Executive Order 13175 (Tribal Consultation)**

FRA has evaluated this final rule consistent with the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

**G. Executive Order 12898 (Environmental Justice)**

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534, May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this rule under Executive Order 12898 and the DOT Order and determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

#### H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that

before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement

detailing the effect on state, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

#### I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355, May 22, 2001. Under the Executive Order, a “significant energy action” is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is

likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule consistent with Executive Order 13211. FRA has determined this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined this final rule is not a “significant energy action” within the meaning of Executive Order 13211.

#### J. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this final rule on foreign commerce and believes its requirements are consistent with the Trade Agreements Act of 1979. The requirements imposed relate to safety standards, which, as noted, are not considered unnecessary obstacles to trade.

#### K. Privacy Act

Consistent 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).

#### List of Subjects in 49 CFR Part 207

Law enforcement, Law enforcement officers, Railroad employees, Railroad safety.

#### The Rule

In consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

#### PART 207—[AMENDED]

■ 1. The authority citation for part 207 continues to read as follows:

**Authority:** 49 U.S.C. 28101; 49 CFR 1.89.

■ 2. Revise § 207.1 to read as follows:

#### § 207.1 Application.

This part applies to all railroads as defined in 49 U.S.C. 20103.

■ 3. Revise § 207.2(a) to read as follows:

#### § 207.2 Definitions.

\* \* \* \* \*

(a) *Railroad police officer* means a peace officer who is commissioned in his or her state of legal residence or state of primary employment and directly employed by or contracted by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo.

\* \* \* \* \*

■ 4. Revise § 207.3(b) to read as follows:

#### § 207.3 Designation and commissioning.

\* \* \* \* \*

(b) Except as provided by § 207.6, the designated railroad police officer shall be commissioned by the railroad police officer’s state of legal residence or the railroad police officer’s state of primary employment.

■ 5. Add § 207.6 to read as follows:

#### § 207.6 Transfers.

(a) *General.* If a railroad police officer certified or commissioned as a police officer under the laws of a state or jurisdiction transfers primary employment or residence from the certifying or commissioning state to another state or jurisdiction, then the railroad police officer must apply to be certified or commissioned as a police officer under the laws of the state of new primary employment or residence not later than one (1) year after the date of transfer.

(b) *Interim period.* During the period beginning on the date of transfer and ending one year after the date of transfer, a railroad police officer certified or commissioned as a police officer under the laws of a state may enforce the laws of the new state or jurisdiction in which the railroad police officer resides, to the same extent as provided in § 207.5(a).

■ 6. Add § 207.7 to read as follows:

#### § 207.7 Training.

(a) A state may consider an individual to have met that state’s basic police officer certification or commissioning requirements for qualification as a railroad police officer under this section if that individual:

(1) Has successfully completed a program at a state-recognized police training academy in another state or at a Federal law enforcement training center; and

(2) Is certified or commissioned as a police officer by the other state.

(b) Nothing in this section shall be construed as superseding or affecting any state training requirements related to criminal law, civil procedure, motor vehicle code, any other state law, or state-mandated comparative or annual in-service training academy or Federal law enforcement training center.

Issued in Washington, DC, on December 1, 2016.

**Amitabha Bose,**

*Acting Administrator.*

[FR Doc. 2016-29256 Filed 12-6-16; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

RIN 2130-AC58

#### Update to Email Address for the Electronic Submission via the Internet of Certain Accident/Incident Reports

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

**ACTION:** Final rule.

**SUMMARY:** This final rule updates FRA's accident/incident reporting regulations to provide the current electronic mail address railroads must use to electronically submit to FRA certain accident/incident report forms.

**DATES:** Effective: December 7, 2016.

**FOR FURTHER INFORMATION CONTACT:**

Kebo Chen, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W33-314, 1200 New Jersey Ave. SE., Washington, DC 20590 (telephone 202-493-6079); or Gahan Christenson, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W33-435, 1200 New Jersey Ave. SE., Washington, DC 20590 (telephone 202-493-1381).

**SUPPLEMENTARY INFORMATION:** This rule updates the electronic mail (email) address provided in 49 CFR part 225 for railroads to electronically submit certain FRA accident/incident report forms.<sup>1</sup> Part 225 references the FRA email

address in two places: Paragraph (c) of § 225.27 and paragraph (c)(1) of § 225.37. Those paragraphs direct railroads to submit the specified forms to the following email address: *aireports@frasafety.net*. This FRA email address is out of date and no longer functional. Accordingly, in this rule FRA is updating the email address referenced in paragraph (c) of § 225.27 and paragraph (c)(1) of § 225.37 to the current email address where FRA can receive these reports. The current email address is: *RsisAiReports@dot.gov*.

Starting in 2013, FRA informed railroad reporting officers of the change in the email address in §§ 225.27 and 225.37 and started transitioning to the new *RsisAiReports@dot.gov* email address. FRA established the *RsisAiReports@dot.gov* email address to avoid increased costs associated with the previous email address in the regulations. Until December 31, 2015, FRA accepted emailed accident/incident report forms at the email address in part 225 (*aireports@frasafety.net*) and at *RsisAiReports@dot.gov*, but the *aireports@frasafety.net* email address no longer functions.

This rule only updates the email address in the regulation and makes no other changes to part 225. FRA is issuing this final rule without providing an opportunity for prior to public notice and comment as the Administrative Procedure Act (APA) normally requires. See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). Because this final rule makes no substantive amendment to FRA's regulations and only changes the email address for railroads to submit to FRA certain already required documents, FRA finds, for good cause, that notice and public comment is unnecessary, because the public would not benefit from such notice. Moreover, The scope of this regulatory change is very limited; FRA is merely replacing an outdated email address with a current email address.

#### Regulatory Evaluation

*Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

FRA evaluated this final rule under existing policies and procedures and determined it to be a non-significant regulatory action under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. This final rule

only updates the email address used by railroads to report certain accident/incident forms to FRA, and makes no substantive changes to part 225's reporting requirements. This rule is necessary because the current email address is out of date and no longer accepts accident/incident report forms. Over the past three years, FRA has repeatedly notified railroads of the new email address that should be used for submitting accident/incident report forms. Consequently, most railroads already use the new email address referenced in this rule, but some do not and will need to do so under this final rule. These railroads will incur a minor administrative burden to make note of the new email address and revise their contact lists accordingly, in comparison to no change in the email address used to submit accident/incident report forms to FRA.

The administrative burden to update the email address will depend on how the railroads submit accident/incident report forms to FRA. In general, railroads use the email address in two ways to submit accident/incident report forms. First, a railroad may manually enter the email address into its email program or electronic device (such as a multi-function printer) each time the railroad submits an accident/incident report form to FRA. In this case, substituting the new email address for the old one would present no additional burden because the railroad would have had to enter an email address regardless. Furthermore, if occasionally updating email addresses is a regular part of a railroad reporting officer's duties (the employee most likely to submit accident/incident report forms to FRA), the burden of updating the email address is already taken into account. The railroad employee would only need to take note of the new email address, requiring a minimal amount of time.

Second, a railroad may use an automated system to submit accident/incident report forms to FRA. In such a system, the reporting officer would need to update, save and/or compile, and check for errors when using the new email address (such as entering in the email address wrong). These steps are standardized, and again, would require minimal time to update one email address. In addition, whether email addresses are entered manually, or stored in an automated system, the email address would only need to be updated once. Thus, given the small amount of time needed to revise the current email address to the new one, and one-time occurrence of the task, the costs associated with this change will be minimal.

<sup>1</sup> FRA is not simultaneously updating the email address in the FRA Guide for Preparing Accident/Incident Reports (Guide) because this final rule and updates on FRA's Web site, in addition to communication between FRA and individual railroads, makes it unnecessary to revise the Guide at this time.