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Title 49 –Transportation

Subtitle B –Other Regulations Relating to Transportation

Chapter II –Federal Railroad Administration, Department of Transportation

Part 217 –Railroad Operating Rules

Subpart A –General

Authority: 49 U.S.C. 20103, 20107, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

Source: 39 FR 41176, Nov. 25, 1974, unless otherwise noted.

§ 217.9 Program of operational tests and inspections; recordkeeping.

- (a) **Requirement to conduct operational tests and inspections.** Each railroad to which this part applies shall periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions, specifically including tests and inspections sufficient to verify compliance with the requirements of subpart F of part 218 of this chapter, in accordance with a written program as required by paragraph (c) of this section.
- (b) **Railroad and railroad testing officer responsibilities.** The requirements of this paragraph (b) are applicable beginning January 1, 2009.
 - (1) Each railroad officer who conducts operational tests and inspections (railroad testing officer) shall:
 - (i) Be qualified on the railroad's operating rules in accordance with § 217.11 of this part;
 - (ii) Be qualified on the operational testing and inspection program requirements and procedures relevant to the testing and inspections the officer will conduct;
 - (iii) Receive appropriate field training, as necessary to achieve proficiency, on each operational test or inspection that the officer is authorized to conduct; and
 - (iv) Conduct operational tests and inspections in accordance with the railroad's program of operational tests and inspections.
 - (2) Written records documenting qualification of each railroad testing officer shall be retained at the railroad's system headquarters and at the division headquarters for each division where the officer is assigned and shall be made available to representatives of the FRA for inspection and copying during normal business hours.
 - (3) A passenger railroad that utilizes inward-facing locomotive image or in-cab audio recordings to conduct operational tests and inspections shall adopt and comply with a procedure in its operational tests and inspections program that ensures employees are randomly subject to such operational tests and inspections involving image or audio recordings. The procedure adopted by a passenger railroad must:
 - (i) Establish objective, neutral criteria to ensure every employee subject to such operational tests and inspections is selected randomly for such operational tests and inspections within a specified time frame;
 - (ii) Not permit subjective factors to play a role in selection, *i.e.*, no employee may be selected based on the exercise of a railroad's discretion; and

- (iii) Require that any operational test or inspection using locomotive image or audio recordings be performed within 72 hours of the completion of the employee's tour of duty that is the subject of the operational test. Any operational test performed more than 72 hours after the completion of the tour of duty that is the subject of the test is a violation of this section. The 72-hour limitation does not apply to investigations of railroad accidents/incidents or to violations of Federal railroad safety laws, regulations, or orders, or any criminal laws.
- (4) FRA may review a passenger railroad's procedure implementing paragraph (b)(3) of this section, and, for cause stated, may disapprove such procedure under paragraph (h) of this section.
- (c) **Written program of operational tests and inspections.** Every railroad shall have a written program of operational tests and inspections in effect. New railroads shall have such a program within 30 days of commencing rail operations. The program shall—
 - (1) Provide for operational testing and inspection under the various operating conditions on the railroad. As of January 1, 2009, the program shall address with particular emphasis those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f) of this section, as applicable;
 - (2) Require a minimum number of tests and inspections per year covering the requirements of part 218, subpart F of this chapter;
 - (3) Describe each type of operational test and inspection required, including the means and procedures used to carry it out;
 - (4) State the purpose of each type of operational test and inspection;
 - (5) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is to be conducted;
 - (6) As of January 1, 2009, identify the officer(s) by name, job title, and, division or system, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented. The responsibilities of such officer(s) shall include, but not be limited to, ensuring that the railroad's testing officers are directing their efforts in an appropriate manner to reduce accidents/incidents and that all required reviews and summaries are completed. A railroad with divisions shall identify at least one officer at the system headquarters who is responsible for overseeing the entire program and the implementation by each division.
 - (7) Include a schedule for making the program fully operative within 210 days after it begins.
- (d) **Records.**
 - (1) Each railroad to which this part applies shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters and at each division headquarters where the tests and inspections are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours.

(2) Each railroad shall retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be retained at the system headquarters and at each division headquarters where the tests and inspections are conducted for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours.

(e) **Reviews of tests and inspections and adjustments to the program of operational tests.** This paragraph (e) shall apply to each Class I railroad and the National Railroad Passenger Corporation beginning April 1, 2009 and to all other railroads subject to this paragraph beginning July 1, 2009.

(1) **Reviews by railroads other than passenger railroads.** Each railroad to which this part applies shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the following written reviews, provided however that this requirement does not apply to either a railroad with less than 400,000 total employee work hours annually or a passenger railroad subject to paragraph (e)(2) of this section.

(i) **Quarterly review.** The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, shall conduct a written quarterly review of the accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for that division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the quarter. The review shall also include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s). Quarterly reviews and adjustments shall be completed no later than 30 days after the quarter has ended.

(ii) **Six month review.** The designated officer of each system headquarters office responsible for development and administration of the program of operational tests and inspections shall conduct a review of the program of operational tests and inspections on a six month basis to ensure that it is being utilized as intended, that the quarterly reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts. Six month reviews shall be completed no later than 60 days after the review period has ended.

(2) **Reviews by passenger railroads.** Not less than once every six months, the designated officer(s) of the National Railroad Passenger Corporation and of each railroad providing commuter service in a metropolitan or suburban area shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the reviews. Each such review shall be completed within 30 days of the close of the period. The designated officer(s) shall conduct a written review of:

(i) The operational testing and inspection data for each division, if any, or the system to determine compliance by the railroad testing officers with its program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this review shall include the name of

each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program;

- (ii) Accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for each division, if any, or the system to identify the relevant operating rules related to those accidents/incidents that occurred during the period. Based upon the results of that review, the designated officer(s) shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s); and
- (iii) Implementation of the program of operational tests and inspections from a system perspective, to ensure that it is being utilized as intended, that the other reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts.

(3) **Records retention.** The records of periodic reviews required in paragraphs (e)(1) and (e)(2) of this section shall be retained for a period of one year after the end of the calendar year to which they relate and shall be made available to representatives of FRA for inspection and copying during normal business hours.

(f) **Annual summary of operational tests and inspections.** Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually, shall retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous calendar year activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (c) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of the FRA for inspection and copying during normal business hours.

(g) **Electronic recordkeeping.** Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met:

- (1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access;
- (2) The railroad has a terminal at the system headquarters and at each division headquarters;
- (3) Each such terminal has a computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;
- (4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and
- (5) The railroad provides representatives of the FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

Program of operational tests and inspections; recordkeeping.

- (h) Upon review of the program of operational tests and inspections required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program,
- (1) The railroad has 35 days from the date of the written notification of such disapproval to:
 - (i) Amend its program and submit it to the Associate Administrator for Safety for approval; or
 - (ii) Provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing; and
 - (2) A failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this part.

[73 FR 8496, Feb. 13, 2008, as amended at 73 FR 33902, June 16, 2008; 88 FR 70760, Oct. 12, 2023]