§ 218.95 Instruction, training, and examination.

(a) Program. Beginning January 1, 2009, each railroad shall maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee’s duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under § 217.11 of this chapter. An employee who successfully completes all instruction, training, and examination required by this written program shall be considered qualified.

(1) The written program of instruction, training, and examination shall
address the requirements of this subpart, as well as consequences of non-compliance.

(2) The written program of instruction, training, and examination shall include procedures addressing how the railroad qualifies employees in any technology necessary to accomplish work subject to the requirements of this subpart. Such procedures shall include, but are not limited to, those which explain:

(i) The purpose for using the technology;
(ii) How an employee will be expected to use the technology;
(iii) How to detect malfunctioning equipment or deviations from proper procedures;
(iv) How to respond when equipment malfunctions or deviations from proper procedures are detected; and
(v) How to prevent unintentional interference with the proper functioning of the technology.

(3) Implementation schedule for employees, generally. Each employee performing duties subject to the requirements in this subpart shall be initially qualified prior to July 1, 2009.

(4) Beginning July 1, 2009, no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified on these rules within the previous three years.

(5) The records of successful completion of instruction, examination and training required by this section shall document qualification of employees under this subpart.

(b) Written records documenting successful completion of instruction, training, and examination of each employee required by this subpart shall be retained at its system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain a program, or any records maintained to prove compliance with such a program, by electronic recordkeeping in accordance with §§217.9(g) and 217.11(c) of this chapter.

(c) Upon review of the program of instruction, training, and examination 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.


§218.97 Good faith challenge procedures.

(a) Employee responsibility. An employee shall inform the railroad or employer whenever the employee makes a good faith determination that the employee has been directed to either take actions that would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required by this subpart, or to take actions that would violate the railroad’s operating rules implementing the requirements of this subpart.

(b) General procedures. Each railroad or employer is responsible for the training of and compliance by its employees with the requirements of this subpart.

(1) Each railroad or employer shall adopt and implement written procedures which guarantee each employee the right to challenge in good faith whether the procedures that will be used to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon