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be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)). FRA's website at *www.fra.dot.gov* contains a schedule of civil penalty amounts used in connection with this part.

[63 FR 24676, May 4, 1998, as amended at 69 FR 30595, May 28, 2004; 72 FR 51198, Sept. 6, 2007; 73 FR 79704, Dec. 30, 2008; 77 FR 24422, Apr. 24, 2012; 81 FR 43112, July 1, 2016; 82 FR 16135, Apr. 3, 2017; 83 FR 60749, Nov. 27, 2018; 84 FR 23737, May 23, 2019; 84 FR 37075, July 31, 2019]

§ 239.13 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 239.15 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*), and have been assigned OMB control number 2130-0545.

(b) The information collection requirements are found in the following sections: §§ 239.101, 239.103, 239.105, 239.107, 239.201, 239.203, 239.301, and 239.303.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with a

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written emergency preparedness plan approved by FRA under the procedures of § 239.201. The plan shall include the following elements and procedures for implementing each plan element.

(1) *Communication*—(i) *Initial and on-board notification*. An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. As appropriate, an on-board crewmember shall inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notification by control center or emergency response communications center*. The control center or the emergency response communications center, as applicable under the plan, shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred. Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification*—(i) *On-board personnel*. The railroad's emergency preparedness plan shall address individual employee responsibilities and provide for initial training, as well as periodic training at least once every two calendar years thereafter, on the applicable plan provisions. As a minimum, the initial and periodic training shall include:

- (A) Rail equipment familiarization;
- (B) Situational awareness;
- (C) Passenger evacuation;
- (D) Coordination of functions; and
- (E) "Hands-on" instruction concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center and emergency response communications center personnel*. The railroad's emergency preparedness plan shall require initial training of responsible control center personnel and any emergency response communications center personnel employed by the

railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad, as well as periodic training at least once every two calendar years thereafter, on appropriate courses of action for each potential emergency situation under the plan. At a minimum, the initial and periodic training shall include the following:

(A) Territory familiarization (*e.g.*, access points for emergency responders along the railroad's right-of-way; special circumstances (*e.g.*, tunnels); parallel operations; and other operating conditions (*e.g.*, elevated structures, bridges, and electrified territory) including areas along the railroad's right-of-way that are remote and that would likely present challenges for individuals responding to a passenger train emergency);

(B) Procedures to retrieve and communicate information to aid emergency personnel in responding to an emergency situation;

(C) Protocols governing internal communications between appropriate control center and emergency response communications center personnel whenever an imminent potential or actual emergency situation exists, as applicable under the plan; and

(D) Protocols for establishing and maintaining external communications between the railroad's control center or emergency response communications center, or both, and emergency responders and adjacent modes of transportation, as applicable under the plan.

(iii) *Initial training schedule for current personnel.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and responsible control center personnel, as well as any emergency response communications center personnel, who are employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad on the date that the plan is conditionally approved under § 239.201(b)(1), in accordance with the following schedule:

(A) For each railroad that provides commuter or other short-haul pas-

senger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, not more than one year after January 29, 1999, or not more than 90 days after commencing passenger operations, whichever is later.

(B) For each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(C) For each railroad that provides intercity passenger train service, regardless of the number of route miles or passenger miles, not more than two years after January 29, 1999, or not more than 180 days after commencing passenger operations, whichever is later.

(D) For each freight railroad that hosts passenger train service, regardless of the number of route miles or passenger miles of that service, not more than one year after January 29, 1999, or not more than 90 days after the hosting begins, whichever is later.

(iv) *Initial training schedule for new personnel.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and responsible control center personnel, as well as any emergency response communications center personnel, who are hired by the railroad, contracted or subcontracted by the railroad, or hired by the contractor or subcontractor to the railroad after the date on which the plan is conditionally approved under § 239.201(b)(1). Each of these individuals shall receive initial training within 90 days after the individual's initial date of service.

(v) *Testing of on-board, control center, and emergency response communications center personnel.* The railroad shall have procedures for testing an individual being evaluated for qualification under the emergency preparedness plan who is employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad. The types of testing selected by the railroad shall be—

(A) Designed to accurately measure the individual's knowledge of his or her responsibilities under the plan;

(B) Objective in nature;

(C) Administered in written form; and

(D) Conducted without reference by the person being tested to open reference books or other materials, except to the degree the person is being tested on his or her ability to use such reference books or materials.

(vi) *On-board staffing.* (A) Except as provided in paragraph (a)(2)(vi)(B), all crewmembers on board a passenger train shall be qualified to perform the functions for which they are responsible under the provisions of the applicable emergency preparedness plan.

(B) A freight train crew relieving an expired passenger train crew en route is not required to be qualified under the emergency preparedness plan, provided that at least one member of the expired passenger train crew remains on board and is available to perform excess service under the Federal hours of service laws in the event of an emergency.

(3) *Joint operations.* (i) Each railroad hosting passenger train service shall address its specific responsibilities consistent with this part.

(ii) In order to achieve an optimum level of emergency preparedness, each railroad hosting passenger train service shall communicate with each railroad that provides or operates such service and coordinate applicable portions of the emergency preparedness plan. All of the railroads involved in hosting, providing, and operating a passenger train service operation shall jointly adopt one emergency preparedness plan that addresses each entity's specific responsibilities consistent with this part. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances—(i) Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect

readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detrainment, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall require reasonable and prudent action to coordinate emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or the railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

(i) Developing and making available a training program for all on-line emergency responders who could reasonably be expected to respond during an emergency situation. The training program shall include an emphasis on access to railroad equipment, location of railroad facilities, and communications interface, and provide information to emergency responders who may not have the opportunity to participate in an emergency simulation. Each affected railroad shall either offer the training directly or provide the program information and materials to state training institutes, firefighter organizations, or police academies;

(ii) Inviting emergency responders to participate in emergency simulations; and

(iii) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that

could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the position titles and telephone numbers of relevant railroad officers to contact.

(6) *On-board emergency equipment*—(i) *General*. Each railroad's emergency preparedness plan shall state the types of emergency equipment to be kept on board and indicate their location(s) on each passenger car that is in service. Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, this equipment shall include, at a minimum:

(A) One fire extinguisher per passenger car;

(B) One pry bar per passenger car; and

(C) One flashlight per on-board crewmember.

(ii) Effective May 4, 1999, or not more than 120 days after commencing passenger operations, whichever is later, each railroad that provides intercity passenger train service shall also equip each passenger train that is in service with at least one first-aid kit accessible to crewmembers that contains, at a minimum:

(A) Two small gauze pads (at least 4 × 4 inches);

(B) Two large gauze pads (at least 8 × 10 inches);

(C) Two adhesive bandages;

(D) Two triangular bandages;

(E) One package of gauge roller bandage that is at least two inches wide;

(F) Wound cleaning agent, such as sealed moistened towelettes;

(G) One pair of scissors;

(H) One set of tweezers;

(I) One roll of adhesive tape;

(J) Two pairs of latex gloves; and

(K) One resuscitation mask.

(iii) *On-board emergency lighting*. Consistent with the requirements of part 238 of this chapter, auxiliary portable lighting (e.g., a handheld flashlight) must be accessible and provide, at a minimum:

(A) Brilliant illumination during the first 15 minutes after the onset of an emergency situation; and

(B) Continuous or intermittent illumination during the next 60 minutes after the onset of an emergency situation.

(iv) *Maintenance*. Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of first-aid kits, on-board emergency equipment, and on-board emergency lighting.

(7) *Passenger safety information*—(i) *General*. Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities*. Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more additional methods to provide safety awareness information including, but not limited to, one of the following:

(A) On-board announcements;

(B) Laminated wallet cards;

(C) Ticket envelopes;

(D) Timetables;

(E) Station signs or video monitors;

(F) Public service announcements; or

(G) Seat drops.

(8) *Procedures regarding passengers with disabilities*. The railroad's emergency preparedness plan shall include procedures to promote the safety of passengers with disabilities under all conditions identified in its emergency preparedness plan, such as during a train evacuation. These procedures shall include, but not be limited to, a process for notifying emergency responders in an emergency situation about the presence and general location of each such passenger when the railroad has knowledge that the passenger is on board the train. The railroad does not have knowledge that such passenger has a disability unless a crewmember has actual knowledge of the disability, such as where a passenger (or his or her companion or fellow passenger) has expressly informed a crewmember on the train of the disability or where the disability is readily apparent. Nothing in this part requires the railroad to maintain any list of train passengers.

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(b) [Reserved]

[63 FR 24676, May 4, 1998, as amended at 79 FR 18147, Mar. 31, 2014]

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct full-scale emergency simulations, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Except as provided in paragraph (c) of this section:

(1) Each railroad that provides commuter or other short-haul passenger train service and whose operations include less than 150 route miles and less than 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during every two calendar years.

(2) Each railroad that provides commuter or other short-haul passenger train service and whose operations include at least 150 route miles or at least 200 million passenger miles annually, shall conduct a minimum of one full-scale emergency simulation during each calendar year.

(3) Each railroad that provides intercity passenger train service, shall conduct a minimum of one full-scale emergency simulation during each calendar year, regardless of the number of route miles or passenger miles.

(c) *Actual emergency situations.* Neither a tabletop exercise nor the activation of its emergency preparedness plan during an actual emergency situation may be credited toward the minimum number of full-scale emergency simulations required under paragraph (b) of this section. However, a railroad that has activated its emergency preparedness plan in response to a major emergency may elect to postpone a scheduled full-scale simulation for up to 180 calendar days beyond the applicable calendar year completion date in order to evaluate the effectiveness of its plan during that major emergency

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and, as appropriate, modify the rescheduled simulation.

(d) *Definition.* As used in this section, *major emergency* means an unexpected event related to the operation of passenger train service that results in serious injury or death to one or more persons and property damage greater than the current reporting threshold of part 225 of this chapter to railroad on-track equipment, signals, tracks, track structures, or roadbeds, including labor costs and the costs for acquiring new equipment and material.

§ 239.105 Debriefing and critique.

(a) *General.* Except as provided in paragraph (b) of this section, each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed. The debriefing and critique session shall be conducted within 60 days of the date of the passenger train emergency situation or full-scale simulation. To the extent practicable, all on-board personnel, control center personnel, and any other employees involved in the emergency situation or full-scale simulation shall participate in the session either:

(1) In person;

(2) Offsite via teleconference; or

(3) In writing, by a statement responding to questions provided prior to the session, and by responding to any follow-up questions.

(b) *Exceptions.* (1) No debriefing and critique session shall be required in the case of an emergency situation involving only a collision between passenger railroad rolling stock and: a pedestrian; a trespasser; or a motor vehicle or other highway conveyance at a highway-rail grade crossing, provided that the collision does not result in: a passenger or employee fatality, or an injury to one or more crewmembers or passengers requiring admission to a hospital; or the evacuation of a passenger train. (2) For purposes of this section, *highway-rail grade crossing*