

§217.4

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

[40 FR 2690, Jan. 15, 1975, as amended at 54 FR 33229, Aug. 14, 1989]

§217.4 Definitions.

As used in this part—

Associate Administrator for Safety means the Associate Administrator for Safety of the Federal Railroad Administration or that person's delegate as designated in writing.

Class I, Class II, and Class III have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR part 1201; General Instructions 1-1), as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Division headquarters means the location designated by the railroad where a high-level operating manager (*e.g.*, a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

FRA means the Federal Railroad Administration.

Qualified means that a person has successfully completed all instruction, training, and examination programs required by the railroad and this part and that the person, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is expected to be competent.

System headquarters means the location designated by the railroad as the general office for the railroad system.

[59 FR 43070, Aug. 22, 1994, as amended at 73 FR 8496, Feb. 13, 2008]

§217.5 Penalty.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or

49 CFR Ch. II (10-1-24 Edition)

facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$1,086 and not more than \$35,516 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$142,063 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See FRA's website at www.fra.dot.gov for a statement of agency civil penalty policy.

[53 FR 28599, July 28, 1988]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §217.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§217.7 Operating rules; filing and recordkeeping.

(a) On or before December 21, 1994, each Class I railroad, Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area that is in operation on November 21, 1994, shall file with the Federal Railroad Administrator, Washington, DC 20590, one copy of its code of operating rules, timetables, and timetable special instructions which were in effect on November 21, 1994. Each Class I railroad, each Class II railroad, and each railroad providing commuter service in a metropolitan or suburban area that commences operations after November 21, 1994, shall file with the Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations.

(b) After November 21, 1994, each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area shall file each new amendment to its code of operating

rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued.

(c) On or after November 21, 1994, each Class III railroad and any other railroad subject to this part but not subject to paragraphs (a) and (b) of this section shall keep one copy of its current code of operating rules, timetables, and timetable special instructions and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction, at its system headquarters, and shall make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

[59 FR 43070, Aug. 22, 1994]

§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