

### Subpart D—Operational Tests and Inspections; Records, Record-keeping, and Availability of Records

#### § 239.301 Operational tests and inspections.

(a) *Requirement to conduct operational tests and inspections.* Each railroad to which this part applies shall periodically conduct operational tests and inspections of on-board personnel, responsible control center personnel, and, as applicable, 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, to determine the extent of compliance with its emergency preparedness plan.

(1) *Program of operational tests and inspections.* Operational tests and inspections shall be conducted in accordance with the railroad's program. A new railroad shall adopt such a program within 30 days of commencing rail operations. The program shall—

(i) Provide for operational testing and inspection on appropriate courses of action in response to various potential emergency situations and on the responsibilities of an employee of the railroad, of an individual who is a contractor or subcontractor to the railroad, or an employee of a contractor of subcontractor to the railroad, as they relate to the railroad's emergency preparedness plan.

(ii) Describe each type of operational test and inspection required, including the means and procedures used to carry it out.

(iii) State the purpose of each type of operational test and inspection.

(iv) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is to be conducted.

(v) 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. A railroad with operating 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.

(vi) Require that each railroad officer who conducts operational tests and inspections be trained on those aspects of the railroad's emergency preparedness plan that are relevant to the operational tests and inspections that the officer conducts, and that the officer be qualified on the procedures for conducting such operational tests and inspections in accordance with the railroad's program of operational tests and inspections and the requirements of this section.

(2) The program of operational tests and inspections required by paragraph (a)(1) of this section may be combined with the written program of operational tests and inspections required by § 217.9(c) of this chapter.

(b) *Maintaining records of operational tests and inspections.* Each railroad to which this part applies shall maintain a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test or inspection, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) *Retaining operational test and inspection records.* Each record required by paragraph (b) of this section shall be retained at the system headquarters of the railroad and, as applicable, at the division headquarters for the division where the test or inspection was conducted, for one calendar year after the end of the calendar year to which the test or inspection relates. Each such record shall be retained either in hard copy or electronically, if pursuant to § 239.303, and shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(d) *Retaining records of program of operational tests and inspections.* Each railroad shall retain one copy of its current operational testing and inspection program 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, as applicable, at each division headquarters

where the operational tests and inspections are conducted, for three calendar years after the end of the calendar year to which they relate. These records shall be retained either in hard copy or electronically, if pursuant to § 239.303, and shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(e) *Six-month review of tests and inspections and adjustments to the program of operational tests and inspections.* Not less than once every six months, the officer(s) responsible for overseeing the entire program of operational tests and inspections under this section and the implementation of the program by each division, if any, or the system, as designated pursuant to paragraph (a)(1)(v) of this section, shall conduct periodic reviews and analyses as provided in this paragraph, prepare records of reviews as provided in this paragraph, and retain one copy of these records at the system headquarters, and, as applicable, at each division headquarters. Each such review and record shall be completed within 30 days of the close of the period being reviewed. The record of each such review shall be retained (in hard copy or electronically, if pursuant to § 239.303) for a period of one year after the end of the calendar year to which the review relates, and be made available to representatives of FRA for inspection and copying during normal business hours. In particular, each designated officer's review and record shall include the following:

(1) 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 (a)(1) 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;

(2) Accident/incident data, the results of prior operational tests and inspections under this section, and other per-

inent 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 of the data for each division, if any, or the system, the designated officer(s) shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s); and

(3) Implementation of the program of operational tests and inspections under this section from a system perspective, to ensure that the program 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.

(f) *Annual summary of operational tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies shall prepare and retain at the system headquarters of the railroad and, as applicable, at each of its division headquarters, one copy of a 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 as applicable, that was conducted as required by paragraph (a) of this section. A record of each such summary shall be retained (in hard copy or electronically, if pursuant to § 239.303) for three calendar years after the end of the calendar year to which the record relates and shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

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### § 239.303 Electronic recordkeeping.

Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met: