

## § 239.1

### APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 49 U.S.C. 20133; 28 U.S.C. 2461 note; and 49 CFR 1.49(c), (g), (m).

SOURCE: 63 FR 24676, May 4, 1998, unless otherwise noted.

### Subpart A—General

#### § 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the provisions of its plan. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

#### § 239.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

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service in a metropolitan or suburban area (as described by 49 U.S.C. 20102(1)), including public authorities operating passenger train service; and

(3) Passenger or freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does *not* apply to:

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

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

#### § 239.5 Preemptive effect.

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

#### § 239.7 Definitions.

As used in this part—

*Adjacent rail modes of transportation* means other railroads, trolleys, light rail, heavy transit, and other vehicles operating on rails or electromagnetic guideways which are expressly identified in a railroad's emergency preparedness plan.

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

*Control center* means a central location on a railroad with responsibility for directing the safe movement of trains.

*Crewmember* means a person, other than a passenger, who is assigned to perform either:

(1) On-board functions connected with the movement of the train (i.e., an employee of a railroad, or of a contractor to a railroad, who is assigned

to perform service subject to the Federal hours of service laws during a tour of duty) or

(2) On-board functions in a sleeping car or coach assigned to intercity service, other than food, beverage, or security service.

*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.

*Emergency or emergency situation* means an unexpected event related to the operation of passenger train service involving a significant threat to the safety or health of one or more persons requiring immediate action, including:

- (1) A derailment;
- (2) A fatality at a grade crossing;
- (3) A passenger or employee fatality, or a serious illness or injury to one or more passengers or crewmembers requiring admission to a hospital;
- (4) An evacuation of a passenger train; and
- (5) A security situation (e.g., a bomb threat).

*Emergency preparedness plan* means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

*Emergency responder* means a member of a police or fire department, or other organization involved with public safety charged with providing or coordinating emergency services, who responds to a passenger train emergency.

*Emergency window* means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

*FRA* means the Federal Railroad Administration.

*Joint operations* means rail operations conducted by more than one railroad on the same track, except as necessary for the purpose of interchange, regardless of whether such operations are the result of:

- (1) Contractual arrangements between the railroads;
- (2) Order of a governmental agency or a court of law; or
- (3) Any other legally binding directive.

*Passenger train service* means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service or commuter or other short-haul passenger service in a metropolitan or suburban area.

*Person* includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Private car* means a rail passenger car used to transport non-revenue passengers on an occasional contractual basis, and includes business or office cars and circus trains.

*Qualified* means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function involving emergency preparedness.

*Railroad* means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including—

(i) Commuter or other short-haul rail passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979, and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads, but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation and

(2) A person that provides railroad transportation, whether directly or by

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contracting out operation of the railroad to another person.

*Railroad officer* means any supervisory employee of a railroad.

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

### § 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor to a railroad, performs any function required by this part, that person (whether or not a railroad) shall perform that function in accordance with this part.

### § 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 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 \$22,000 per violation may 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)). Appendix A contains a schedule of civil penalty amounts used in connection with this part.

### § 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

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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 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) *Notifications by control center.* The control center 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