

**§ 216.27**

for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at this conference and a hearing is desired, the petitioner must submit a written request for a hearing within fifteen (15) days after the conference. The hearing will commence within fourteen (14) calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C.

(c) Unless stayed or modified by the Administrator, the requirements of each Emergency order issued under this subpart shall remain in effect and be observed pending decision on a petition for review.

**§ 216.27 Reservation of authority and discretion.**

The FRA may issue Emergency orders concerning track without regard to the procedures prescribed in this subpart whenever the Administrator determines that immediate action is required to assure the public safety.

**PART 217—RAILROAD OPERATING RULES**

**Subpart A—General**

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APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 39 FR 41176, Nov. 25, 1974, unless otherwise noted.

**49 CFR Ch. II (10–1–06 Edition)**

**Subpart A—General**

**§ 217.1 Purpose.**

Through the requirements of this part, the Federal Railroad Administration learns the condition of operating rules and practices with respect to trains and other rolling equipment in the railroad industry, and each railroad is required to instruct its employees in operating practices.

**§ 217.3 Application.**

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate trains or other rolling equipment on standard gage track which is part of the general railroad system of transportation.

(b) This part does not apply to—

(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—

*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.

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

[59 FR 43070, Aug. 22, 1994]

**§ 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 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 \$550 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 \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

[53 FR 28599, July 28, 1988, as amended at 53 FR 52927, Dec. 29, 1988; 63 FR 11620, Mar. 10, 1998; 69 FR 30593, May 28, 2004]

**§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 in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the tests are conducted.

(b) *Written program of operational tests and inspections.* On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this part applies shall retain one copy of its current program for periodic performance of the operational tests and inspections 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 of the railroad and at the division headquarters for each division where the tests are conducted, for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. The program shall—

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(1) Provide for operational testing and inspection under the various operating conditions on the railroad;

(2) Describe each type of operational test and inspection adopted, including the means and procedures used to carry it out;

(3) State the purpose of each type of operational test and inspection;

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

(5) Begin within 30 days after November 21, 1994, or the date of commencing operations, whichever is later; and

(6) Include a schedule for making the program fully operative within 210 days after it begins.

(c) *Records of individual tests and inspections.* Each railroad to which this part applies shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(d) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total manhours, shall retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous year's activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (b) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representa-

tives of the Federal Railroad Administration for inspection and copying during normal business hours.

(e) *Electronic recordkeeping.* Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in paragraphs (b) through (d) of this section, provided that all of the following conditions are met:

(1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access;

(2) The railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

[39 FR 41176, Nov. 25, 1974, as amended at 59 FR 43070, Aug. 22, 1994]

### §217.11 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.

(a) To ensure that each railroad employee whose activities are governed by the railroad's operating rules understands those rules, each railroad to which this part applies shall periodically instruct each such employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the employee is instructed.

(b) On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to

which this part applies shall retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and one copy of each subsequent amendment to that program. The system headquarters of the railroad shall retain one copy of all these records; the division headquarters for each division where the employees are instructed shall retain one copy of all portions of these records that the division applies and enforces. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. This program shall—

- (1) Describe the means and procedures used for instruction of the various classes of affected employees;
- (2) State the frequency of instruction and the basis for determining that frequency;
- (3) Include a schedule for completing the initial instruction of employees who are already employed when the program begins;
- (4) Begin within 30 days after November 21, 1994, or the date of commencing operations, whichever is later; and

(5) Provide for initial instruction of each employee hired after the program begins.

(c) Each railroad to which this part applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules provided that the requirements stated in §217.9(e)(1) through (5) of this part are satisfied.

[39 FR 41176, Nov. 25, 1974, as amended at 59 FR 43071, Aug. 22, 1994]

**§ 217.13 Information collection.**

(a) The information collection requirements in this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511, and have been assigned OMB control number 2130-0035.

(b) The information collection requirements are found in the following sections:

- (1) Section 217.7.
- (2) Section 217.9.
- (3) Section 217.11.

[50 FR 7919, Feb. 27, 1985. Redesignated and amended at 59 FR 43071, Aug. 22, 1994]

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>

Section	Violation	Willful violation
217.7 Operating rules:		
(a) .....	\$2,500	\$5,000
(b) .....	\$2,000	\$5,000
(c) .....	\$2,500	\$5,000
217.9 Operational tests and inspections:		
(a) Program .....	\$5,000	\$7,500
(b) Record of program .....	2,500	\$5,000
(c) Record of tests and inspections .....	\$5,000	\$7,500
(d) Annual summary .....	\$5,000	\$7,500
217.11 Program of instruction on operating rules:		
(a) .....	\$5,000	\$7,500
(b) .....	\$2,500	\$5,000

<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 \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[59 FR 43071, Aug. 22, 1994, as amended at 63 FR 11620, Mar. 10, 1998; 69 FR 30593, May 28, 2004]

**PART 218—RAILROAD OPERATING PRACTICES**

**Subpart A—General**

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