

amendment, any person may comment on the program or amendment.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590.

(3) The commenter shall certify that a copy of the comment was served on the railroad.

(c) *Approval.* (1) Within 60 days of receipt of each initial inspection, testing, and maintenance program, FRA will conduct a formal review of the program. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the inspection, testing, and maintenance program is approved and, if not approved, the specific points in which the program is deficient. If a program is not approved by FRA, the railroad shall amend its program to correct all deficiencies and resubmit its program with the required revisions not later than 45 days prior to commencing passenger operations.

(2) FRA will review each proposed amendment to the program within 45 days of receipt. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the proposed amendment has been approved by FRA and, if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) Following initial approval of a program or amendment, FRA may reopen consideration of the program or amendment for cause stated.

[64 FR 25660, May 12, 1999, as amended at 74 FR 25174, May 27, 2009]

## Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

### § 238.601 Scope.

This subpart contains specific safety planning requirements for the operation of Tier II passenger equipment, procurement of Tier II passenger equipment, and the introduction or major upgrade of new technology in existing Tier II passenger equipment that affects a safety system on such equipment.

### § 238.603 Safety planning requirements.

(a) Prior to commencing revenue service operation of Tier II passenger equipment, each railroad shall prepare and execute a written plan for the safe operation of such equipment. The plan may be combined with any other plan required under this part. The plan shall be updated at least every 365 days. At a minimum, the plan shall describe the approaches and processes to:

(1) Identify all requirements necessary for the safe operation of the equipment in its operating environment;

(2) Identify all known or potential hazards to the safe operation of the equipment;

(3) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using a formal safety methodology such as MIL-STD-882; and

(4) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(b) For the procurement of Tier II passenger equipment, and for each major upgrade or introduction of new technology in existing Tier II passenger equipment that affects a safety system on such equipment, each railroad shall prepare and execute a written safety plan. The plan may be combined with any other plan required under this part. The plan shall describe the approaches and processes to:

(1) Identify all safety requirements governing the design of the passenger equipment and its supporting systems;

(2) Evaluate the total system, including hardware, software, testing, and support activities, to identify known or

potential safety hazards over the life cycle of the equipment;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using a formal safety methodology such as MIL-STD-882;

(5) Monitor the progress in resolving safety issues, reducing hazards, and meeting safety requirements;

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met; and

(7) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(c) Each railroad shall maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall maintain sufficient documentation to track how safety issues are raised and resolved.

(d) Each railroad shall make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan.

[64 25660, May 12, 1999, as amended at 67 FR 19994, Apr. 23, 2002]

#### APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

Section	Violation	Willful violation
<b>SUBPART A—GENERAL</b>		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test .....	5,000	7,500
(c) Improper movement of en route defect .....	2,500	5,000
(2), (3) Insufficient tag or record .....	1,000	2,000
(4) Failure to determine percent operative brake .....	2,500	5,000
(d) Failure to follow operating restrictions .....	5,000	7,500
(e) Failure to follow restrictions for inoperative front or rear unit .....	2,500	5,000
238.17 Movement of other than power brake defects: <sup>1</sup>		
(c)(4), (5) Insufficient tag or record .....	1,000	2,000
(d) Failure to inspect or improper use of roller bearings .....	2,500	5,000
(e) Improper movement of defective safety appliances .....	(1)	
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system .....	7,500	11,000
(b) Failure to retain records .....	2,000	4,000
(c) Failure to make records available .....	1,000	2,000
(d) Failure to list power brake repair points .....	2,000	4,000
<b>SUBPART B—SAFETY PLANNING AND GENERAL REQUIREMENTS</b>		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials .....	5,000	7,500
(b) Improper certification .....	1,000	2,000
(c) Failure to consider fire safety on new equipment .....	5,000	7,500
(d) Failure to perform fire safety analysis .....	5,000	7,500
(e) Failure to develop, adopt or comply with procedures .....	5,000	7,500
238.105 Train electronic hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety .....	7,500	11,000
(d) Failure to include required design features .....	5,000	7,500
(e) Failure to comply with hardware and software safety program .....	5,000	7,500
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan .....	7,500	11,000
(b)(1)–(5) Failure of plan to address specific item .....	3,000	6,000
(d) Failure to conduct annual review .....	5,000	7,500
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program .....	7,500	11,000
(b)(1)–(4) Failure of plan to address specific item .....	3,000	6,000
(b)(5)–(12) Failure to comply with specific required provision of the program .....	5,000	7,500
(b)(13) Failure to maintain adequate records .....	2,500	5,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment .....	7,500	11,000
(b)(1) Failure to develop plan .....	7,500	11,000
(b)(2) Failure to submit plan to FRA .....	5,000	7,500
(b)(3) Failure to comply with plan .....	5,000	7,500
(b)(4) Failure to document results of testing .....	5,000	7,500