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specified elements of the recognized program to its operations in the United States. Once granted, program recognition remains valid so long as the program retains these elements and the foreign railroad complies with the program requirements.

[69 FR 19286, Apr. 12, 2004, as amended at 74 FR 25172, 25173, May 27, 2009]

### §219.5 Definitions.

As used in this part—

*Accident or incident reportable under part 225* does not include a case that is classified as “covered data” under §225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee’s injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication).

*Class I, Class II, and Class III* have the meaning assigned by regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1).

*Controlled substance* has the meaning assigned by 21 U.S.C. 802, and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301–1316).

*Covered employee* means a person who has been assigned to perform service in the United States subject to the hours of service laws (49 U.S.C. ch. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service. (An employee is not “covered” within the

meaning of this part exclusively by reason of being an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term “covered employee” includes a person applying to perform covered service in the United States.

*Covered service* means service in the United States that is subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

*Co-worker* means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent, or officer.

*Cross-border operation* means a rail operation that crosses into the United States from Canada or Mexico.

*Domestic railroad* means a railroad that is incorporated in the United States.

*DOT Agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol or controlled substance testing (14 CFR parts 61, 63, 65, 121 and 135; 49 CFR parts 199, 219, 382 and 655) in accordance with part 40 of this title.

*Drug* means any substance (other than alcohol) that has known mind- or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

*Foreign railroad* means a railroad that is incorporated outside the United States.

*FRA* means the Federal Railroad Administration, United States Department of Transportation.

*FRA representative* means the Associate Administrator for Safety of FRA, the Associate Administrator’s delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel of FRA, or the Chief Counsel’s delegate.

*General railroad system of transportation* means the general railroad system of transportation in the United States.

*Hazardous material* means a commodity designated as a hazardous material by part 172 of this title.

*Impact accident* means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold (see §225.19(e) of this chapter)) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

- (1) An accident in which the derailment of equipment causes an impact with other rail equipment;
- (2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and
- (3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

*Independent* with respect to a medical facility, means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself, remove the facility from this definition.

*Medical facility* means a hospital, clinic, physician's office, or laboratory where toxicological specimens can be collected according to recognized professional standards.

*Medical practitioner* means a physician or dentist licensed or otherwise authorized to practice by the state.

*NTSB* means the National Transportation Safety Board.

*Passenger train* means a train transporting persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

*Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this part.

*Possess* means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

*Railroad* means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, and any person providing such transportation, including—

- (1) Commuter or other short-haul railroad 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
- (2) 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.

*Railroad property damage or damage to railroad property* refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property must be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See §225.21 of this chapter.) However, replacement of passenger equipment is calculated based on the cost of acquiring a new unit for comparable service.

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*Reportable injury* means an injury reportable under part 225 of this chapter except for an injury that is classified as "covered data" under §225.5 of this chapter (i.e., employee injury/illness cases reportable exclusively because a

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physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness; work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication.

*Reporting threshold* means the amount specified in §225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter.

*State* means a State of the United States of America or the District of Columbia.

*Supervisory employee* means an officer, special agent, or other employee of the railroad who is not a co-worker and who is responsible for supervising or monitoring the conduct or performance of one or more employees.

*Train*, except as context requires, means a locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

*Train accident* means a passenger, freight, or work train accident described in §225.19(c) of this chapter (a "rail equipment accident" involving damage in excess of the current reporting threshold), including an accident involving a switching movement.

*Train incident* means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

*United States* means all of the States.

*Violation rate for random alcohol testing* means the number of 0.04 and above

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random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

[66 FR 41973, Aug. 9, 2001, as amended at 68 FR 10135, Mar. 3, 2003; 68 FR 75463, Dec. 31, 2003; 69 FR 19287, Apr. 12, 2004]

### §219.7 Waivers.

(a) A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter. A petition for waiver of the part 40 prohibition against stand down of an employee before the Medical Review Officer has completed the verification must also comply with §40.21 of this title.

(c) If the FRA Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

(d) *Special dispensation for employees performing train or dispatching service on existing cross-border operations.* If a foreign railroad requests a waiver not later than August 10, 2004, for an existing cross-border operation, subparts E, F, and G of this part shall not apply to train or dispatching service on that operation in the United States performed by an employee of a foreign railroad whose primary reporting point is outside the United States, until the railroad's waiver request is acted upon by FRA.

(e) *Waiver requests for employees performing train or dispatching service on new or expanded cross-border operations.* A foreign railroad seeking a waiver from subparts E, F, and G of this part for its employees performing train or dispatching service on a new cross-border operation that proceeds more than 10 route miles into the United States, or a formerly excepted cross-border operation that expands beyond the 10 mile limited haul exception in paragraph (d) of this section, must file a petition not later than 90 days before