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(or otherwise engage in joint operations in the United States with another railroad) except as necessary for purposes of interchange.

(3) Subpart I of this part does not apply to a railroad that has fewer than 400,000 total employee hours, including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States. For purposes of this paragraph, the term ''employees of the railroad'' includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

(c) *Exceptions available to foreign railroads only*. (1) Subparts E, F and G of this part do not apply to train or dispatching service in the United States performed by an employee of a foreign railroad whose primary reporting point is outside the United States, on that portion of a rail line in the United States extending up to10 route miles from the point that the line crosses into the United States from Canada or Mexico.

(2) Unless otherwise provided by paragraph (b) of this section, subparts A, B, C, D, H, I, and J of this part apply to signal service in the United States of a foreign railroad performed by an employee of the foreign railroad if the employee's primary place of reporting is located outside the United States. Subparts E, F, and G of this part do not apply to signal service in the United States of a foreign railroad performed by an employee of the foreign railroad if the employee's primary place of reporting is located outside the United States.

(3) Unless otherwise excepted under paragraph (c)(1) of this section, on and after June 11, 2004, a foreign railroad shall conduct a pre-employment drug test on each of its final applicants for, and each of its employees seeking to transfer for the first time to, duties involving train or dispatching service in the United States while having his or her primary reporting point outside of the United States. The test shall be conducted in accordance with this part prior to the applicant or employee's performance of train or dispatching service in the United States.

[69 FR 19286, Apr. 12, 2004]

§219.4 Recognition of a foreign railroad's workplace testing program.

(a) *General*. A foreign railroad may petition the FRA Associate Administrator for Safety for recognition of a workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in subpart B of this part and the requirements of subparts E, F, and G of this part with respect to its employees whose primary reporting point is outside the United States but who enter the United States to perform train or dispatching service and with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such service.

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to subparts B, E, F, and G of this part:

(i) Pre-employment drug testing;

(ii) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(iii) Random drug and alcohol testing;

(iv) Return-to-duty testing; and

(v) Testing procedures and safeguards reasonably comparable in effectiveness to all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(2) In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary.

(b) *Alternative programs*. (1) Upon FRA's recognition of a foreign railroad's workplace testing program as compatible with the return-to-service requirements in subpart B and the requirements of subparts E, F, and G of this part, the foreign railroad must comply with either the enumerated provisions of part 219 or with the standards of the recognized program, and any imposed conditions, with respect

to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart E of this part or the standards of the recognized program.

(2) The foreign railroad must comply with subparts A, B (other than the return-to-service provisions in § 219.104(d)), C, reasonable suspicion testing in subpart D, and subparts I and J. Drug or alcohol testing required by these subparts must be conducted in compliance with all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(c) *Petitions for recognition of a foreign railroad's workplace testing programs.* Each petition for recognition of a foreign workplace testing program shall contain:

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;

(2) The requirements of the foreign railroad workplace testing program to be considered for recognition;

(3) Appropriate data or records, or both, for FRA to consider in determining whether the foreign railroad workplace testing program is equivalent to the minimum standards contained in this part and provides at least an equivalent level of safety.

(d) FEDERAL REGISTER *notice.* FRA will publish a notice in the FEDERAL REGISTER concerning each petition under paragraph (c) of this section that it receives.

(e) *Comment.* Not later than 30 days from the date of publication of the notice in the FEDERAL REGISTER concerning a petition under paragraph (c) of this section, any person may comment on the petition.

(1) A 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) Any comment on a petition should reference the FRA docket and notice numbers. A commenter may submit a comment and related material by only one of the following methods:

(i) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal Docket Management System electronic docket site.

(ii) *Fax.* 1–202–493–2251.

(iii) *Mail.* U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(iv) *Hand delivery.* Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

(3) The commenter shall certify that a copy of the comment was served on the petitioner. Note that all petitions received will be posted without change to *http://www.regulations.gov* including any personal information provided.

(f) *Disposition of petitions.* (1) If FRA finds that the petition complies with the requirements of this section and that the foreign railroad's workplace testing program is compatible with the minimum standards of this part, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of any petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause.

(2) If FRA finds that the petition does not comply with the requirements of this section or that the foreign railroad's workplace testing program is not compatible with the minimum standards of this part, the petition will be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

(g) *Program recognition.* If its program has been recognized, the foreign railroad shall maintain a letter on file indicating that it has elected to extend

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.