

## § 219.1

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APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 219—DESIGNATION OF LABORATORY FOR POST-ACCIDENT TOXICOLOGICAL TESTING

APPENDIX C TO PART 219—POST-ACCIDENT TESTING SPECIMEN COLLECTION

AUTHORITY: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

SOURCE: 66 FR 41973, Aug. 9, 2001, unless otherwise noted.

## Subpart A—General

### § 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

### § 219.3 Application.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by 49 U.S.C. 20102) in the United States.

(b) *Exceptions available to both domestic and foreign railroads.* (1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D, E, F and G of this part do not apply to a railroad that—

(i) Has a total of 15 or fewer employees who are covered by the hours of service laws at 49 U.S.C. 21103, 21104, or 21105, or who would be subject to the hours of service laws at 49 U.S.C. 21103, 21104, or 21105 if their services were performed in the United States; and

(ii) Does not operate on the tracks in the United States of another railroad (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 to 10 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

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