

§ 238.19

49 CFR Ch. II (10–1–07 Edition)

for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

(6) After a qualified maintenance person or a qualified person verifies that the defective equipment is safe to remain in service as required in paragraphs (c)(1) and (c)(2) of this section, the defective equipment that develops a condition not in compliance with this part while en route may continue in passenger service not later than the next calendar day mechanical inspection, if the requirements of this paragraph are otherwise fully met.

(d) *Inspection of roller bearings on equipment involved in a derailment.* (1) A railroad shall not continue passenger equipment in service that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested in accordance with the railroad's procedures for handling defective equipment.

(2) The roller bearing shall be disassembled from the axle and inspected internally if:

- (i) It shows any external sign of damage;
- (ii) It makes any unusual noise when its wheel set is spun freely (an on-track rolling test is acceptable) or when the bearing is manually rotated;
- (iii) Its truck was involved in a derailment at a speed of more than 10 miles per hour; or
- (iv) Its truck was dragged on the ground for more than 100 feet.

(e) *Special requisites for movement of passenger equipment with safety appliance defects.* Consistent with 49 U.S.C. 20303, passenger equipment with a safety appliance not in compliance with this part or with part 231 of this chapter, if applicable, may be moved—

- (1) If necessary to effect repair of the safety appliance;
- (2) From the point where the safety appliance defect was first discovered by the railroad to the nearest available location on the railroad where the nec-

essary repairs required to bring the passenger equipment into compliance can be made or, at the option of the receiving railroad, the equipment may be received and hauled for repair to a point on the receiving railroad's line that is no farther than the point on the delivering railroad's line where the repair of the defect could have been made;

(3) If a tag placed on both sides of the passenger equipment or an automated tracking system contains the information required under paragraph (c)(4) of this section; and

(4) After notification of the crewmember in charge of the movement of the defective equipment, who in turn shall inform all other crewmembers of the presence of the defective condition(s).

(f) *Special Notice for Repair.* Nothing in this section authorizes the movement of equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

[64 FR 25660, May 12, 1999, as amended at 65 FR 41306, July 3, 2000; 71 FR 61857, Oct. 19, 2006]

§ 238.19 Reporting and tracking of repairs to defective passenger equipment.

(a) *General.* Beginning on January 1, 2002, each railroad shall have in place a reporting and tracking system for passenger equipment with a defect not in conformance with this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part. The reporting and tracking system shall record the following information:

- (1) The identification number of the defective equipment;
- (2) The date the defect was discovered;
- (3) The nature of the defect;
- (4) The determination made by a qualified person or qualified maintenance person on whether the equipment is safe to run;
- (5) The name of the qualified person or qualified maintenance person making such a determination;

(6) Any operating restrictions placed on the equipment; and

(7) Repairs made and the date that they were made.

(b) *Retention of records.* At a minimum, each railroad shall keep the records described in paragraph (a) of this section for one periodic maintenance interval for each specific type of equipment as described in the railroad's inspection, testing, and maintenance plan required by § 238.107. FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-based decisions concerning test and maintenance intervals that may be developed pursuant to § 238.307(b).

(c) *Availability of records.* Railroads shall make defect reporting and tracking records available to FRA upon request.

(d) *List of power brake repair points.* Railroads operating long-distance intercity and long-distance Tier II passenger equipment shall designate locations, in writing, where repairs to passenger equipment with a power brake defect will be made and shall provide the list to FRA's Associate Administrator for Safety and make it available to FRA for inspection and copying upon request. Railroads operating these trains shall designate a sufficient number of repair locations to ensure the safe and timely repair of passenger equipment. These designations shall not be changed without at least 30 days' advance written notice to FRA's Associate Administrator for Safety.

[64 FR 25660, May 12, 1999, as amended at 65 FR 41306, July 3, 2000]

§ 238.21 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §§ 238.103, 238.223, 238.229, 238.309, 238.311, 238.405, or 238.427; for approval of alternative compliance under §§ 238.201, 238.229, or 238.230; and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by § 238.505.)

(b) *Petitions for special approval of alternative standard.* Each petition for special approval of an alternative standard 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 alternative proposed, in detail, to be substituted for the particular requirements of this part;

(3) Appropriate data or analysis, or both, establishing that the alternative will provide at least an equivalent level of safety; and

(4) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(c) *Petitions for special approval of alternative compliance.* Each petition for special approval of alternative compliance shall contain—

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

(2) The elements prescribed in §§ 238.201(b), 238.229(j)(2), and 238.230(d); and

(3) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(d) *Petitions for special approval of pre-revenue service acceptance testing plan.*

(1) Each petition for special approval of a pre-revenue service acceptance testing plan shall contain—

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

(ii) The elements prescribed in § 238.111.

(2) Three copies of each petition for special approval of the pre-revenue service acceptance testing plan shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 25, Washington, D.C. 20590.