

§ 239.203

plan to correct all deficiencies identified by FRA (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the proposed plan was not conditionally approved.

(2) *Final review.* (i) Within 18 months of receipt of each proposed plan, and within 180 days of receipt of each proposed plan for passenger operations to be commenced after the initial deadline for plan submissions, FRA will conduct a comprehensive review of the conditionally approved plan to evaluate implementation of the elements included. This review will include ongoing dialogues with rail management and labor representatives, and field analysis and verification. FRA will then notify the primary contact person of each affected railroad in writing of the results of the review, whether the conditionally approved plan has been finally approved by FRA, and if not approved, the specific points in which the plan is deficient.

(ii) If an emergency preparedness plan of a railroad or railroads is not finally approved by FRA, the affected railroad or railroads shall amend the plan to correct all deficiencies (and provide FRA with a corrected copy) not later than 30 days following receipt of FRA's written notice that the plan was not finally approved.

(3) *Review of amendments.* (i) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient.

(ii) If the amendment is not approved, the railroad shall correct any deficiencies identified by FRA and file the corrected amendment prior to implementing the amendment.

(4) *Reopened review.* Following initial approval of a plan, or amendment, FRA may reopen consideration of the plan, or amendment, for cause stated.

§ 239.203 Retention of emergency preparedness plan.

Each passenger railroad to which this part applies, and all railroads hosting

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its passenger train service (if applicable), shall each retain one copy of the emergency preparedness plan required by § 239.201 and one copy of each subsequent amendment to that plan at the system and division headquarters of each, and shall make such records available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

§ 239.301 Operational (efficiency) tests.

(a) Each railroad to which this part applies shall periodically conduct operational (efficiency) tests of its on-board and control center employees to determine the extent of compliance with its emergency preparedness plan.

(b) Each railroad to which this part applies shall maintain a written record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) Each record required by paragraph (a) of this section shall be retained at the system headquarters of the railroad and at the division headquarters for the division where the test was conducted for one calendar year after the end of the calendar year to which the test relates. Each such record shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

Each railroad to which this part applies is authorized to retain by electronic recordkeeping the information prescribed in § 239.301, provided that all of the following conditions are met:

(a) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(b) The railroad has a terminal at the system headquarters and at each division headquarters;

(c) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representa-

tives of FRA and States participating under part 212 of this chapter;

(d) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(e) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

APPENDIX A TO PART 239—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
Subpart B—Specific Requirements:		
239.101(a) Failure of a railroad to adopt a written emergency preparedness plan	\$7,500	\$11,000
(a)(1) Failure of the plan to provide for:		
(i) Initial or on-board notifications by an on-board crewmember	2,500	5,000
(ii) Notification of outside emergency responders by control center	2,500	5,000
(a)(2) Failure of the plan to provide for:		
(i) Initial or periodic training of on-board personnel	2,500	5,000
(ii) Initial or periodic training of control center personnel	2,500	5,000
(iii) Completion of initial training of all on-board and control center personnel by the specified date	2,500	5,000
(iv) Completion of initial training of all newly hired on-board and control center personnel by the specified date	2,500	5,000
(v) Adequate procedures to evaluate and test on-board and control center personnel for qualification under the emergency preparedness plan	2,500	5,000
(vi) Adequate on-board staffing	2,500	5,000
(a)(3) Failure of a host railroad involved in joint operations to coordinate applicable portions of the emergency preparedness plan with the railroad or railroads providing or operating a passenger train service operation	3,000	6,000
(a)(4) Failure of the plan to address:		
(i) Readiness procedures for emergencies in tunnels	2,500	5,000
(ii) Readiness procedures for emergencies on an elevated structure or in electrified territory	2,500	5,000
(iii) Coordination efforts involving adjacent rail modes of transportation	2,500	5,000
(a)(5) Failure of the plan to address relationships with on-line emergency responders by providing for:		
(i) The development and availability of training programs	3,000	6,000
(ii) Invitations to emergency responders to participate in emergency simulations	3,000	6,000
(iii) Distribution of applicable portions of the current emergency preparedness plan	3,000	6,000
(a)(6) Failure of the plan to provide for, or the railroad to include on board each train and maintain and replace:		
(i) Emergency equipment	2,500	5,000
(ii) First-aid kits	2,500	5,000
(iii) Emergency lighting	2,500	5,000
(a)(7) Failure of the plan to provide for emergency instructions inside each passenger car or to include additional safety awareness information	3,500	7,000
239.103 Failure to conduct a required full-scale simulation in accordance with the frequency schedule	5,000	7,500
239.105 Debriefing and critique		
(a) Failure to conduct a debriefing and critique session after an emergency or full-scale simulation	4,000	7,500
(d)(1) Failure to maintain a record	2,500	5,000
(i) Failure to include date or location of the emergency or simulation	1,000	2,000
(ii) Failure to include date or location of the debriefing and critique session ..	1,000	2,000
(iii) Failure to include names of participants in the debriefing and critique session	1,000	2,000
(d)(2) Failure to make record available	1,000	2,000
239.107 Emergency exits		

Section	Violation	Willful violation
(a)(1), (a)(2):		
(i) Door not marked or instructions not posted	2,500	5,000
(ii) Door improperly marked or instructions 1,000-2,000-improperly posted ...	2,500	5,000
(b)(1) Failure to provide for scheduled inspection, maintenance, and repair of emergency windows and doors	5,000	7,500
(b)(2):		
(i) Failure to test a representative sample of emergency windows	3,000	6,000
(ii) Emergency windows tested too infrequently	1,500	3,000
(b)(3) Failure to repair an inoperative emergency window or door exit	3,500	7,000
(c):		
(i) Failure to maintain a record	2,500	5,000
(ii) Failure to make record available	1,000	2,000
(d)(1) Insufficient limits or controls on accessibility to records	2,500	5,000
(d)(2) Missing terminal	1,000	2,000
(d)(3) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d)(4) Failure by railroad to designate an authorized representative	1,000	2,000
(d)(5) Failure to make record available	1,000	2,000
Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans:		
239.201 Filing and approval		
(a):		
(i) Failure of a railroad to file a written emergency preparedness plan	5,000	7,500
(ii) Failure to designate a primary person to contact for plan review	1,000	2,000
(iii) Failure of a railroad to file an amendment to its plan	2,500	5,000
(b)(1), (b)(2):		
(i) Failure of a railroad to correct a plan deficiency	2,500	5,000
(ii) Failure to provide FRA with a corrected copy of the plan	1,000	2,000
(b)(3):		
(i) Failure of a railroad to correct an amendment deficiency	2,500	5,000
(ii) Failure to file a corrected plan amendment with FRA	1,000	1,000
239.203 Retention of emergency preparedness plan		
(1) Failure to retain a copy of the plan or an amendment to the plan	2,500	5,000
(2) Failure to make record available	1,000	2,000
Subpart D—Operational (efficiency) tests; Inspection of Records and Recordkeeping:		
239.301 Operational (efficiency) tests		
(a) Testing Program	5,000	7,500
(b)(1) Failure to maintain a record	2,500	5,000
(b)(2) Record improperly completed	1,000	1,000
(c)(1) Failure to retain a copy of the record	2,500	5,000
(c)(2) Failure to make record available	1,000	2,000
239.303 Electronic recordkeeping		
(a) Insufficient limits or controls on accessibility to records	2,500	5,000
(b) Missing terminal	1,000	2,000
(c) Inability of railroad to produce information in a usable format for immediate review	1,000	2,000
(d) Failure by railroad to designate an authorized representative	1,000	2,000
(e) Failure to make record available	1,000	2,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304, and 49 CFR part 209, appendix A. Further designations, not found in the CFR citation for certain provisions, are FRA Office of Chief Counsel computer codes added as a suffix to the CFR citation and used to expedite imposition of civil penalties for violations. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined designation cited in the penalty demand letter.

[63 FR 24676, May 4, 1998, as amended at 69 FR 30595, May 28, 2004]

240.11 Penalties and consequences for non-compliance.
240.13 Information collection requirements.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

Subpart B—Component Elements of the Certification Process

Subpart A—General

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240.1 Purpose and scope.
240.3 Application and responsibility for compliance.
240.5 Preemptive effect and construction.
240.7 Definitions.
240.9 Waivers.

240.101 Certification program required.
240.103 Approval of design of individual railroad programs by FRA.
240.104 Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer.
240.105 Criteria for selection of designated supervisors of locomotive engineers.