DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 223 and 239

[FRA Docket No. PTEP–1, Notice No. 1]

RIN 2130–AA96

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Railroad Safety Authorization Act of 1994, FRA proposes a rule to require minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. The proposed rule also requires each affected railroad to instruct its employees on the plan's provisions. Elements of this emergency preparedness plan would include communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad would be subject to formal review and approval by FRA.

This proposal for emergency preparedness regulations, which formalizes a planning requirement and identifies certain mandatory elements, is the second phase in a four-phase process that began in 1994. In the first phase, FRA encouraged railroads to examine their programs to determine what improvements could be made, while in the third phase, FRA will review the railroad plans to determine if all emergency preparedness issues have been adequately addressed within the varying contexts of railroad operations. In the fourth phase, FRA will review the implementation and effectiveness of the proposed standards and related voluntary developments, and will address the need for further rulemaking activity.

The proposed rule does not apply to tourist and historic railroad operators. However, after appropriate consultation with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger operations.

DATES: (1) *Written comments:* Written comments must be received on or before April 25, 1997. Comments received after that date will be considered by FRA and the Passenger Train Emergency Preparedness Working Group in preparing the final rule to the extent possible without incurring additional expense or delay. The docket will remain open until the Working Group proceedings are concluded. Requests for formal extension of the comment period must be made by April 10, 1997.

(2) *Public hearings:* FRA intends to hold two public hearings, and the dates of these hearings will be published in a forthcoming notice in the Federal Register. Anyone who desires to make an oral statement at either of the hearings must notify the Docket Clerk by telephone (202–632–3198) or mail, and must submit three copies of the oral statement that he or she intends to make at the hearing. The dates by which the Docket Clerk must be notified about the oral statement and receive the three copies of this statement will be set forth in the notice announcing the public hearings.

ADDRESSES: *Written Comments:* Written comments should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours on the Seventh floor of 1120 Vermont Avenue, N.W. in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3191).

SUPPLEMENTARY INFORMATION:

Request for Comments

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60-day comment period is necessary for parties with interests that were not represented by the working group on passenger train emergency preparedness that has been established by the agency under 49 U.S.C. 20133.

Background

The overall safety record of conventional intercity and commuter passenger train operations in the United States has been exemplary. However, accidents continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger operating environment in the United States is rapidly changing—technology is advancing, equipment is being designed for ever-higher speeds, and many potential new operators of passenger equipment are appearing. With this more complex operating environment, FRA must become more proactive to ensure that operators of passenger train service, as well as freight railroads hosting passenger operations, engage in careful, advance planning to minimize the consequences of emergencies that could occur. Even minor incidents could easily develop into life-threatening events if they are not addressed in a timely and effective manner.

In recent years, passenger train accidents, such as the tragic ''Sunset Limited'' passenger train derailment near Mobile, Alabama in September 1993, have demonstrated the need to improve the way railroads respond in emergency situations. On September 22, 1993, at about 2:45 a.m., barges that were being pushed by the towboat Mauvilla in dense fog struck and displaced the Big Bayou Canot railroad bridge near Mobile, Alabama. At about 2:53 a.m., National Railroad Passenger Corporation (Amtrak) train no. 2, the Sunset Limited, en route from Los Angeles, California to Miami, Florida with 220 persons on board, struck the displaced bridge and derailed. The three locomotive units, the baggage and dormitory cars, and two of the six passenger cars fell into the water. The fuel tanks on the locomotive units ruptured, and the locomotive units and the baggage and dormitory cars caught fire. Forty-two passengers and five crewmembers were killed, and 103 passengers were injured. The towboat's four crewmembers were not injured.

In a report on the accident released on September 19, 1994, the National Transportation Safety Board (NTSB) determined that several circumstances hampered emergency response efforts. NTSB Railroad-Marine Accident Report 94/01. In its assessment of emergency

response at the accident site, the NTSB noted that the location of the accident was remote (accessible only by rail, water, or air), fog in the area was dense (requiring the use of radar to navigate boats), limited modes of transportation were available for bringing in personnel and equipment, and the magnitude of the accident was great. Nevertheless, the NTSB concluded that, following the delay while emergency responders identified the location of the accident, emergency response activities were efficient and effective. The report did find, however, that Amtrak did not have an effective system in place to apprise passengers of train safety features, passengers were at a disadvantage during evacuation due to the absence of portable lighting on the passenger cars, and emergency responders were at a disadvantage because they were unable to obtain an adequate passenger and crew list from Amtrak until the next day. The NTSB also noted that had the Mobile County Emergency Management Agency held drills to simulate a train accident, the incident commander may have known about Amtrak's procedure for accounting for passengers, and CSX Transportation, Inc., the owner of the bridge, may have had the correct telephone number to contact the U.S. Coast Guard.

Considerable effort has focused on how to mitigate casualties after a train accident occurs. In this regard, even before the occurrence of the tragic accident near Mobile, FRA had tasked DOT's Volpe National Transportation Systems Center (TSC), in Cambridge, Massachusetts, to perform research and to recommend emergency preparedness guidelines for passenger train operators. The results were published at the end of 1993 as a publication entitled ''RECOMMENDED EMERGENCY PREPAREDNESS GUIDELINES FOR PASSENGER TRAINS'' (Volpe Report), which is available to the public through the National Technical Information Service, Springfield, VA 22161 (DOT/FRA/ORD–93–24—DOT–VNTSC–FRA–93–23). The publication references safety recommendations of the NTSB, as well as many other publications on the subject of emergency preparedness, and contains recommended guidelines designed to assist passenger train operating systems and emergency response organization management in evaluating and modifying or supplementing their emergency response plans. A copy of the Volpe Report has been placed in the public docket for this rulemaking.

The Volpe Report recommendations address guidelines relating to emergency plans, procedures, and training. In addition, guidelines for passenger train and facility features intended to shorten emergency response time, improve the effectiveness of evacuating passengers, and minimize the effects of an emergency are presented. The publication also lists inter-organizational emergency protocols, which include those of fire departments, emergency medical services (EMS), police departments, public utilities, hospitals, and local, State, regional, and Federal governments.

In an effort to be proactive after the accident near Mobile, FRA mailed the Volpe Report to all intercity passenger and commuter railroads, freight railroads, the United Transportation Union, and the Brotherhood of Locomotive Engineers in March 1994 for their information and guidance. Concurrent with this mailing, FRA invited the railroads to attend a roundtable meeting in Washington, D.C., on June 9, 1994, to discuss the emergency preparedness issues addressed in the publication. The 23-member roundtable discussion was comprised of representatives from the following organizations:

Amtrak,
FRA,
Long Island Rail Road (LIRR),
MTA Metro-North Railroad (METRO-NORTH),
Northeast Illinois Regional Commuter Railroad Corporation (METRA),
Peninsula Corridor Joint Powers Board (CALTRAIN),
Port Authority Trans-Hudson Corporation (PATH),
Southern California Regional Rail Authority (METROLINK),
Southeastern Pennsylvania Transportation Authority (SEPTA),
Tri-County Commuter Rail Authority (TRI-RAIL),
TSC, and
Virginia Railway Express (VRE).

During the meeting, FRA agreed to assist the passenger railroads in establishing improved working relationships with their host freight railroads. FRA also promised to help the passenger railroads in their emergency response efforts in larger metropolitan areas by contacting emergency response agencies and eliciting more cooperation between them. In addition, FRA stated that it would conduct field visits to several passenger railroads to study their equipment and their emergency response and training programs.

At that same meeting, the passenger railroads agreed to provide stronger supervisory oversight of their emergency response and training programs, and stated that they would offer additional, structured ''hands-on'' training to their train crews concerning the removal of emergency windows and passenger evacuation. They also agreed to develop programs for recurring passenger car inspections, emphasizing checking of emergency equipment such as windows, tools, and fire extinguishers. Further, they agreed to improve their methods of apprising passengers of emergency information, to include seat drops, placards inside each car, and messages in on-board magazines. While FRA is encouraged that passenger railroads have already begun to incorporate the recommendations of the Volpe Report into their own emergency preparedness plans, more progress by the entire industry is needed.

As a result of concerns raised about the safety of the operation of rail passenger service, Congress enacted section 215 of the Federal Railroad Safety Authorization Act of 1994, Public Law No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994), entitled ''Passenger Car Safety Standards.'' Section 215, as now codified at 49 U.S.C. 20133, reads as follows:

§ 20133. Passenger cars.

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—

(1) the crashworthiness of the cars;

(2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;

(3) maintenance and inspection of the cars;

(4) emergency response procedures and equipment; and

(5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after such date of enactment.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number

permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

FRA is committed to the maximum feasible use of collaborative processes in the development of safety regulations. Consistent with the intent of Congress that FRA consult with the railroad industry, FRA invited various organizations to participate in a working group (Working Group) to focus on the issues related to passenger train emergency preparedness and build the framework for the development of a Notice of Proposed Rulemaking (NPRM) and, ultimately, a final rule. FRA held its first Working Group meeting on August 8, 1995. The 33-member Working Group was comprised of representatives from the following organizations:

American Public Transit Association (APTA),
Amtrak,
Association of American Railroads (AAR),
Brotherhood of Locomotive Engineers (BLE),
CALTRAIN,
FRA,
LIRR,
Maryland Mass Transit Administration (MARC),
Massachusetts Bay Transportation Authority (MBTA),
METRA,
METRO-NORTH,
METROLINK,
National Association of Railroad Passengers (NARP),
NTSB,
New Jersey Transit Rail Operations, Inc. (NJTR),
Northern Indiana Commuter Transportation District (NICTD),
PATH,
Safe Travel America (STA),
SEPTA,
TRI-RAIL,
TSC,
United Transportation Union (UTU), and
VRE.

Regulations covering rail passenger equipment safety standards—inspection, testing, and maintenance of passenger equipment; equipment design and performance criteria related to passenger and crew survivability in the event of a train accident; and the safe operation of passenger train service—supplementing existing railroad safety standards, will be covered by a separate rulemaking and are being addressed by a separate working group. Persons wishing to receive more information regarding this other rulemaking should refer to FRA Docket No. PCSS–1 and contact either Mr. Thomas Peacock, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, RRS–14, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3338), or Daniel L. Alpert, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3186).

The proposed rule was developed by FRA in consultation with the Working Group. The proposal incorporates comments submitted by the Working Group in response to a preliminary draft of the proposed rule text. FRA expects that the Working Group will help FRA develop the final rule based on a consensus process, with facts and analysis flowing from both the Working Group's deliberations and information submitted by commenters on this NPRM. In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group meetings and associated documentation, together with data provided by the membership during their deliberations—will be placed in the public docket of this rulemaking. All comments submitted in response to this NPRM will be provided to the Working Group for their consideration in preparation of the final rule.

FRA convened the first meeting of the Working Group on August 8, 1995, by announcing that the purpose of the meeting was to provide an opportunity to collectively focus on evaluating issues related to passenger train emergency preparedness, as well as to develop and formulate plans and programs that would culminate in a final rule. The discussion focused on the key issues of emergency notification, training of railroad employees and emergency responders, suitability of on-board emergency equipment, and the Volpe Report. While FRA did not limit the Working Group's discussions, the agency requested that, at a minimum, the following topics and issues should be considered and addressed during the consultation process for possible inclusion in the rule:

- Types of safety equipment that should be required in each passenger car (*e.g.*, fire extinguishers, saws, hammers, and flashlights) including where the equipment should be located, who should have access to it, and how to avoid pilferage;
- Training for railroad employees on the use of on-board emergency equipment;
- Frequency of inspection of on-board emergency equipment;
- Effective marking of emergency windows on each passenger car;
- Informing passengers about safety procedures and emergency equipment, including locations of exit doors and windows;
- Demonstrations by on-board crewmembers of emergency procedures and exits after major station stops;
- Communication capabilities of on-board crewmembers;
- Requiring on-board crewmembers to be trained to provide cardio-pulmonary resuscitation (CPR) and/or first aid treatment;
- Ensuring that on-board crewmembers have contact telephone numbers for control centers and local authorities;
- Requiring preparation of an emergency preparedness plan, including periodic exercises to test employee knowledge of proper procedures involving passenger illness or injury, stalled trains, evacuation procedures, derailments, collisions, severe weather, and security threats;
- Coordinating applicable portions of emergency preparedness plans between passenger railroads and freight railroads that host these passenger operations;
- Extent to which safety action plans should be regulated in terms of content or format, and whether such plans should be subject to FRA review and approval;
- Training for auxiliary individuals participating in passenger emergencies (*e.g.*, control center employees, on-board service staff, and appropriate supervisory and maintenance personnel);
- Training for emergency responders along passenger corridor routes;
- Accounting for the unique emergency preparedness concerns raised by passenger operations through tunnels, on elevated structures, and in electrified territory;
- Level of training specificity required for each category of employee;
- Requiring passenger railroads to develop and update inter-organizational emergency protocols with local communities, in order to augment safety action plans;

• Providing emergency responders with accurate passenger counts; and

• Emergency lighting in passenger cars (*e.g.,* floor strip lighting, flood lighting, and emergency exit lighting), including standards for testing and reliability.

FRA deliberated at length with members of the Working Group about what the proposed rule would demand of affected railroads, in order to achieve the goal of optimizing their level of preparedness when faced with passenger train emergencies. The consensus was that the final rule needed to be flexible in its requirements to allow each railroad to address the unique characteristics of its individual operation. The Working Group recommended that FRA require each affected railroad to prepare a formal emergency preparedness plan covering broad elements, such as: employee and emergency responder training; on-board crewmember responsibilities; communication between the train crew and the control center, and between the control center and the emergency responders; delineation of passenger railroad and freight railroad responsibilities in cases of joint operations; and operations in tunnels or over elevated structures. However, the group urged FRA to afford railroads considerable latitude to design and administer emergency preparedness plans that best address each railroad's specific safety issues and concerns, with each plan then subject to review and approval by FRA.

FRA incorporated the Working Group's recommendations into a draft NPRM, and mailed the draft to the group on December 14, 1995, along with a copy of the minutes of the first meeting of the Working Group. Copies of both documents, and other relevant enclosures, have been placed in the public docket for this rulemaking. The 34-member Working Group held its second meeting on February 6–7, 1996, and was comprised of representatives from the same organizations in attendance at the first Working Group meeting. The Working Group reviewed the draft and presented its comments, and a copy of the minutes of the second meeting of the group has also been included in the rulemaking docket. The Working Group's comments were then incorporated into this NPRM. Through subsequent communication with the Working Group, additional specificity has been incorporated into this proposal.

While FRA has focused on crafting a rule containing comprehensive requirements in connection with railroads adopting, implementing, and complying with their emergency preparedness plans, many details remain unresolved concerning the enforcement obligations that FRA will impose in the final rule. Among the broad range of possibilities, the final rule could impose a ''reasonable care'' standard and focus on achieving substantial compliance, with an emphasis on determining whether each railroad has demonstrated a general effort to fulfill each of the elements of its emergency preparedness plan. Under this approach, for example, FRA would verify whether a railroad has established a training program for its employees on the applicable provisions of the emergency preparedness plan, and could impose a civil penalty on a railroad for failing to comply with this basic element of emergency preparedness. However, if FRA concluded that the railroad had properly adopted a training program, but during the occurrence of an actual emergency several employees failed (under the stress of the situation) to fulfill all of their responsibilities under the emergency preparedness plan, FRA would not penalize the railroad. Also, if a railroad failed to designate an employee to maintain a current list of emergency telephone numbers, for use by control center personnel to notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred, FRA could clearly penalize the railroad for this omission. However, if a railroad's plan properly provided for the maintenance of the list of emergency telephone numbers, but one telephone number on a long list of accurate numbers was found by FRA to be out of date, and thus incorrect, the railroad would not face the imposition of a civil penalty.

As an alternative, FRA could maintain strict oversight by requiring compliance with every individual element of the emergency preparedness plan, and impose a civil penalty in every instance in which a railroad fails to achieve compliance. Accordingly, under this approach, a railroad could be penalized for failing to constantly update its list of emergency telephone numbers, neglecting to distribute applicable portions of its emergency preparedness plan to all on-line emergency responders, or operating a train with an incorrect type of on-board emergency equipment. Rather than stress the concept of determining the overall level of emergency preparedness achieved by a railroad before the emergency occurs, this enforcement philosophy would specifically focus on whether the railroad in fact complied with all of the written emergency plan procedures for implementing each plan element. FRA invites commenters to address the questions of what compliance obligations should exist in the final rule, in the context of requiring railroads to adopt and implement procedures for achieving emergency preparedness, and what enforcement policy should be exercised by the agency regarding those obligations. Commenters are also asked to review the language of the section-by-section analysis and rule text of the proposed rule and to offer suggestions on whether FRA's expectations for compliance with the emergency preparedness plan elements are too rigid, or not strict enough.

In drafting the final rule, FRA also expects to incorporate all relevant information derived from the investigation of the accident involving Amtrak train no. 1, the ''Sunset Limited,'' which occurred in Hyder, Arizona on October 9, 1995. In that accident, the initial notification was made by the Amtrak locomotive engineer to the Southern Pacific Transportation Company (SP) train dispatcher's office in Denver, Colorado, which then notified the appropriate local emergency response agencies. The SP yardmaster in Phoenix Yard also dialed 911 after hearing the engineer's radio transmissions to the train dispatcher.

While the local emergency responders stated that the accident was handled well by all parties involved, the responders noted that they were hampered in reaching the accident site by extremely rough terrain, initially negotiable only by four-wheel drive vehicles until graders and earth movers created a trail for conventional vehicles. The responders were somewhat confused by being provided with only a milepost location instead of a more familiar identifier. The responders were also frustrated by the lack of an accurate passenger count, but Amtrak has stated that once it has satellite cellular telephone capabilities train conductors will report passenger counts to a central telephone number after leaving each station. In addition, the responders indicated that, although the emergency lighting did not function on the overturned passenger cars, passengers were able to disembark through the car doors and emergency windows.

FRA also expects to include requirements in the final rule relating to emergency egress from passenger trains, based upon information obtained from the investigations of the two recent train accidents in New Jersey and Maryland.

In the first accident, a near-head-on collision occurred on February 9, 1996 between NJTR trains 1254 and 1107 at milepost 2.8, on the borderline of Secaucus and Jersey City, New Jersey. Of the 331 passengers and crew on both trains, two crewmembers and one passenger were fatally injured, and an additional 162 passengers reported minor injuries. In the second accident, a near-head-on collision occurred on February 16, 1996 between MARC train 286 and Amtrak train 29 on CSX Transportation, Inc., at Silver Spring, Maryland, milepost 8.3. The accident resulted in 11 fatalities, consisting of three crewmembers and eight passengers, and at least 12 non-fatal injuries to passengers of the MARC train.

While many of the questions raised by the New Jersey and Maryland train accidents are being addressed by the working group which is considering regulations covering rail passenger equipment safety standards, the important issue of emergency egress must be addressed by this rulemaking. Specifically, the Silver Spring accident raised serious concerns as to whether MARC passengers had sufficient information about the location and operation of emergency exits to enable them to find and use those exits in an emergency or accident. FRA believes that all commuter and intercity passenger railroads should review their practices, in addition to marking the exits, for providing this information. On February 20, 1996, FRA issued Emergency Order No. 20 (Notice No. 1), which required prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing cab car forward and multiple unit (MU) operations. 61 FR 6876, Feb. 22, 1996. In pertinent part, Notice No. 1 of the Emergency Order stated:

> [T]here is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment used or train control system. FRA's regulations generally require that all passenger cars be equipped with at least four emergency opening windows, which must be designed to permit rapid and easy removal during a crisis situation. The investigation of the Silver Spring accident has raised some concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. Whether those same people eventually were among those who exited safely, or whether those persons were attempting to open windows that were not emergency windows is not known at this time. However, there is sufficient reason for concern to require that measures be taken to ensure that such windows are readily identifiable and operable when they are needed. Accordingly, the order requires that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability. (FRA Safety Glazing Standards, 49 CFR Part 223, require that each passenger car have a minimum of four emergency window exits ''designed to permit rapid and easy removal during a crisis situation.'')

61 FR 6880, Feb. 22, 1996.

On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996. In pertinent part, Notice No. 2 of the Emergency Order stated:

> The original order required but did not set parameters for testing a representative sample of emergency exits. The alteration to the emergency egress provisions requires that sampling of emergency window exits be conducted in conformity with either of two alternate methods commonly recognized for such efforts. This modification provides a degree of uniformity industry wide. These methods require sampling meeting a 95 percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Although the original order would have required testing all exits on a specific series or type of car if one such car had a defective window exit, the amended order permits the use of these commonly accepted sampling techniques to determine how many additional windows in [sic] test. In general, these principles require that the greater the percentage of windows initially found defective, the greater the percentage of windows that will have to be tested.
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> In addition, FRA has modified the emergency egress portion of the order to clarify that the exterior marking requirement applies to those windows that may be employed for access by emergency responders, which may be windows other than, or in addition to, those designed for emergency egress for passengers. In addition, FRA has modified the interim system safety plan portion of the order to require discussion of the railroad's programs and plans for liaison with and training of emergency responders with respect to emergency access to passengers. The original order required discussion only of methods used to inform passengers of the location and method of emergency exits.

61 FR 8703, Mar. 5, 1996.

On March 12, 1996, in response to the MARC train accident in Silver Spring, Maryland on February 16, 1996, the NTSB issued ''Safety Recommendations'' to both the Maryland Mass Transit Administration (R–96–4 through R–96–6) and FRA (R–96–7). The NTSB was concerned because the emergency quick-release mechanisms for the exterior doors on MARC's Sumitomo rail cars are located in a secured cabinet some distance from the doors that they control, and the emergency controls for each door are not readily accessible and identifiable. The NTSB recommends that emergency quick-release mechanisms for exterior doors on MARC cars be well marked and relocated, so that they are immediately adjacent to the door control and readily accessible for emergency escape. The NTSB also noted that the left and right rear exterior side doors of the first car and the front interior end door and the right front exterior door of the second car were jammed, and observed that none of the car doors had removable windows or pop-out emergency escape panels (kick panels) for use in an emergency.

In addition, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals. Also, the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency exits. The NTSB recommends that all emergency exits be clearly identified, with easily understood operating instructions prominently located on each car's interior for use by passengers and on the exterior for use by emergency responders.

Based upon its investigation, the NTSB recommends that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retroreflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class 1, Urgent Action) (R–96–7)

Safety Recommendation R–96–7 at page 3.

On March 26, 1996, FRA convened a joint meeting of the Passenger Train Emergency Preparedness Working Group and the Passenger Equipment Safety Standards Working Group to discuss the NTSB's recommendations and incorporate the Safety Board's findings, as appropriate, into each working group's rulemaking proceeding.

Fifty-seven members from 21 different organizations attended the joint meeting. Although some of the recommendations involving structural modifications to rail equipment will be dealt with by the Passenger Equipment Safety Standards Working Group, the remaining NTSB recommendations involving marking, inspection, maintenance, and repair of emergency exits are reflected in proposed § 223.9(d), entitled ''Requirements for new or rebuilt equipment,'' and proposed § 239.17, entitled ''Emergency exits.'' The Section-by-Section Analysis contains a detailed discussion of FRA's proposed requirements, particularly in light of the two recent accidents in New Jersey and Maryland and the NTSB's safety investigations and recommendations.

In a letter to FRA dated June 24, 1996, Mr. Donald N. Nelson, President of Metro-North and Chairperson of APTA's Commuter Railroad Committee, announced that commuter railroads nationwide are implementing a series of rail passenger safety initiatives building on the safety provisions of FRA's Emergency Order No. 20 and the NTSB's Safety Recommendations R–96–4 through R–96–7. In pertinent part, all commuter rail authorities have committed to early voluntary implementation of the emergency preparedness requirements proposed in this NPRM, including requiring inspection and testing of all emergency window exits as part of routine car maintenance to ensure correct operation and ease of egress, offering emergency responder training for every jurisdiction within each commuter railroad's service area, and educating passengers on the use of emergency exits on commuter trains. The commuter railroads also indicated that each one will ensure the safety of its operation by adopting a comprehensive system safety plan that:

(a) Defines the overall safety effort, how it is to be implemented and the staff required to maintain it;

(b) Establishes the safety interface within the railroad, as well as with its key outside agencies;

(c) Clearly indicates Senior Management support for implementing the safety plan and the railroad's overall commitment to safety;

(d) Establishes the safety philosophy of the organization and provides the means for implementation;

(e) Defines the authority and responsibilities of the safety organization and delineates the safety related authority and responsibilities of other departments; and

(f) Incorporates safety goals and objectives into the overall corporate strategic plan.

APTA's Commuter Railroad Committee letter at pages 1 and 2.

As part of the ongoing review process within DOT, and subsequent to the Working Group's previous opportunities to review the proposed rule text, FRA implemented changes to the draft regulatory text and preamble. FRA initiated these changes in order to strengthen the rule's requirements and establish more objective criteria for FRA's review of each railroad's emergency preparedness plan. In a letter dated December 27, 1996, FRA sent a copy of the revised regulatory text to members of the Working Group, and requested comments on issues that the members wished to see included in the preamble section of the proposal. FRA requested that all comments be submitted to FRA by the close of business on January 8, 1997.

Development of the Passenger Safety Program

As discussed above, this proposed rule is one element of a comprehensive effort to address the safety of rail passenger service. In addition to this rulemaking, FRA is currently addressing related issues in several contexts. Recent actions addressing passenger safety needs have included, for instance, Emergency Order No. 20, which addressed on an interim basis key issues regarding railroad operating rules, inspection of required emergency window exits, and emergency exit signage and marking.

In the Passenger Equipment Safety Standards Working Group, FRA is examining possible requirements for improved emergency egress features for both retrofit and new construction. Affected railroads have already completed, or will complete by the end of this calendar year, the removal of latches requiring special tools for access to manual releases on powered doors. Separately, FRA is reviewing the totality of emergency egress requirements and the issue of their overall adequacy, including the relocation of manual releases to locations immediately adjacent to end vestibule doors. FRA anticipates that these efforts will be advanced through a collaborative rulemaking process. However, if necessary to ensure prompt action, FRA may propose specific requirements based upon its own staff analysis.

In the context of improving railroad communications, the Railroad Safety Advisory Committee (RSAC) has established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. FRA expects that that group will report recommendations to the RSAC early in 1997. FRA anticipates that those recommendations will address the issue of whether there should be redundant communications capability on all passenger trains. Although that rulemaking will establish minimum safety requirements with respect to communications equipment, it should be noted that intercity and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies.

FRA plans a four-phase process to address emergency preparedness. In 1994, FRA distributed the Volpe Report described above and encouraged railroads to examine their existing programs to determine what improvements could be made. This rulemaking represents the second step in this process, formalizing a planning requirement and identifying certain mandatory elements. The third phase will begin as FRA reviews railroad plans to determine that the issues presented by the Volpe Report and the rule have been adequately addressed within the varying contexts of the commuter authority operations. FRA will conduct a detailed review of each plan. Following review and formal approval of written plan submissions, it will also be necessary for FRA to determine how the program is being implemented in the field. FRA will also be interested in determining how this effort is being integrated into the overall system safety planning process that commuter authorities have agreed to undertake.

FRA is optimistic that this approach will yield positive results, promoting creativity and cross-fertilization of the emergency preparedness planning process through FRA, APTA, and other channels. This give-and-take approach should facilitate standardization of matters involving interface with passengers, while permitting continued adaptation of programs to local needs.

The fourth phase would involve FRA's review, after having gained at least a full year of actual experience under the standards proposed here, of the implementation and effectiveness of the standards and related voluntary developments. In this phase of activity, FRA would work with interested parties to evaluate whether further rulemaking or other action might be necessary to ensure that, for each program element, standards and practices are sufficiently precise and stringent to achieve the desired improvements in emergency

preparedness. Further, this review will determine whether experience in working with emergency responders indicates that additional program elements should be addressed.

Section-by-Section Analysis

FRA proposes to amend Part 223 to Title 49, Code of Federal Regulations by adding three new definitions and requiring railroads operating passenger train service to clearly mark emergency windows. FRA also proposes to add Part 239 to Title 49, Code of Federal Regulations specifically devoted to prescribing minimum Federal safety standards concerning the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains.

1. Definitions: Section 223.5

Section 223.5 would be reorganized and definitions of three important terms employed in the proposed passenger train emergency preparedness regulations would be added. The three new defined terms are ''emergency responder,'' ''passenger train service,'' and ''railroad.'' For ease of reference, FRA proposes to define the term ''railroad'' so as to include the statutory (49 U.S.C. 20102) definitions of both ''railroad'' and ''railroad carrier'' and to clarify that those who provide railroad transportation directly or through an operating contractor are railroad carriers. Thus, the term ''railroad'' is clearly intended to include commuter authorities. These terms are intended to have the same meaning as in proposed part 239 of this chapter.

Of course, the term ''railroad,'' as used by FRA in the context of regulating passenger train emergency preparedness, is not controlled by the definitions of ''rail carrier'' and ''railroad'' set forth in 49 U.S.C. 20102 (5) and (6). Likewise, FRA does not intend for its definition of ''railroad'' to have any bearing on how the term is used for purposes of the regulatory activities of the Surface Transportation Board.

2. Requirements for New or Rebuilt Equipment: Section 223.9

In accordance with the requirements of 49 CFR 223.9(c) and 223.15(c), all passenger cars must be equipped with at least four emergency windows, which must be designed to permit rapid and easy removal during a crisis situation. Proposed paragraph 223.9(d) requires that all windows intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 223.9(d)(1) requires that the emergency windows be conspicuously and legibly marked on the inside of the car with luminescent material. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency exits, the proposed rule requires luminescent material on all emergency windows to assist and speed passenger egress from the train during an emergency. The marking of the emergency windows must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify a window exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

METROLINK, in noting that the last line of paragraph 223.9(d) requires ''each railroad [to] post clear and legible operating instructions at or near such exits,'' stated that it assumes that the referenced instructions relate to the doors rather than the windows.

Paragraph 223.9(d)(2) requires that the emergency windows intended for emergency access by emergency responders for extrication of passengers be marked with retroreflective material. Since FRA recognizes that not every window will be equipped for emergency access, railroads are required to choose a retroreflective, unique and easily recognizable symbol that will readily attract the attention of emergency responders. The proposed rule does not require a specific size or shape for the symbol, but FRA expects the railroad's emergency preparedness plan developed pursuant to § 239.13 of this chapter to contain a provision detailing emergency responder access (along with passenger car egress), consistent with the evacuation strategy formulated jointly by the passenger train operator and the emergency responder organizations, in accordance with the emergency responder liaison provision set forth in § 239.13(a)(5) of this chapter. Of course, while the proposed rule would not require emergency responders to participate in evacuation planning or strategy with the railroads, the railroads would be required to offer liaison assistance. FRA is working to identify an appropriate marking that might be capable of universal recognition. Although the proposed rule allows a marking that could consist of a symbol or words (such as ''RESCUE ACCESS''), FRA reserves the right to be more prescriptive in the final rule based upon a uniform pattern.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency windows. This paragraph does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency windows, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency windows as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with §§ 239.13 (a)(5) and (a)(7) of this chapter.

3. Appendix B to 49 CFR Part 223

FRA plans to revise Appendix B to 49 CFR Part 223—Schedule of Civil Penalties, to include penalties for violations of the provisions of § 223.9(d) to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

4. Purpose and Scope: Section 239.1

Section 239.1(a) states that the purpose of this part is to reduce the magnitude of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage emergencies. Subsection (b) states that

these regulations provide minimum standards for the subjects addressed, and the affected railroads may adopt more stringent requirements, so long as they are not inconsistent with this part. FRA does not in any way intend that the subject matter of 49 CFR Part 239, Passenger Train Emergency Preparedness, be read to impose burdens or requirements on emergency responders who either participate with railroads in emergency simulations involving the operation of passenger train service or respond to actual emergency situations, or on any other person who may be involved with the aftermath of a passenger train emergency not specified in proposed § 239.3 concerning applicability. Accordingly, FRA does not intend to restrict a State from adopting a law, rule, regulation, order, or standard affecting emergency responders.

5. Application: Section 239.3

As a general matter, FRA proposes that this rule apply to all railroads that operate passenger train service on the general railroad system of transportation, provide commuter or other short-haul passenger train service in a metropolitan or suburban area, or host the operations of such passenger train service. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor would be regulated by FRA as a railroad under the provisions of the proposed rule. Although the public authority would ultimately be responsible for the development and implementation of an emergency preparedness plan (along with all related recordkeeping requirements), the railroad or other independent contractor that operates the authority's passenger train service would be expected to fulfill all of the responsibilities under this part with respect to emergency preparedness planning, including implementation.

The proposed rule is structured to apply to intercity and commuter service, not tourist operations. At a later time, FRA may propose application of the rule, or some portion thereof, to tourist, scenic, historic, and excursion railroads. FRA's regulatory authority permits it to tailor the applicability sections of its various regulations so as to expand or contract the populations of railroads covered by a particular set of regulations. FRA has had jurisdiction over all railroads since the Federal Railroad Safety Act of 1970 was enacted.

In considering the issue of requiring emergency preparedness planning by tourist and historic railroad operators in the context of this rulemaking, FRA has not yet had the opportunity to fully consult with those railroads and their associations to determine appropriate applicability in light of financial, operational, or other factors that may be unique to such railroad operations. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be prescribed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

The Federal Railroad Safety Authorization Act of 1994 instructed FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, stated that:

> In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Public Law No. 103–440, § 217, 108 Stat. 4619, 4624 (November 2, 1994). In addition, section 215 of that Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations that must be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). In its report to Congress entitled ''Regulatory Actions Affecting Tourist Railroads,'' FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress. FRA will address the emergency preparedness concerns for these unique types of operations at a later date in a separate rulemaking proceeding. To facilitate resolution of this issue, and a significant number of related issues, the Railroad Safety Advisory Committee (RSAC) has established a Tourist and Historic Railroads Working Group. As a matter of cost efficiency, the Working Group may elect to cover emergency preparedness planning for tourist railroads as part of a package of tourist-specific safety proposals during a multi-day consultation on several rulemaking dockets. FRA would then issue a Notice of Proposed Rulemaking addressing issues in several dockets that pertain to these smaller passenger operations.

In § 239.3(b)(2), FRA proposes that the requirements of this part would not apply to the operation of private passenger train cars, including business or office cars and circus trains. While FRA believes that a private passenger car operation should be held to the same basic level of emergency preparedness planning as other passenger train operations, FRA intends to take into account the financial burden imposed by requiring private passenger car owners and operators to conform to the requirements of this part. Private passenger cars are often hauled by host railroads such as Amtrak and commuter railroads, and these hosts often impose their own safety requirements on the operation of the private passenger cars. Pursuant to this part, the host railroads would already be required to have emergency preparedness plans in place to protect the safety of their own passengers; the private car passengers would presumably benefit from these plans even without the rule directly covering private car owners or operators. In the case of non-revenue passengers, including employees and guests of railroads that are transported in business and office cars, as well as passengers traveling on circus trains, the railroads would provide for their safety in accordance with existing safety operating procedures and protocols relating to normal freight train operations.

6. Preemptive Effect: Section 239.5

Section 239.5 informs the public as to FRA's views regarding the preemptive effect of the proposed rule. While the presence or absence of such a section does not in itself affect the preemptive effect of this part, it informs the public concerning the statutory provision which governs the preemptive effect of these rules. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 preempts any State regulatory agency rule covering the same subject matter as these regulations proposed today.

Of course, the subject matter of these regulations covers only the preparation,

adoption, and implementation of emergency preparedness plans for passenger train operations. Accordingly, States are in no way preempted from regulating any of the training requirements or other activities of the non-railroad emergency responders who arrive at the scene of an emergency after a railroad's emergency preparedness plan has been activated.

7. Definitions: Section 239.7

This section contains an extensive set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the proposed rule. The proposed definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. Several of the definitions introduce new concepts which require further discussion.

Although the definition of ''crewmember'' is primarily intended to cover persons who either perform on-board functions connected with the movement of a train (e.g., a locomotive engineer, conductor) or provide on-board service (e.g., an Amtrak food service employee or sleeping car attendant), a deadheading employee is covered by the definition as well. Accordingly, such an employee could count as a ''qualified'' employee under § 239.101(a)(2)(iv) for purposes of meeting a railroad's minimum on-board staffing requirements for its emergency preparedness plan. However, during a passenger train emergency situation, off-duty employees would also be expected to assume their appropriate roles under the railroad's emergency preparedness plan and assist the passengers. METROLINK indicated that on some trains it has conductors who perform the function of fare enforcement, and recommended that FRA exclude these individuals from the definition of ''crewmember.'' METROLINK also requested that FRA exclude contract food workers from the definition of ''crewmember.''

The term ''control center'' envisions not only the traditional railroad concept of a train dispatcher's office, but also railroad offices that are identified as ''control centers'' but only monitor railroad operations, and modern system operations centers such as those of CSX Transportation, Inc., in Jacksonville, Florida and the Burlington Northern Santa Fe Corporation in Ft. Worth, Texas. The term does not include a location on a railroad with responsibility for the security of railroad property, personnel, or passengers.

It is very likely that control center personnel are located at facilities which are remote from the right-of-way. These facilities should consist of the necessary command, control, and communications equipment to maintain normal train operations, to control electric traction, and to maintain communications throughout the passenger train system. In addition to these functions, the control center should help coordinate responses to emergencies by using equipment such as radio communications systems, direct ''hotline'' telephones, wayside power removal controls, and ventilation controls under the direction of emergency responders, according to the protocols and procedures of the emergency preparedness plan.

Typical emergency scenarios encompassed by the term ''emergency'' or ''emergency situation'' involving a significant threat to the safety or health of one or more persons requiring immediate action may include one or more of the following: illness or injury; a stalled train in a tunnel or on a bridge; collision with a person, including suicides; collision or derailment; fire; collision or derailment with a fire; collision or derailment with water immersion; severe weather conditions; natural disasters; and security situations (e.g., bombings, bomb threats, hijacking, civil disorders, and other acts of terrorism).

The term ''qualified,'' as used in the rule, means employees who are trained under an applicable emergency preparedness plan's components and implies no provision or requirement for Federal certification of persons who perform those functions.

The definition of ''railroad'' is based upon 49 U.S.C. 20102 (1) and (2), and encompasses any person providing railroad transportation directly or indirectly, including a commuter rail authority that provides railroad transportation by contracting out the operation of the railroad to another person, as well as any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, but excludes urban rapid transit not connected to the general system.

The terms explained here are not exhaustive of the definitions that are proposed for inclusion in § 239.7. This introduction merely provides a sampling of the most important concepts of the proposed rule. Many other terms are defined and explained in the section-by-section analysis when analyzing the actual proposed rule text to which they apply.

8. Responsibility for Compliance: Section 239.9

Section 239.9 clarifies FRA's position that the requirements contained in the proposed rules are applicable to any ''person,'' including a contractor, that performs any function required by the proposed rules. Although all sections of the proposed rule address the duties of a railroad, FRA intends that any person who performs any action required by this part on behalf of a railroad is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, if an independent contractor is hired by a railroad to maintain its records of inspection, maintenance, and repair of emergency window and door exits, pursuant to proposed § 239.17, the contractor would be required to perform those duties in the same manner as required by a railroad.

9. Penalties: Section 239.11

Section 239.11 identifies the penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21304, and 21311, formerly contained in § 209 of the Federal Railroad Safety Act of 1970 (Safety Act) (49 U.S.C. 20101–20117, 20131, 20133–20141, 20143, 21301, 21302, 21304, 21311, 24902, and 24905, and §§ 4(b)(1), (i), and (t) of Public Law 103–272, formerly codified at 45 U.S.C. 421, 431 *et seq.*). The penalty provision parallels penalty provisions included in numerous other regulations issued by FRA under authority of the provisions of law formerly contained in the Safety Act. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $10,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $20,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Finally, a person may be subject to criminal penalties for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in

ensuring that compliance is achieved not only in terms of developing and implementing emergency preparedness plans, but also to better determine if railroads are planning ahead to minimize the consequences of emergencies that could occur.

The final rule will include a schedule of civil penalties in an Appendix A to 49 CFR Part 239, to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

10. Emergency Preparedness Plan: Section 239.101

In drafting the proposed rule, FRA recognized that the operations of each individual passenger train system must be considered in the development and implementation of effective emergency preparedness programs. Factors which should be considered include system sizes and route locations, types of passenger cars and motive power units, types of right-of-way structures and wayside facilities, and numbers of passengers carried, as well as internal railroad organizations and outside emergency response resources. Under the proposed rule, each railroad subject to the regulation is required to establish an emergency preparedness plan designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board railroad personnel. The plan must reflect the railroad's policies, plans, and readiness procedures for addressing emergencies. The railroad is expected to employ its best efforts, under the circumstances of the emergency situation, to execute the provisions of its plan.

In their development of emergency preparedness plans, FRA encourages railroads to integrate, as practicable, the recommended guidelines contained in the Volpe Report. The report provides a comprehensive degree of specificity. While the proposed rule does not require the special level of detail reflected in the Volpe Report, FRA advocates that railroads voluntarily incorporate such elements and items as appropriate into the development of their own emergency preparedness plans, and exclude recommendations only after judicious consideration.

While FRA stresses that each railroad should retain latitude in developing an emergency preparedness plan appropriate for its operations, the plan must provide a comprehensive overview, make clear and positive statements to railroad employees, and contain implementation details concerning the roles, responsibilities, and expectations for employee participation. The plan does not have to be one single document with every section applying to every railroad employee and location; instead, the plan may consist of multiple documents, with a separate section of the plan detailing the specific responsibilities for each job category or function. In instances where a freight railroad hosts the operations of a passenger railroad, both railroads would have to address issues of emergency preparedness. However, the rule would require the hosting freight railroad to develop only the applicable portions of an emergency preparedness plan uniquely dealing with the passenger operations not otherwise addressed.

The majority of passenger train operational difficulties are handled effectively and do not become emergencies. Since in many instances a train crew can immediately take action to resolve a problem and potential emergency without evacuating the train, existing emergency preparedness policies de-emphasize immediate evacuation from trains located between stations unless passengers and crews are in immediate danger. Accordingly, in most situations, after notifying the control center that a problem exists and receiving permission, the train crew will move the train to the nearest station or safe location (e.g., outside a tunnel) before taking further action. If the train crew is unable to resolve the situation, railroad personnel or outside emergency responders may be sent to the emergency scene to provide mechanical aid, alternate transportation, or medical assistance.

The effectiveness of a railroad's overall response under its emergency preparedness plan will be greatly influenced by the type of emergency with which the train crew is presented (e.g., injury or illness, stalled train, suicide or accidental collision with a person, derailment or collision, smoke or fire, severe weather conditions or natural disasters, and vandalism or sabotage). The response will also be affected by the characteristics and type of train involved and the functional status of electrical and mechanical systems, including lighting, ventilation, and public address systems. In addition, the operational environment (e.g., a train is located in a tunnel, on an elevated structure, or in electrified territory), and the type of right-of-way structure or wayside facility must be addressed, as appropriate, in each railroad's emergency preparedness plan.

The emergency preparedness plan should establish a chain of command which assigns functions and responsibilities to appropriate passenger railroad operating personnel, while recognizing the authority and responsibilities of emergency responders. Coordination is important to the ability of all parties to respond appropriately to an emergency, regardless of its size and location. Documentation, including applicable portions of the emergency preparedness plan, protocols, and procedures within rulebooks, manuals, and guidelines for control center employees and on-board personnel, provides the basic framework for coordination between all internal parties responding to an emergency. This internal documentation should address at least the following issues:

- Delineation of functions and responsibilities during emergencies for passenger railroad operating personnel, including control center personnel;
- Telephone numbers of railroad personnel and emergency responders who need to be notified;
- Criteria for determining whether an emergency exists and requires assistance from emergency responders;
- Procedures for determining the specific type, location, and severity of the emergency, and thus which response is appropriate;
- Procedures for notifying emergency responders; and
- Procedures and decision-making criteria for transferring incident responsibility from the passenger railroad operator to emergency responders.

Section 239.101 sets forth the general requirement that railroads shall develop and comply with their own emergency preparedness plans and written procedures to implement their own plans for addressing issues of emergency preparedness, that meet Federal minimum standards. Paragraph 239.101(a) requires all railroads affected by this proposed part to develop and implement written procedures to fulfill each applicable element of this section. Depending on the nature of a railroad's operations, as well as on whether its operations involve a host freight railroad, different elements of this proposed section may be fulfilled by more than one entity. While FRA requires all elements of this section to

be addressed for each passenger train operation, the rule does not mandate that every element be addressed in each affected entity's emergency preparedness plan. Accordingly, if a passenger train service operator relies on its freight railroad host to notify outside emergency responders after an emergency occurs, FRA would permit the freight railroad's emergency preparedness plan to address this element. Provided that both entities properly coordinate their emergency preparedness plans (and include cross-reference citations to each other's plan), the passenger train service operator's plan could omit this item and still be in compliance with the proposed rule.

The proposed rule would not require that the public authority and the operating railroad or independent contractor each file a separate emergency preparedness plan with FRA if the operating railroad or independent contractor is the only party performing a function under the regulation. However, each party's responsibility for compliance with this part must be clearly spelled out in the emergency preparedness plan or plans that are filed with FRA for approval covering the entire passenger train service operation. After approval of the plan or plans, FRA may hold the public authority or the other entity or both responsible for compliance with this part.

FRA proposes to establish the parameters for such a plan and defer to the expertise of each individual railroad to adopt a suitable emergency preparedness plan for its railroad, in accordance with these parameters. As noted previously in the preamble to this proposed rule, the emergency preparedness plan may consist of multiple documents, with a separate document detailing the responsibilities of each category of employee under the railroad's plan. Each railroad is also encouraged to review the suggestions provided in the Volpe Report before developing an emergency preparedness plan in accordance with the requirements set forth in this section. In developing the plan, railroads are reminded that the goal of the proposed rule is to maximize the safety of passengers, railroad personnel, emergency response personnel, property, and the general public which come in contact with the railroad by providing for immediate notification of outside law enforcement officials and emergency responders. Railroads should not instruct their on-board employees to substitute as professional emergency responders and delay notification of appropriate railroad and outside officials.

Paragraph 239.101(a)(1) sets forth the requirement that the passenger train crewmembers must communicate immediately and effectively with each other, as well as with the control center and the passengers. Typically, in an emergency situation the proposed rule requires an on-board train crewmember to immediately contact the control center via a dependable on-board radio or an alternate means of communication (e.g., wayside railroad telephone, public telephone, private residence telephone, or cellular telephone) to advise appropriate railroad officials of the nature of the emergency and the type of assistance required. After this initial notification to the control center occurs, the passengers must be informed of the emergency and provided directions. As appropriate, all passengers should be accounted for (particularly in sleeping compartments) so as to expedite evacuation, if necessary, and to avoid needless effort to search for ''missing'' persons.

METROLINK stated that the train crewmember should notify the passengers after consultation with the control center and the control center officer, unless the train must be evacuated immediately. Also, the LIRR recommended that FRA revise paragraph 239.101(a)(1) in the final rule to require an on-board crewmember to remove all occupants of the train from imminent danger as a first step after he or she quickly and accurately assesses the passenger train emergency situation. FRA recognizes that each emergency situation is unique, and may require rapid decisionmaking by on-board crewmembers on how best to ensure the safety of the passengers. Moreover, it is FRA's expectation that railroads will properly train their employees to perform the requisite life-saving functions after an emergency (e.g., relocation of passengers from a smoke-filled car to a safer section of the train or evacuation of the passengers from a derailed car), in conjunction with their responsibilities to assess the nature of the emergency and notify the control center as soon as practicable thereafter. Accordingly, while FRA may conclude in the course of investigating a specific train incident or accident that a particular employee's egregious mishandling of an emergency situation warrants individual enforcement action and/or enforcement action against the railroad, we are reluctant to strictly impose the precise order or manner in which on-board crewmembers must execute their individual responsibilities under the railroad's emergency preparedness plan. However, in the course of drafting the final rule text, FRA may elect to incorporate recommended practices as specific directives to railroads concerning how they must respond to the various types of emergency situations most likely to occur during passenger operations, such as on-board fires, downed electrical power sources, or passenger injuries from a derailment.

Although the proposed rule does not require a railroad to use a specific means of communication, FRA expects the railroad to select a method that is effective and capable of reaching pertinent railroad control centers and on-board locations in order to comply with the notification requirement of this subsection. FRA further expects that railroads will voluntarily build redundancy into their emergency preparedness plans by outfitting their crewmembers with an immediately available backup means of communication, in the event that primary communications systems are either damaged during the emergency or otherwise rendered inoperative. For example, a cellular telephone could be made available for use by on-board crewmembers to contact the control center in the event the locomotive radio is inoperative. Also, on-board crewmembers could still maintain proper communication with the passengers, in the event that regular or emergency power was unavailable to operate the train's public address system, by using portable megaphones. Commenters are asked to discuss whether the final rule should expand the subsection's language requiring notification to mandate a specific primary means of communication, and/or whether the final rule should also require each affected railroad to equip its passenger trains with a secondary means of communication in the event that the primary means is unavailable. This issue may be resolved in this proceeding or in the context of the forthcoming revision of the Radio Standards and Procedures in 49 CFR Part 220. That rulemaking was tasked to the RSAC on April 1, 1996.

It is FRA's understanding that many railroads publish an emergency toll-free telephone number in the employee timetable which connects with the control center office. Amtrak also has a nationwide toll-free telephone number which connects the caller to the national Amtrak police desk in Washington, DC, which is manned around the clock. The rule does not require that notification to either the control center or the train passengers occur within a precisely measured number of minutes, rather it uses the

words ''as soon as practicable'' in order to give railroads maximum flexibility. FRA expects that in the totality of the circumstances of the emergency situation, the train crewmembers will exercise their best judgment using the railroad's own emergency preparedness plan procedures.

Under current practice, Amtrak's notification of the emergency responders will vary slightly depending on whether or not the passenger train emergency occurs in Amtrak-dispatched territory. In territory where trains are dispatched by Amtrak, either the control center will directly notify the emergency responder or the control center will notify Amtrak police, who will then, as appropriate, notify pertinent emergency responders, state and federal agencies, and Amtrak supervisors. In territory where trains are not dispatched by Amtrak, the host railroad control center will directly notify the appropriate emergency responders, government agencies, and host railroad supervisors. Which emergency responders and agencies are notified depends on the nature of the emergency. Most control centers have emergency telephone numbers already in their computer systems, usually listed alphabetically by city, with hard copy backups.

FRA is aware that each railroad's operations are somewhat unique, and that the appropriate persons and organizations who must be notified will vary based upon the railroad's individual operating characteristics and the actual type of emergency that occurs. Accordingly, paragraph 239.101(a)(1)(ii) does not specify emergency responder organizations (e.g., fire departments, helicopter rescue groups) or job titles or duties of appropriate railroad officials whom the control center must contact. The subsection also does not specify which control center employees may be designated by the railroad to maintain the list of emergency telephone numbers; METROLINK recommended that FRA require that the railroad designate an employee function or position to be responsible for maintaining current emergency telephone numbers, rather than a particular employee. In addition, the term ''adjacent'' is not defined (e.g., a distance measurement from the passenger train experiencing the emergency to adjacent rail modes) for purposes of determining which other rail modes must be notified. Instead, consistent with the Working Group's recommendation that the proposed rule should provide each affected railroad with flexibility to implement the rule's provisions, this subsection requires that the emergency preparedness plan state how the railroad will achieve the appropriate notifications.

Paragraph 239.101(a)(2) requires that the emergency preparedness plan provide for initial and periodic training at least once every two years of all railroad employees who have responsibilities under the plan, and that the training address the role of each affected employee. Adequate training is integral to any safety program. This subsection recognizes that the successful implementation of an emergency preparedness plan depends upon the knowledge of the on-board and control center personnel about the system route characteristics, passenger cars and motive power units, and emergency plans, protocols, procedures, and on-board emergency equipment. An employee who has not been trained to react properly during an emergency situation may present a significant risk to railroad personnel and passengers. Employees must receive ''hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment, stressing the following:

- Opening emergency window, roof, and door exits, with an emphasis on operating them during adverse conditions such as when a rail car is overturned;
- Use of emergency tools and fire extinguishers;
- Use of portable lighting when the main power source is unavailable on a passenger train; and
- Use of megaphones and public address systems (if they are provided by the railroad for communication purposes).

The proposed rule affords the passenger railroad operator a time period of up to two years to provide each session of ''periodic'' training after the operator provides initial training in the emergency preparedness plan's provisions to its employees. The periodic training requirement is intended to inform railroad personnel of changes in procedures and equipment and ensure that their skills remain at a level that enables them to effectively execute their responsibilities under the emergency preparedness plan. In addition, the recurrent training will reinforce segments of the emergency preparedness plan for individuals who have not performed properly.

FRA concludes that the unique operating characteristics of all the different railroads subject to the proposed rule, as well as the financial costs involved with providing training, would make it impractical to include a calendar year or other more restrictive or specific requirement for periodic training in the proposed rule. Moreover, assuming that FRA elects to specify in the final rule that the upper limit of the term ''periodic'' will remain at two years, anytime the provisions of an emergency preparedness plan are invoked during an actual emergency, we would count that event toward the training requirement for those affected employees.

FRA is interested in receiving comments from railroads on the costs of implementing the on-board personnel training requirements of the proposed rule. Specifically, FRA wants to determine the extent of the current training that railroads already provide to their on-board employees (including emergency preparedness training) as part of regular operating rules training programs. Comments are requested concerning the estimated dollar amount of the incremental additional costs connected with modifying existing training programs to comply with this proposal. FRA is interested in ascertaining whether the proposed training requirements will add merely *de minimis* costs to each railroad's existing training program or if compliance would entail moderate or significant additional costs.

As discussed in the analysis of proposed § 239.103, FRA expects railroads operating passenger train service to conduct emergency simulations to evaluate their overall emergency response capabilities and ensure that emergency preparedness plans, procedures, and equipment address the particular needs of various types of passengers. Emergency simulations can help railroads achieve theses goals through careful selection of the time and location of the simulation and participation by personnel from the railroads, outside emergency responder organizations, and ''volunteer passengers''. In addition to classroom training, simulations provide employees with a practical and realistic understanding of rules, procedures, trains, and right-of-way structures/ wayside facilities as they relate to emergency response. FRA expects that the employee training provided in accordance with paragraph 239.101(a)(2) will include instruction on the importance of emergency simulations in achieving successful implementation of the emergency preparedness plan.

The proposed rule does not require on-board personnel to receive training in first aid or in CPR. Although FRA initially considered including these items as training requirements in the

proposed rule, or at least mandating that railroads offer employees the opportunity to receive this training, the consensus of the Working Group was that both first aid and CPR training should be excluded from the rule. The Working Group stressed that the goal of the proposed rule is to ensure that emergency responders arrive promptly at the scene of an emergency, not to train on-board personnel to act as emergency responders. The Working Group also stated that even if FRA requires a railroad to offer first aid and CPR training, no railroad can literally force an on-board crewmember to assist an ailing passenger. Further, trains with heavier passenger loadings are likely to have on board one or more medical professionals whose skills will be more extensive, and better practiced, than those of a crewmember whose primary and recurring duties do not include medical emergencies.

During the Working Group meeting on February 7, 1996, Amtrak stated that it is spending between $2.5 to $3 million by fiscal year 1998 to train the chiefs of on-board service and to provide for at least one employee on every train being trained to administer first aid and perform CPR. Under the Amtrak plan, employees will not be required to use this training, merely to receive it. Despite the extent of Amtrak's commitment to voluntarily providing extensive first aid and CPR training, Amtrak did not want these items required in the final rule. Another member of the Working Group, Metrolink, stated that it has served approximately eight million passengers in three years of operation, and has never had a passenger require CPR. Metrolink also noted that commuter railroads generally operate in populated areas, with professional emergency responders in most cases only minutes away. The LIRR stated that it offers CPR training to newly hired employees and shows a refresher film to employees every five years, but acknowledged that it cannot force employees to administer CPR. The railroad also noted that it would never want the engineer to leave the controls of the locomotive during an emergency. NJTR indicated that its train crews already have many duties to perform during an emergency and that first aid and CPR should be performed by emergency medical services personnel.

FRA invites commenters to submit their views on whether the final rule should include the issues of first aid and CPR training. If FRA does decide to address these issues, one option would be to mandate that railroads offer their employees first aid and CPR training, without requiring employees to actually use this training during an emergency. Under this scenario, a railroad employee who offered no assistance during an emergency, because he or she feared coming into contact with an injured or ill passenger's bodily fluids, would not violate these regulations. (The experience of the American Red Cross is that volunteers who receive first aid and CPR training, and appropriate equipment, are motivated to provide needed assistance when the time comes.) The second option would be not only to require railroads to train their employees in first aid and CPR, but also to mandate that employees use this training during an emergency.

The proposed rule also does not require railroads to record the number of passengers riding on their trains at any given time or to record how many people get on and off at each train stop. Although lack of an exact passenger manifest may delay emergency responders in determining when every passenger has been removed from a derailed or disabled train, the frequency with which many passenger trains pick up and discharge passengers would create logistical difficulties for a train operator. A train crew can usually provide a good estimate to emergency responders, so that they can respond with the necessary personnel and equipment. Moreover, it is doubtful that emergency responders would simply trust an exact passenger count provided by a train crew and cease looking for additional survivors of an emergency. Commenters are invited to offer proposals for training on-board crewmembers to track the exact number of passengers present on a train at any given moment, and to include suggestions on cost-efficient technology for achieving this goal.

The proposed rule also requires appropriate training of control center personnel who affect the implementation of a railroad's emergency response plan. FRA expects the railroad to provide training only for the requisite control center employees designated under the plan to convey the nature and extent of a passenger train's emergency to the emergency responder organizations. Accordingly, FRA does not wish to require training of other control center employees who perform merely incidental functions, e.g., a clerical or other office employee who receives a telephone call from a stalled train.

The term ''accurately measure'' is used in proposed paragraph 239.101(a)(2)(iii) relative to employee qualification in a broad sense to mean that the employee being tested will show to the railroad sufficient understanding of the emergency preparedness plan subject area for which he or she is responsible, and that the employee can perform the duties required under the plan in a safe and effective manner. Proficiency must be demonstrated by successful completion of a written examination, but in addition may be illustrated by an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section.

This section permits railroads discretion to design the tests that will be employed (which for most railroads will entail some modification of their existing ''book of rules'' examination to include new subject areas), provided that the design addresses all relevant elements of the emergency preparedness plan. This section does not specify things like the number of questions to be asked or the passing score to be obtained. It does, however, contain the requirement that the test not be conducted with open reference books unless use of such materials is part of a test objective. This section also requires that the test be in writing. In deciding to require a written test, FRA was aware that the test taking skills of some individuals may be deficient and that some persons may have literacy problems. However, FRA believes that minimum reading and comprehension skills are needed to assure proper execution of an emergency preparedness plan.

Paragraph 239.101(a)(2)(iv) requires that at least one on-board crewmember be qualified under the applicable provisions of the railroad's emergency preparedness plan. For example, a commuter railroad operates with a three-person crew fully trained under the applicable provisions of the railroad's emergency preparedness plan, but includes an engineer trainee in the locomotive cab who is not qualified under the plan's provisions. Since the train already has a fully trained and qualified crew operating the train, the commuter railroad is in full compliance with the proposed rule even though one on-board crewmember is not qualified under the emergency preparedness plan. This paragraph may also apply if, for example, a fully-trained passenger train crew turns over the operation of its train to a freight railroad train crew that is not qualified under the passenger railroad's emergency preparedness plan. Provided that the passenger train is operated by the freight crew with at least one on-board crewmember of the passenger train present who is qualified under the

passenger railroad's emergency preparedness plan, there would be no violation of the proposed rule. Although the proposed rule requires only one qualified crewmember, FRA anticipates that railroads will voluntarily elect to train most, if not all, on-board crewmembers in emergency response procedures.

Paragraph 239.101(a)(3) contains the requirement that freight railroads must prepare emergency preparedness plans addressing instances when they host the operations of rail passenger service over their lines. Even though freight railroads may neither provide nor operate rail passenger service themselves, and therefore not be subject to most requirements of the proposed rule, these railroads still have certain significant emergency preparedness responsibilities. The emergency preparedness plans for freight railroads must, at a minimum, include procedures for making emergency responder notifications, and discuss their general capabilities for rendering assistance to the involved passenger railroads during emergency situations. The hosting freight railroads must address any physical and operating characteristics of their rail lines that may affect the safety of these rail passenger operations, e.g., evacuating passengers from a train stalled in a tunnel or on an elevated structure.

FRA expects a railroad that operates rail passenger service over the line of a freight railroad to review all of the requirements imposed by the proposed rule with the host railroad, and coordinate their respective roles in implementing a coherent response to an emergency situation. While FRA presumes that the freight railroad will bear primary responsibility for ensuring the emergency preparedness of any railroad permitted to operate intercity passenger or commuter trains over its line, the proposed rule does not restrict the host railroad and the operating railroad from assigning responsibility for compliance with this part via a private contractual arrangement. FRA included the coordination requirement to ensure that all railroads involved in a particular rail passenger service operation understand each other's crucial role in planning for emergency preparedness.

Paragraph 239.101(a)(4)(i) addresses FRA's expectations for compliance with this part from railroads with operations that include tunnels of considerable length, where immediate passenger egress is not feasible. In order to limit the number of structures covered by this proposed paragraph to the longer ones that could be expected to present more impediments to the safe and orderly withdrawal of passengers from a disabled train, tunnels of less than 1,000 feet are excluded. This limitation is reasonable, considering that intercity passenger trains seldom consist of less than four cars and often have many more cars than this, implying a minimum total train length of 400 or more feet. Most likely, a train of this or greater length will have either the head or rear end close to or outside of a tunnel portal should an unplanned stop occur in a tunnel less than 1,000 feet long.

Over the years, passenger train emergencies have occurred in tunnels where existing emergency procedures and tunnel characteristics, such as lighting and communication capabilities, were determined to be inadequate. In order to better evaluate tunnel safety issues related to emergency preparedness, FRA requested additional information from the railroad industry. The results were summarized in a report entitled ''Tunnel Safety Analysis'' (Tunnel Report), which was published by FRA in February 1990. A copy of the report was also made available to the rail passenger railroads for their information and guidance, and has been placed in the docket for this rulemaking. FRA encourages all railroads required to address tunnel safety in their emergency preparedness plans to consult the Tunnel Report for guidance. FRA is also aware that many State and local jurisdictions already impose site-specific regulations to address tunnel safety, and that most railroads with operations involving tunnels have long-standing internal emergency tunnel procedures.

Paragraph 239.101(a)(4)(ii) proposes that railroads operating on elevated structures, over drawbridges, and in electrified territory, incorporate emergency preparedness procedures into their plans to address these unique physical characteristics. For example, in an emergency in electrified territory, the control center should be responsible for issuing instructions to deenergize the electrical power. Also, the train crew and emergency responders should know how, when, and when not to remove on-board power from the train, including traction power, train-lined (head-end) power to individual cars, and battery source power.

Paragraph 239.101(a)(4)(iii) recognizes that the emergency preparedness plans of certain freight and passenger railroads will need to address the unique safety concerns posed by adjacent rail modes of transportation. For example, employees of a freight railroad to which this part applies, who have knowledge of or observe an emergency in a common corridor, e.g., fire, derailment, or intrusion by rapid transit rail equipment or vehicles, must be required by the plan to immediately notify the control center with details. The control center must attempt to determine the exact location of the incident, any condition that would affect safe passage by affected trains or road vehicles, and whether hazardous materials are involved, and then initiate appropriate responsive action.

Many emergencies require response from outside emergency responder organizations in addition to the railroad. Proper coordination of roles between all of the organizations that may respond to an emergency is essential to ensure timely and effective response, since the number of passengers carried and the railroad operating environment may be quite different according to the type of service and routes. Paragraph 229.101(a)(5) recognizes that the successful implementation of any emergency preparedness plan depends upon the affected railroads maintaining current working relationships with the emergency responder organizations, so that each party can learn of the full preparedness capabilities that the other can offer during an emergency. In this regard, each railroad's emergency preparedness plan must provide for distribution to emergency responders of railroad equipment diagrams and manuals, right-of-way maps, information on physical characteristics such as tunnels, bridges, and electrified territory, and other related materials. In order to continually reinforce the familiarization of the emergency responder organizations with the railroads' protocols, procedures, operations, and equipment, the proposed rule requires railroads to periodically distribute applicable portions of the plan to emergency responders at least once every three years, even if no changes have been implemented. Further, since the knowledge and ability to carry out procedures and use emergency equipment are essential to the success of emergency response actions, the proposal requires the railroads to promptly notify emergency responders whenever material alterations to the plan occur (e.g., revisions to emergency exit information, pertinent changes in system route characteristics or railroad equipment operated on the system, or updates to names and telephone numbers of relevant contact officials on the railroad).

FRA wants to ensure that the emergency responders will receive the maximum amount of available

information about a railroad's operations in advance of an emergency, and hopes that emergency responders will voluntarily study the material distributed and participate in emergency simulations. However, the proposed rule would only require that affected railroads make the operations information available to emergency responders, and that the responders merely be invited to participate in emergency simulations. FRA has no authority to penalize an emergency responder organization if it chooses to ignore the distributed information or refuses to attend simulations with the railroad. Likewise, the proposed rule would not hold a railroad accountable for an emergency responder organization's unwillingness to enter into a liaison relationship, provided that the railroad made the liaison opportunities known and available to the responders.

In its comments on the revised regulatory text, METROLINK questioned the meaning in paragraph 239.101(a)(5)(ii) of the phrase ''maintaining an awareness of each emergency responders' capability.'' METROLINK noted that its operations include 33 different fire districts, over 50 ambulance companies, and 45 police agencies, and contended that maintaining this type of awareness is not a railroad function. METROLINK also stressed that the proposed rule does not require emergency responders to notify each affected railroad when their capabilities change, and stated that it is the responsibility of the emergency responders to establish mutual aid with other local agencies when emergency situations exceed their capabilities. In addition, METROLINK indicated that it lacks the technical capacity to know or understand when a significant change may occur in an emergency responder's response capability.

FRA is aware of the great number of jurisdictions that intercity trains operate through, and that it is neither simple nor inexpensive for passenger train operators to provide material and familiarization to every outside emergency response organization within all individual communities along each route. Some commuter train operators have developed booklets and videotapes to illustrate equipment and describe entry and evacuation procedures for its trains and certain right-of-way facilities. However, Amtrak stated at the Working Group meetings that because it operates through thousands of jurisdictions with thousands of potential emergency responder organizations located throughout the United States, it would have difficulty complying with this paragraph.

While FRA considers the establishment of liaison relationships between railroads involved with rail passenger operations and emergency responders crucial to achieving the goals of the proposed rule, the agency is also fully aware of the unique circumstances of Amtrak's operations. Commenters are invited to suggest either how Amtrak can best comply with the emergency responder liaison requirement as set forth in the proposed rule, or whether the final rule should establish a different standard for railroads that operate in territories with large numbers of potential emergency responders to contact. Any commenter proposing two or more sets of standards should also suggest what numerical or mileage criteria should be used to distinguish the railroads, and state how these differing standards would still ensure adequate levels of safety and emergency preparedness.

Paragraph 239.101(a)(6) states that each railroad's emergency preparedness plan shall indicate the types of on-board emergency equipment and the location on each passenger car. Although the proposed rule requires a minimum of only one fire extinguisher and one pry bar per passenger car, and one flashlight per on-board crewmember, FRA would strongly encourage each railroad to voluntarily supplement this list of on-board emergency equipment. Further, FRA recognizes that there may be special local interests that might need to be accommodated, particularly in cases of public authorities operating passenger train service within only one territory. While national uniformity to the extent practicable of laws, regulations, and orders related to railroad safety is important, FRA does not wish to decrease the level of emergency preparedness already in place on a passenger railroad.

FRA must determine whether the final rule should specifically address special circumstances that may exist in local jurisdictions throughout the country on a categorical basis, which are currently subject to more stringent requirements than the minimum quantities of on-board emergency equipment set forth in the proposed rule. Accordingly, FRA invites comments on what types and quantities of on-board emergency equipment railroads are currently required to carry pursuant to laws in the local jurisdictions in which they operate. FRA also invites comments on the reasons for these more stringent requirements. Depending on the comments received, FRA may adopt the minimums set forth in the text of the proposed rule or decide to broaden the coverage and requirements of § 239.101(a)(6) by specifying additional types and/or quantities of on-board emergency equipment that some or all railroads must carry on each passenger car.

This paragraph does not require railroads to instruct their passengers about either the location or use of the on-board emergency equipment. As stated, FRA is committed to crafting a final rule that avoids micromanagement of the provisions of a railroad's emergency preparedness plan. FRA recognizes that passengers might benefit from receiving routine instructions about the location and operation of on-board emergency equipment during each train trip, in the event that the crewmembers are injured or otherwise unable to access the equipment before the outside emergency responders arrive. However, FRA is also aware from its consultations with the Working Group that pilferage of on-board emergency equipment is a serious problem on many passenger railroads, and that specifically focusing the attention of passengers on where the equipment is located would only exacerbate the problem. Clearly, the equipment can only help both crewmembers and passengers during an emergency if it is available for proper use. Also, members of the Working Group stressed that regular riders on intercity or commuter operations are probably already familiar with the on-board emergency equipment by virtue of their frequent presence on the train, and would not benefit from any additional required information.

Since the rulemaking on rail passenger equipment safety standards is still ongoing, FRA is unable to state whether railroads will be required to install permanent or auxiliary emergency lighting on their rail cars. However, whatever requirements eventually appear in a new set of regulations at 49 CFR Part 238, paragraph 239.101(a)(6)(ii) states that auxiliary portable lighting must be available for assistance in an emergency and should be routinely maintained and replaced as necessary. The proposed rule does not require that every rail passenger car have such lighting, but the train itself must carry enough portable lighting capable of fostering passenger evacuation. In its comments on paragraph 239.101(a)(6)(ii) of the revised regulatory text, METROLINK stated that FRA needs to define the phrase ''auxiliary portable lighting must be accessible,'' and questioned whether a flashlight is an acceptable form of

such lighting. FRA intends for a handheld flashlight, such as a flashlight with a ''D'' cell, to be one of the means of satisfying the auxiliary portable lighting requirement.

Finally, paragraph 239.101(a)(7) requires railroads to make passengers aware of emergency procedures to follow before an emergency situation develops, thus enabling them to respond properly during the emergency. All passenger awareness efforts must emphasize that passengers must follow the directions of the train crew during an emergency. If passengers are on a disabled train, but are not injured or facing imminent danger, they could safely await the arrival of trained emergency responders with appropriate evacuation equipment. However, in a serious emergency involving smoke or fire, passengers may have to evacuate the train before emergency responders arrive. Thus, operators of rail passenger service should take steps to increase passenger awareness about basic evacuation procedures. Since passengers could inadvertently jeopardize their own safety, it is appropriate for them to take the initiative only if the crewmembers are incapacitated.

Passenger railroads must educate passengers about their role in cooperating in emergencies by conspicuously and legibly posting emergency instructions inside each passenger car, and by utilizing at least one of the additional methods designated in this paragraph to provide safety awareness information. These methods include distributing pamphlets, posting information in stations on signs or on video monitors, and the review of procedures by crewmembers via public address announcements. All brochures and signage must emphasize that passengers must follow the directions of the train crew during an emergency.

Although paragraph 239.101(a)(7)(ii)(A) permits a railroad to fulfill the secondary passenger education requirement of the proposed rule by making on-board announcements, the proposed language does not specify the frequency with which these announcements must be made during a train run. While FRA believes that, with regard to intercity service, announcements are appropriate after at least each major passenger pick-up point, commenters are invited to suggest ways of providing safety information to all new riders without becoming repetitious to the remaining passengers. In addition, while the proposed rule requires railroads to utilize only one additional method to disseminate safety awareness information to passengers, FRA encourages railroads to employ as many of the options as possible based on operating and budgetary considerations.

The information in the various sources of passenger safety awareness information must be consistent in content and sufficient for first-time users of the railroad, but not so overwhelming as to arouse undue concern. All information must be printed or spoken in English, but railroads serving large non-English speaking communities should consider providing information in other languages as well. Materials for persons who are visually impaired should be printed in large type format and in braille. Finally, for persons with other types of disabilities, appropriate passenger awareness materials should provide information about evacuation policies and procedures and other emergency actions, to the extent practicable.

Passenger awareness education should include information that may permit passengers to accomplish the following:

- Recognize and immediately report potential emergencies to crewmembers;
- Recognize hazards;
- Recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- Recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons.

Paragraph 239.101(a)(7)(iii) requires railroads to perform surveys of their passengers in order to learn how successful the passenger awareness program activities have been in apprising passengers of the procedures that must be followed during an emergency. In addition to verifying that passengers can locate and operate the emergency window and door exits in the event of an evacuation, the surveys must determine that passengers know where the safety information is posted in the car and that during an emergency they must follow the directions of the train crew.

Although the railroad is required to maintain records of the information obtained from its passenger surveys, the proposal does not mandate that railroads ask passengers to complete written questionnaires. Instead of handing out questionnaire surveys at station stops and hoping that passengers will voluntarily elect to either provide responses in narrative form or fill in answers to multiple choice questions, the railroad could direct its employees to wait at either station stops or onboard trains and orally read the questions to selected members of the traveling public who voluntarily agree to participate. The oral responses would then be recorded by the railroad in writing on records that would be maintained at the system headquarters for the railroad and at the division headquarters for each division where the surveys were conducted (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering locations of the safety information on the cars and knowledge of the safety procedures to follow in an emergency. Additionally, railroads must make these survey records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

The proposal specifies that a railroad must survey a representative sample of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness activities. FRA is not proposing a methodology for conducting this sampling, nor is it requiring that the surveys be distributed at every station stop or along particular major lines. FRA is confident that each railroad will use due dilgence in surveying a statistically significant cross section of its customer population in order to periodically update and improve its passenger safety awareness information and amend its emergency preparedness plan, as appropriate. Although FRA is proposing that railroads conduct the surveys at least annually, we expect that after the initial education effort takes place in the first year that the rule is in effect the ridership awareness level will reach a percentage in the range of between 60 to 75 percent. If this increased awareness level occurs, as reflected in a high rate of correct survey responses, FRA believes that the requirement could be modified to permit railroads to conduct the surveys at least once every three years. FRA seeks public comment on both whether the final rule should permit railroads to conduct surveys less frequently than annually, and if so, on what would be an appropriate minimum percentage of public awareness that must be reached before less frequent surveying would be justified.

Since the issue of passenger surveys was not fully developed with the Working Group during the drafting of this proposal, FRA looks forward to working with the members of the

Working Group during the final rule phase to develop the most effective means of verifying that the passenger awareness program activities will achieve their objectives. In this regard, FRA seeks comments on whether the survey process anticipated by this proposal can be a reliable measure of the effectiveness of the passenger information programs or whether there are more efficient or less expensive means than surveys to determine the success of these programs, such as focus groups or unstructured meetings and discussions with members of the traveling public. Commenters from railroads are urged to discuss what sampling techniques they currently use when they conduct customer satisfaction surveys in order to assist them in improving passenger comfort, determining if railroad employees are providing proper customer service, and planning timetable schedules.

Since proposed paragraph 239.101(a)(7)(ii) requires railroads to utilize an additional method of providing safety information without specifying how frequently the information must be provided, commenters are encouraged to address this issue by indicating whether each railroad should be allowed to study the results of the passenger surveys in order to determine the effectiveness and proper timing of passenger safety awareness program activities appropriate for its operation. Accordingly, instead of specifying a fixed maximum time interval between utilization of the additional forms of program activity, FRA could elect to require that railroads determine the optimal frequency that best serves their passengers. In addition, it is expected that as the traveling public grows more accustomed to reading and understanding the emergency instructions posted inside all passenger cars on bulkhead signs, seatback decals, or seat cards the need for redundant reminders (e.g., on-board announcements, ticket envelope safety information, or public service announcements), especially at frequent time intervals, will greatly diminish. Moreover, depending on the additional method selected, different time intervals may be appropriate. For example, while it may be suitable for a railroad to distribute safety awareness information on a seat drop every three months, the railroad may conclude that it should arrange for public service announcements on a weekly basis. Commenters recommending inclusion of fixed timeframes for providing passengers with additional methods of safety awareness information are urged, if possible, to provide scientific or sociological data and/or cost estimates to support their suggested time intervals.

11. Passenger Train Emergency Simulations: Section 239.103

Section 239.103 recognizes that one of the most effective training techniques is a simulation of specific emergency scenarios. Simulations may vary from a small-scale drill or tabletop exercise for just one train crew or control center operator, to a full-scale emergency exercise involving several levels of railroad management that includes the voluntary participation of fire departments, ambulance and emergency medical service units, local police, sheriff and state police organizations, local emergency auxiliary groups, and state and federal regulatory agencies. While simulations are primarily designed to demonstrate that railroad employees can quickly and efficiently manage an emergency situation to ensure that emergency responders arrive quickly, simulations are also intended to determine whether train crews are properly trained to get passengers out of an imperiled train.

The tabletop exercise is the simplest to stage, as it involves only a meeting room and knowledgeable managers and employees from the passenger train operator and the appropriate responding organizations who voluntarily participate. For an imaginary emergency, the actions to be taken by the appropriate personnel are described; the time, equipment, and personnel necessary are estimated; and potential problems are predicted. Conflicts of functional areas, lack of equipment, procedural weaknesses or omissions, communication difficulties, and confusing terminology are among the problems which can be identified.

Passenger train operators can drill their train crews, other on-board personnel, supervisors, and control center operators on emergency operating procedures by posing a hypothetical emergency for employees to resolve without dispatching emergency responders to the scene. A drill could also involve the voluntary participation of personnel of a particular response organization, e.g., a fire department. The same type of problems as indicated for the tabletop exercise can be identified, and the actual response capabilities of personnel in terms of their knowledge of procedures and equipment can be evaluated.

Full-scale emergency exercises require weeks of carefully organized plans involving all participating organizations and will involve the expenditure of funds for both the training and actual full-scale exercise. Recording or videotaping the scenes and conversations in key areas of the exercise itself will serve as valuable classroom training for later years. A full-scale exercise is the total application of the resources of the passenger railroad operator and the voluntarily participating emergency response organizations. Such an exercise can reveal the degree of familiarity of both the passenger train system and emergency response organization personnel with train operations, the physical layout of trains, right-of-way structures and wayside facilities, emergency exits, and emergency equipment. Thus, shortcomings in the emergency preparedness plan and specific response protocols and procedures, as well as equipment, can be identified and corrected.

FRA is seriously evaluating whether tabletop exercises should be afforded the same weight in the final rule as full-scale simulations for purposes of demonstrating the readiness of a railroad to successfully react to a passenger train emergency, and we are considering requiring that each railroad conduct a minimum number of its simulations as full-scale exercises. In this regard, FRA is skeptical as to whether a tabletop exercise can equal the comprehensiveness of a full-scale exercise and be a highly effective means of determining whether a railroad is adequately prepared for the likely variety of emergency scenarios that could occur on its lines, as well as an important training tool for the train crews, control center employees, and members of the emergency responder community who elect to participate. In considering whether to strengthen the emergency simulation requirement, FRA is aware that realistic full-scale simulations that enable all participants to practice using the on-board emergency equipment and emergency exits, and encourage the emergency responders to become personally familiar with passenger equipment and applicable railroad operations, could prove invaluable in helping railroads and the emergency responder community to manage real emergencies in ways that tabletop exercises cannot. However, FRA is also aware that the financial and logistical costs of conducting full-scale simulations are undoubtedly higher, including the need to close railroad tracks during the hours of the simulation, opportunity costs for the railroads due to lost use of the passenger equipment that is employed

in the simulations, unavailability of firefighting and rescue equipment for other emergencies while the simulations are being conducted, and salary costs for many or all of the simulation participants.

In order to best determine whether the final rule should require full-scale emergency simulations in conjunction with tabletop exercises, or perhaps in place of such exercises, FRA must carefully weigh the expected costs and potential benefits of all available options. FRA therefore seeks public comment on the perceived effectiveness of both full-scale emergency simulations and tabletop exercises, including a discussion of whether tabletop exercises can achieve the equivalent level of emergency preparedness as full-scale simulations. FRA is particularly interested in receiving comments from the emergency responder community, especially from those members who have participated in either emergency simulations or actual emergency situations with railroads.

To achieve a maximum level of effectiveness, drills and exercises should reinforce classroom training in emergency response and passenger evacuation for the passenger train operator personnel and the emergency response units who voluntarily participate. Procedures should also be included to teach personnel to identify the emergency and distinguish its unique demands, and to follow through with the appropriate responses. In addition, the drills and exercises should be planned to minimize hazards which could create an actual emergency or cause injuries and to provide a mechanism for simultaneous testing and reinforcement of emergency operating procedures for specific types of emergencies and evacuation procedures. Moreover, the drills and exercises should test the communication capabilities and coordination of the passenger operator with the emergency responders, as well as the operability and effectiveness of emergency equipment.

Paragraph (b) requires each railroad that provides commuter or other short-haul passenger train service to conduct an emergency simulation at least once during every two calendar year on all major lines, and include at least 50 percent of the major lines in the total number of simulations held during any given calendar year. Since FRA has determined that a train crew on a commuter or other short-haul operation will usually operate a train along the same line for an extended period of time, and that emergency responder organization personnel tend to be line-specific in terms of their familiarity with a railroad's operations, it is crucial that each affected railroad provide adequate opportunities along all of its major lines for its employees and the responder community to obtain emergency simulation training. While FRA anticipates that each commuter or short-haul railroad will conduct emergency simulations as frequently as possible on its entire system, the proposal applies only to operations over major lines so that the railroad can best reach the most heavily traveled portions of its system while conserving limited resources. In this regard, FRA recognizes that emergency responder organizations tend to be densely located along the major lines of commuter and short-haul railroad operations.

FRA seeks public comment on whether the final rule should require a different timetable for accomplishing emergency simulations along each major route and/or require a greater total number of emergency simulations during any given calendar year. In this regard, since emergency simulations are such an important means for a railroad to measure its degree of emergency preparedness, FRA is considering strengthening the final rule to require that each railroad conduct a sufficient number of emergency simulations so that each major line will be included at least once during every calendar year, instead of only once during every two calendar years.

Although the proposal sets forth a requirement for each commuter and short-haul railroad to perform emergency simulations on all of its major lines, FRA does not expect the railroad to require all employees along those lines who are trained under the emergency preparedness plan to attend the simulations, nor do we expect the railroad to invite all potential emergency responders along those lines to participate. While FRA hopes that over the long term all railroad employees involved in the operation of passenger train service, as well as the applicable members of the emergency responder community, will have the opportunity to participate in this valuable training exercise and enhance their individual emergency preparedness skills, the simulations are also intended to identify shortcomings in each railroad's emergency preparedness plan and specific response protocols and procedures. The railroad must discuss the identified weaknesses and overall effectiveness of the emergency preparedness plan with the simulation participants at the debriefing and critique session held under proposed § 239.105, and then initiate any appropriate improvements and/or amendments to the plan. As part of this review process, FRA expects the railroad to revise its training program and liaison relationships with the emergency responder community, in accordance with proposed § 239.101. Accordingly, while the proposed rule does not mandate that affected railroads conduct numerous simulations all along the major lines so as to include every possible participant, FRA concludes that the lessons learned from the required debriefing and critique sessions will have far reaching benefits.

In order to ensure that each affected railroad evaluates its overall emergency response capabilities through careful selection of the appropriate scenarios and locations on each of its main lines for the emergency simulations, the proposal requires each railroad to organize simulations that will adequately test the performance of the railroad's program under the variety of emergency situations that could reasonably be expected to occur on the operation. For example, a railroad operating in territory that includes underground tunnels will need to conduct simulations to test the railroad's ability to ensure employee and passenger safety during an emergency situation occurring in this unique environment. Adequate lighting and sources of air in tunnels and underwater tubes are critical for successful passenger evacuation during emergencies. Further, emergency responders depend on sufficient lighting for visibility during fire suppression and rescue operations. If the railroad intends to evacuate passengers by using cross passages and/or fire doors leading to the opposite track area, or a separate center passageway between the adjacent track areas, the simulation should include practice in the requisite evacuation protocols and procedures.

In the case of a railroad providing intercity passenger service involving a number of lines operated over long distances, such as the coast-to-coast service provided by Amtrak, the need for the railroad to carefully plan its simulations and concurrently examine the effectiveness of its emergency preparedness plan under a variety of scenarios becomes crucial. Many of Amtrak's lines run for hundreds of miles through remote locations that could include risks from tunnel mishaps, natural disasters (e.g., fires, floods, and earthquakes), hazardous material leaks, and/or acts of terrorism. Further, because of the length of time required to travel these lines, the same train will be operated by more than one crew and may involve operation over

the line of a freight railroad. Since Amtrak's lines traverse numerous populated communities throughout the United States, an emergency situation could require the assistance of any number of potentially thousands of emergency responders from these locations.

While FRA is not proposing at this time to require operators of intercity service to conduct additional emergency simulations along its lines in order to reach a greater proportion of employees and members of the emergency response community (equivalent to the number required on the major lines of railroads that provide commuter or other short-haul service), we do expect such railroads to plan simulations that sufficiently test the elements of their emergency preparedness plan under the variety of circumstances that could occur in intercity service. Although FRA recognizes that the length and diversity of Amtrak's operations limit the potential benefits from resources spent on conducting emergency simulations, the proposed rule requires Amtrak to conduct at least two full-scale or tabletop exercises per year on each of its business units. However, FRA is considering imposing more rigorous requirements in the final rule on operators of intercity service such as Amtrak in order to ensure the requisite level of emergency preparedness. By considering each of the emergency scenarios that could possibly occur on the different segments of the railroad (e.g., simulations of a derailment at a remote location where emergency responder assistance is not immediately available, an on-board fire inside a tunnel or on a bridge, a derailment involving a freight train carrying a hazardous materials spill, etc.), Amtrak can carefully design a program to fulfill its overall emergency response needs. While we recognize that the term ''business unit'' represents the current organizational structure of Amtrak in 1997, and have therefore incorporated that concept into the proposed rule, FRA expects to craft a term for inclusion in the final rule that has broader applicability.

While the proposal requires railroads that provide intercity passenger train service to conduct two emergency simulations on each business unit or other major organizational element during each calendar year, FRA seeks public comment on whether this number should be increased in the final rule. Commenters, especially those representing members of the emergency response community, are encouraged to discuss how their recommended minimum number of required emergency simulations can best achieve the rule's emergency preparedness objectives in a cost beneficial manner that does not compromise rail safety. In recommending an optimal minimum number of emergency simulations, commenters are specifically urged to opine on how a passenger railroad as diverse as Amtrak, which operates coast-to-coast service under a wide variety of operating conditions through the jurisdictions of numerous emergency responders, can best achieve the emergency preparedness goals of this section throughout its entire system without expending a disproportionate amount of its limited resources.

12. Debriefing and Critique: Section 239.105

Section 239.105 recognizes the value of conducting a formal evaluation process after the occurrence of either an actual emergency situation or an emergency simulation such as a full-scale or tabletop exercise to determine what lessons can be learned. To increase the effectiveness of the evaluation of an emergency simulation, railroad personnel should be designated as evaluators to provide a perspective on how well the emergency preparedness plan and procedures were carried out. Although not required by the proposed rule, railroads are also encouraged to invite outside emergency response organizations and other outside observers to participate as evaluators. Evaluators should be given copies of the railroad's emergency preparedness plan before the simulation is conducted, and a preliminary meeting should be held to familiarize the evaluators with the drill or exercise and assign functional areas of concern for evaluation (*e.g.*, communications, evacuation times). Depending on the elaborateness of the simulation, evaluators may also choose to use video cameras to record the sequence of events, actions of personnel, and use of emergency equipment.

The purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. Persons responsible for conducting the sessions should be instructed by the railroad to ask questions that will test emergency preparedness procedures, assess training, and evaluate equipment. After a simulation, these persons should debrief all participants (including simulated victims, if any) who can offer valuable insights and thus help the railroad to revise its procedures. The debriefing session should help to determine what emergency preparedness or response procedures could not be used because of the special circumstances of either the train or the passengers, and whether coordination between the railroad and the emergency responders requires improvement.

The above method of conducting post-simulation debriefing and critique sessions should also be used by railroads to evaluate reactions to actual emergencies. Weaknesses in emergency preparedness procedures and equipment and areas for improving training should be identified, and the railroad shall amend its emergency preparedness plan in accordance with proposed § 239.201. All persons involved should be debriefed.

Although the term ''emergency or emergency situation'' is defined in proposed § 239.7 to include a collision with a person, including suicides, FRA does expect a railroad to conduct a debriefing and critique session after every grade crossing accident. While the railroad would still be expected to invoke its emergency preparedness plan in the event of a grade crossing accident, the goal of this proposed rule is to ensure that railroads effectively and efficiently manage passenger train emergencies. Accordingly, FRA does not intend for the debriefing and critique requirements of this section to apply when an emergency situation involves only a motorist or pedestrian who has been injured or killed, and does affect the passengers onboard the train. In addition, a railroad cannot count its activation of the emergency preparedness plan under these circumstances for purposes of satisfying the emergency simulation requirements of § 239.103. While a significant derailment with one or more injured passengers or a fire on a passenger train would undoubtedly involve significant threats to passenger safety, and therefore require a debriefing and critique session, the proposed rule leaves open the question of what other types of emergency situations would trigger the requirements of this section. Since the threshold issue of what constitutes a ''significant threat'' to the safety or health of one or more persons requiring immediate action has not been fully determined by either FRA or the Working Group, FRA is seeking public comment on what sorts of situations to include in the final rule under the definition of ''emergency'' or ''emergency situation'' set forth in proposed § 239.7.

The proposed rule does not require railroads to use a prescribed FRA form or other specific document at the debriefing and critique sessions, nor does the proposed rule set forth specific questions that railroads must ask after a simulation or actual emergency.

However, as a result of whatever means the railroad selects to ascertain the effectiveness of its emergency preparedness plan, paragraph (b) requires the railroad to determine the functional capabilities of the on-board communications equipment, the timeliness of the required emergency notifications, and the overall efficiency of the emergency responders and the emergency egress of the passengers.

In order to achieve the goals of this proposed section, and to comply with the debriefing and critique recordkeeping requirement of paragraph (c), evaluators should be provided with critique sheets, to be collected and used in the debriefing and critique sessions conducted by the railroads. At a minimum, whatever documentation the railroad selects to comply with paragraph (c) should contain the date(s) and location(s) of the simulation and the debriefing and critique session, and should include the names of all participants. Under the proposed rule, the critique sheets, or equivalent records, would then be maintained by the railroad at its system and applicable division headquarters, and be made available for FRA inspection and copying during normal business hours.

FRA invites comments on whether the final rule should specify additional types of issues that must be addressed by railroads at debriefing and critique sessions (in addition to the five issues required to be addressed in proposed paragraph (b)), or whether each railroad should retain some flexibility to develop it own approach to conducting these sessions. In this regard, FRA encourages comments on the relative value of the final rule requiring discussion and documentation of any or all of the following questions:

- Did on-board personnel try to initiate a radio call immediately?
- How long did it take for on-board personnel to reach and inform the control center of the emergency situation?
- What was the method of notification to the control center? Was the method an on-board radio or a wayside radio (if equipped)?
- Was there adequate radio communication equipment? Was it used properly? Did it work properly?
- Did on-board personnel know the proper emergency telephone number to call from the wayside telephone?
- Did on-board personnel identify him/herself to the control center by name and location?
- Did on-board personnel report the number (approximate or actual, as appropriate) and status of the passengers?
- Did on-board personnel make audible, appropriate announcements to passengers? How many minutes elapsed after the simulation or emergency began before the first announcement was made?
- Did on-board personnel properly operate the fire extinguishers?
- Did on-board personnel request deenergization of the third rail or catenary power?
- Did on-board personnel request the halting of train movements?
- How long did it take for the first emergency response unit to arrive at the emergency scene?
- How long did it take to completely evacuate the train or right-of-way structure or wayside facility and/or extinguish a fire (real or simulated)?

In its comments on the revised regulatory text, METROLINK stated that if a commuter railroad performs a tabletop exercise or simulation it cannot follow the criteria for a debriefing and critique session set forth in this section. Specifically, METROLINK contends that during field drill and tabletop exercise simulations the railroads usually do not involve real passengers and do not notify the emergency responders via the normal means of communication. Moreover, the emergency responders do not respond with lights and sirens as they would under real emergency conditions.

13. Emergency Exits: Section 239.107

In the course of normal passenger train operations, persons enter and exit passenger cars at a station platform through doors on the side of the train. However, when a disabled train cannot be moved to the nearest station, alternative evacuation methods must be employed. Emergency access to and egress from a passenger car may be achieved through outside doors, end doors, and windows. In some emergencies, such as when a fire is confined to a single passenger car, persons may be moved through the end door(s) to an adjacent car. In other emergencies, transfer of all the passengers from the disabled train may be required.

Not all passenger cars have vestibule side doors on both ends, and in some equipment, operation of these doors has required considerable effort, including hand tools. If a power loss occurs, crewmembers may be unable to open either or both of the car vestibule side doors from the normal key control station in the car. If side-door emergency controls permit opening of only one sliding door, it could prove difficult to move certain individuals through it. Also, if the vestibule side doors cannot be opened immediately from either the inside or the outside, persons may panic and could be injured as others attempt to leave the car.

Commuter railroads have agreed to FRA's request that arrangements requiring hand tools (coins and pencils) be retrofitted. Two railroads with significant numbers of affected cars are already completing this work, and this issue will be separately addressed in the forthcoming NPRM on Passenger Equipment Safety Standards. The Passenger Equipment Safety Standards Working Group will be evaluating other improvements in door design and operation. Paragraph 239.107(a) requires that all doors intended by a railroad to be used during an emergency situation be properly marked inside and outside, and that the railroad post clear and understandable instructions for their use at the designated locations.

Paragraph 239.107(a)(1) requires that the emergency egress exits be conspicuously and legibly marked on the inside of the car with luminescent material or be properly lighted. FRA realizes that during an emergency the main power supply to the passenger cars may become inoperative and that crewmembers with portable flashlights may be unavailable. Since lack of clear identification or lighting could make it difficult for passengers to find the emergency door exits, the proposed rule requires luminescent material on all emergency egress door exits (or secondary auxiliary lighting near these exits) to assist and speed passenger egress from the train during an emergency. The marking of the emergency door exits must be conspicuous enough so that a reasonable person, even while enduring the stress and panic of an emergency evacuation, can determine where the closest and most accessible emergency route out of the car is located. In addition, while this proposed section does not prescribe a particular brand, type, or color of luminescent paint or material that a railroad must use to identify an exit, FRA expects each railroad to select a material durable enough to withstand the daily effects of passenger traffic, such as the contact that occurs as passengers enter and leave the cars.

Paragraph 239.107(a)(2) requires that the emergency door exits intended for emergency access by emergency

responders for extrication of passengers be marked with retroreflective material, so that the emergency responders can easily distinguish them from the nonaccessible doors simply by shining their flashlights or other portable lighting on the marking or symbol selected by the railroad. Again, while this proposed section does not prescribe that a railroad use a particular brand, type, or color of retroreflective material to identify an access location, FRA expects each railroad to select a material durable enough to withstand the daily effects of weather and passenger contact, and capable of resisting, to the extent possible, the effects of heat and fire. If all doors are equally operable from the exterior, no designation would be useful, nor would any be required. In a separate rulemaking, FRA's Passenger Equipment Safety Standards Working Group (FRA Docket No. PCSS–1) will address appropriate requirements for periodic maintenance and replacement of the emergency door exit markings.

The proposed rule requires railroads to post clear and understandable instructions at designated locations describing how to operate the emergency door exits. This section does not mandate that railroads use specific words or phrases to guide the passengers and emergency responders. Instead, each railroad should evaluate the operational characteristics of its emergency door exits, and select key words or diagrams that adequately inform the individuals who must use them. While railroads are encouraged to post comprehensive instructions, FRA also realizes that during an emergency situation every additional moment devoted to reading and understanding access or egress information places lives at risk. In addition, FRA would already expect passengers and emergency responders to be familiar with the location and operation of the railroad's emergency door exits as a result of emergency responder liaison activities and passenger awareness programs conducted in accordance with proposed § 239.101 (a)(5) and (a)(7).

Paragraph (b) requires each railroad operating passenger train service to properly consider the nature and characteristics of its operations and passenger equipment to plan for routine and scheduled inspection, maintenance, and repair of all windows and door exits intended for either emergency egress or rescue access by emergency responders. In the case of emergency window exits, the inspection, maintenance, and repair activities should be performed consistent with the requirements of part 223 of this chapter. While the proposed rule does not require railroads to perform these tasks in accordance with a specific timetable or methodology, except with respect to the periodic sampling requirement for emergency window exits discussed below, FRA expects each railroad to develop and implement procedures for achieving the goals of this paragraph. Visual inspections must be performed periodically to verify that no emergency exit has a broken release mechanism or other overt sign that would render it unable to function in an emergency. Maintenance, including lubrication or scheduled replacement of depreciated parts or mechanisms, must be performed in accordance with standard industry practice and/or manufacturer recommendations. All emergency exits that are found during the course of an inspection or maintenance cycle to be broken, disabled, or otherwise incapable of performing their intended safety function must be repaired before the railroad may return the car to passenger service.

Carrying forward requirements currently contained in FRA's Emergency Order No. 20, the proposed rule also requires each railroad to periodically test a representative sample of emergency window exits on its passenger cars to verify their proper operation. The sampling of these emergency window exits must be conducted in conformity with either of two commonly recognized alternate methods, which will provide a degree of uniformity industry wide. Both methods require sampling meeting a 95-percent confidence level that all emergency window exits operate properly (i.e., the methods do not accept a defect rate of 5 percent). Rather than require railroads to test all window exits on a specific type or series of car if one car has a defective window exit, the proposed rule permits the railroads to use commonly accepted sampling techniques to determine how many additional windows to test. In general, these principles require that the greater the percentage of windows exits that a railroad finds defective, the greater the percentage of windows that the railroad will have to test. Specifically, sampling must be conducted to meet a 95-percent confidence level that no defective units remain in the universe and be in accord with either Military Standard MIL–STD–105(D) Sampling for Attributes or American National Standards Institute ANSI–ASQC Z1.4–1993 Sampling Procedures for Inspections by Attributes. Defective units must be repaired before the passenger car is returned to service.

The proposal specifies that a railroad must test a representative sample of emergency window exits on its cars at least once during every 180 days to verify their proper operation. However commenters are encouraged to address this issue by indicating whether the sampling should occur on an annual basis, or on a less frequent basis. Commenters are also urged, if possible, to provide scientific data and/or cost estimates to support their suggested sampling interval.

The inspection, maintenance, and repair records concerning emergency window and door exits must be retained at the system headquarters for the railroad and at the division headquarters for each division where the inspections, maintenance, or repairs are performed (i.e., the records availability must be division specific). The records can consist of multiple documents, and may contain separate sections covering inspection, maintenance, and repair or separate sections covering different types of passenger equipment. Additionally, railroads must make these inspection, maintenance, and repair records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

METROLINK commented that in order to avoid the unnecessary burden of maintaining duplicate records, the rule should require railroads to store all of the maintenance records for the emergency window and door exits at the site of the inspections. In METROLINK's case, that site would be the applicable division headquarters, which is no more than 15 miles from its system headquarters. METROLINK also noted that paragraph 239.107(c) does not indicate for how long the inspection records must be retained, and recommended that since the current rule calls for major service inspections to be retained for 180 days (or until the next inspection is performed) the final rule should establish a similar timeframe.

14. Emergency Preparedness Plan; Filing and Approval: Section 239.201

Section 239.201 specifies the process for review and approval of each railroad's emergency preparedness plan by FRA. The intent of the review and approval is to be constructive, rather than restrictive. It is anticipated that the railroads will develop and implement varied plans based upon the special circumstances involving their individual operations. Under the proposal, FRA would also require that the railroad summarize its internal discussions and deliberative processes

to explain how the railroad's unique and individual operating characteristics determined how each issue was finally addressed in the emergency preparedness plan. Specifically, FRA expects the railroad to include a review of the analysis that led to each element of the emergency preparedness plan it submits to FRA for approval, including a consideration of the expected monetary costs and anticipated safety benefits associated with each section of the plan.

In its comments, METROLINK stated that the term ''analysis'' in the phrase ''shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan'' is vague and lacking in direction. METROLINK then asked whether FRA expects to receive a cost benefit analysis, systems approach, or safety value analysis. In addition, METROLINK questioned whether the term ''condition on the railroad's property'' concerns elements of the plan such as earthquakes, wind, and power outages.

FRA will conduct a review of each plan so that there can be an open discussion of the plan's provisions from which all concerned parties can benefit. However, in order to ensure compliance with minimum plan requirements FRA will review each plan in detail prior to approval and implementation. FRA expects to involve members of the Passenger Train Emergency Preparedness Working Group in developing benchmark criteria for plan approvals to simplify plan development and approval. It is anticipated that this criteria will address program elements that include the following:

- Specific course content for training programs of on-board personnel, control center personnel, and other key employees;
- Minimum requirements for emergency exercises, including frequency and content of drills with emergency responders and simulations to determine rapidity of emergency evacuations under varying scenarios;
- Specific means for providing emergency safety information to passengers, similar to on-board briefings provided in commercial aviation;
- Detailed requirements for tunnel safety, including lighting and equipment; and
- Additional attention to emergency equipment, by prescribing types and numbers of various kinds of equipment that may be useful under varying operating scenarios.

FRA will also review all plan amendments prior to their going into effect. FRA requests comment on whether there are any categories of plan amendments that should be permitted to go into effect immediately, prior to review and approval, because they constitute improvements for which implementation delay should be avoided.

All persons, such as contractors, who perform any action on behalf of a railroad will be required to conform to the emergency preparedness plans in effect on the railroads upon which they are working. Persons whose employees are working under a railroad's approved emergency preparedness plan need not submit a separate plan to FRA for review and approval. For example, if a railroad hires an outside independent contractor to conduct an emergency simulation pursuant to 49 CFR 239.103, the contractor must perform this task in accordance with the railroad's plan. However, if a freight railroad train crew operates a passenger train for a commuter rail authority, the freight railroad must coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the commuter rail authority's, unless an assignment of responsibility for compliance is made under 49 CFR 239.101(a)(3).

The proposed rule does not specifically call for the involvement of railroad employees or their representatives in the process of designing or reviewing the emergency preparedness plan, because the responsibility for having a plan that conforms with this rule lies with the employer. However, it should be noted that the success of an emergency preparedness plan will require the willing cooperation of all persons whose duties or personal safety are affected by the plan.

15. Retention of Emergency Preparedness Plan: Section 239.203

The emergency preparedness plan and all subsequent amendments must be retained at the system headquarters for the railroad and at the division headquarters for each division where the plan is in effect (i.e., the records availability must be division specific). The emergency preparedness plan may consist of multiple documents or booklets and may contain separate sections covering the varying job functions and plan responsibilities of on-board and control center personnel. Additionally, railroads must make their emergency preparedness plan records available to duly authorized FRA representatives for inspection and copying (e.g., photocopying or handwritten notetaking) during normal business hours.

16. Operational (efficiency) tests: Section 239.301

Section 239.301 contains the requirement that railroads monitor the routine performance of employees who have individual responsibilities under the emergency preparedness plan to verify that the employee can perform the duties required under the plan in a safe and effective manner. It permits the railroad to test proficiency by requiring the employee to complete a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with this section. This testing can also involve check rides and control center visits, along with unannounced, covert observation of the employees.

This section requires a railroad to keep a record of the date, time, place, and result of each operational (efficiency) test that was performed in accordance with its emergency preparedness plan. Each record must identify the railroad officer administering the test of each employee. Accordingly, by identifying the specific data points that each record must provide, this section will promote the examination of relevant information from captured data sources, enabling FRA to better determine the effectiveness of a railroad's emergency preparedness plan. Written or electronic records must be kept of these operational (efficiency) tests for one calendar year after the end of the year in which the test was conducted, available for inspection and copying by FRA during normal business hours.

17. Electronic recordkeeping: Section 239.303

Section 239.303 authorizes railroads to retain their operational (efficiency) test records by electronic recordkeeping, subject to the conditions set forth in that provision. This provision provides an alternative for railroads retaining certain information, as required in proposed § 239.301. FRA realizes that requiring railroads to retain the information in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing programs.

Each participating railroad must have the essential components of a computer system, i.e., a desktop computer and either a facsimile machine or a printer connected to retrieve and produce

records for immediate review. The material retrieved in hard copy form must contain relevant information organized in usable format to render the data completely understandable. The documents must be made available for FRA inspection during normal business hours, which FRA interprets as the times and days of the week when railroads conduct their regular business transactions. Nevertheless, FRA reserves the right to review and examine the documents prepared in accordance with the Passenger Train Emergency Preparedness regulations at any reasonable time if situations warrant.

Additionally, each railroad must provide adequate security measures to limit employee access to its electronic data processing system and must prescribe who can create, modify, or delete data from the database. Although FRA does not identify the management position capable of instituting changes in the database, each railroad must indicate the source authorized to make such changes. Each railroad must also designate who will be authorized to authenticate the hard copies produced from the electronic format. In short, each railroad electing to electronically retain its records must ensure the integrity of the information and prevent possible tampering of data, enabling FRA to fully execute its enforcement responsibilities.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures. Due to the intense public interest in the subject matter of the proposed rule, the proposed rule is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the proposed rule. It may be inspected and photocopied at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, N.W., in Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the benefit-cost analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The Net Present Value (NPV) of the total 20-year costs which the industry is expected to incur is $4.285 million. Following is a breakdown of the costs by requirement.

Section	Requirement	Cost
239.101, 201, 203 ..	Emergency Preparedness Plan (EPP)	$105,754
	Control Center Notification	957
	On-board Personnel Training	0
	Control Center Personnel Training	55,520
	Joint Operations	16,562
	Parallel Operations	1,297
	Emergency Responder Liaison	
	—Provide EPP to Responders	12,741
	—Awareness of Responder Capabilities	56,928
	On-board Emergency Equipment	
	—One Fire Extinguisher/Car	147,801
	—One Pry Bar/Car	92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent On-board Procedures	65,611
	—Periodic Reinforcement	0
	—Annual Customer Surveys	26,616
239.103, 105	Passenger Train Emergency Simulations	969,140
239.107	Emergency Exits	
	—Marking—Interior	450,525
	—Marking—Exterior	1,347,505
	—Inspection and Recordkeeping	327,948
239.301	Operational Efficiency Tests	590,441
Total		4,510,280

Each year there are passenger train accidents which result in one or more fatalities. In the last ten years there have been about seven passenger train accidents which resulted in a significant loss of life. FRA does not know how many commuter or intercity train accidents will occur in the future. Although the passenger rail industry has a very high level of safety, the potential for injuries and loss of life in certain emergency situations is very high. FRA believes that the proposed rule represents a cost-effective approach to providing a reasonable level of protection against known threats to human life, and that if only two fatalities were to be avoided over a twenty-year period then the rule would be cost beneficial. Accordingly, while FRA cannot predict with confidence the likelihood of particular accident circumstances in which particular rule elements will be useful, FRA believes that it is reasonable to expect that the measures called for in this proposal would prevent or mitigate the severity of injuries greater in value than the costs of developing and implementing emergency preparedness plans.

Monetary benefit levels associated with several of the proposed requirements are not estimated due to lack of data. FRA would greatly appreciate receiving information and comments regarding the benefits that would result from complying with the distinct requirements proposed. It should be noted that FRA expects total benefits to exceed total costs for the proposed rule, and that the rule's provisions are necessary components of FRA's overall initiatives for passenger train emergency preparedness.

Included within the $4,510,280 total cost figure are proposed requirements for equipping each passenger car with a pry bar, marking and inspecting emergency exits, and providing passengers with emergency situation procedures that will ensure that each

passenger is able to escape from a life threatening situation on his or her own initiative. The NPV of the twenty-year cost associated with the requirements aimed at ensuring that in a life threatening situation passengers trapped in a car would be afforded enough opportunity to escape safely is $1.2 million.

Section	Requirement	Cost
239.101	Pry Bars	
	—One Pry Bar per Car	$ 92,066
	—Instruction on Pry Bar Use	242,868
	Passenger Safety Awareness	
	—Permanent Car Procedures	65,611
	—Periodic Reinforcement	0
	Annual Customer Surveys	26,616
239.107	Marking Emergency Exits—Interior	450,525
	Inspection of Emergency Exits	327,948
Total		1,193,820

These costs would be justified if the next passenger train emergency situation is handled in such a way that loss of life is contained.

As previously noted, FRA is allowing 60 days for comments and invites public comment on the issue of regulatory impact. FRA seeks comment and/or data to help identify or quantify other factors that may affect the benefits or costs of the proposal, including alternatives that were not explored by the Working Group and any costs or benefits associated with such alternatives.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. This proposed rule affects intercity and commuter passenger railroads. Commuter railroads are part of larger transit organizations that receive Federal funds. The American Public Transit Association (APTA) represents the interests of commuter railroads in regulatory matters. Further, the proposed standards were developed by FRA in consultation with a Working Group that included Amtrak, individual commuter railroads, and APTA.

Entities impacted by the proposed rule are governmental jurisdictions or transit authorities, none of which are small for purposes of the United States Small Business Administration (i.e., no entity operates in a locality with a population of under 50,000 people). Smaller commuter railroads will not be affected disproportionately. The level of costs incurred by each organization should vary in proportion to the organization's size. For instance, railroads with fewer employees and fewer passenger cars will have lower costs associated with both employee efficiency testing and emergency exit inspections.

Smaller passenger rail operations such as tourist, scenic, excursion, and historic railroads are excepted from the proposed rule. The proposed rule does not affect small entities.

A joint FRA/industry working group formed by the RSAC is currently developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. After appropriate consultation with the excursion railroad associations takes place, emergency preparedness requirements for these operations may be proposed by FRA that are different from those affecting other types of passenger train operations. These requirements may be more or less onerous, or simply different in detail, depending in part on the information gathered during FRA's consultation process.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA has submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
223..9d/ 239.107:					
A. Emergency egress	17 RRs	1,300 new decals	4 minutes	621	$18,630
		4,575 replace decals	7 minutes		
		1,300 new decals			
B. Emergency exits	17 RRs	6,320 new decals	4 minutes	824	24,720
			7 minutes		
239.107(b)	17 RRs	1,800 tests	20 minutes (18 minutes to perform test and 2 minutes for recordkeeping).	600	18,000
239.101/239.201	17 RRs	17 plans	158 hours	2,685	90,168
	17 RRs	17 amendments	1.6 hours	27	756
239.101 (1)(i)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	17 RRs	N/A	Usual and customary procedure—No new paperwork.	N/A	N/A
239.101 (1)(ii)	5 RRs	5 updates of records	1 hour	5	140
239.101 (a)(3)	33 RRs	33 negotiations	16 hours	528	19,800
239.101 (a)(7)(ii)	5 RRs	1,300 passenger cars	5 minutes per bulkhead card	108	2,808

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
		5 safety messages	1 hour per RR to develop safety message.	5	190
239.105	17 RRs	66 records	30 minutes per record	33	924
239.301/ 239.303	17 RRs	11,600 tests	8 minutes per test	1,547	58,786
239.101 (a)(5)	16 RRs	16 reponses to distribute info to emergency responders.	2 hours	32	896
	1 RR (Amtrak).	1 response to distribute info to emergency responders.	100 hours	100	2,800
	16 RRs	16 updates of emergency responder records.	30 minutes per updated	8	224
	1RR (Amtrak).	1 update of emergency responder records.	5 hours	5	140

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, please contact Ms. Gloria Swanson at 202–632–3318.

Organizations and individuals desiring to submit comments on the collection of information requirements should submit their views in writing to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office and Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C. 20503, and should also send a copy of their comments to Ms. Gloria D. Swanson, Federal Railroad Administration, RRS–21.1, 400 Seventh Street, S.W., Washington D.C. 20590. Copies of any such comments should also be submitted to the docket of this rulemaking at the mailing address for the Docket Clerk provided above.

OMB is required to make a decision concerning the collection of information requirements contained in this NPRM between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced in the Federal Register.

Environmental Impact

FRA has evaluated these proposed regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above. FRA has made every effort to provide reasonable flexibility to State-level decision making and has included commuter authorities as full partners in development of this proposed rule.

List of Subjects

49 CFR Part 223

Railroad safety, Glazing standards.

49 CFR Part 239

Railroad safety, Passenger train emergency preparedness.

Request for Public Comments

FRA proposes to amend part 223 and adopt a new part 239 of Title 49, Code of Federal Regulations, as set forth below. FRA solicits comments on all aspects of the proposed rule whether through written submissions, or participation in the public hearing, or both. FRA may make changes in the final rule based on comments received in response to this notice.

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend chapter II of Title 49, Code of Federal Regulations as follows:

PART 223—[AMENDED]

1. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 20701, 21301–21302, and 21304; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49(c), (g), (m).

2. By revising § 223.5 to read as follows:

§ 223.5 Definitions.

As used in this part—

Caboose means a car in a freight train intended to provide transportation for crewmembers.

Certified glazing means a glazing material that has been certified by the manufacturer as having met the testing requirements set forth in Appendix A of this part and that has been installed in such a manner that it will perform its intended function.

Designated service means exclusive operation of a locomotive under the following conditions:

(1) The locomotive is not used as an independent unit or the controlling unit is a consist of locomotives except when moving for the purpose of servicing or repair within a single yard area;

(2) The locomotive is not occupied by operating or deadhead crews outside a single yard area; and

(3) The locomotive is stenciled ''Designated Service—DO NOT OCCUPY''.

Emergency opening window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

End facing glazing location means any location where a line perpendicular to the plane of the glazing material makes a horizontal angle of 50 degrees or less with the centerline of the locomotive, caboose or passenger car. Any location which, due to curvature of the glazing material, can meet the criteria for either a front facing location or a side facing location shall be considered a front facing location.

Locomotive means a self-propelled unit of equipment designed primarily for moving other equipment. It does not include self-propelled passenger cars.

Locomotive cab means that portion of the superstructure designed to be occupied by the crew while operating the locomotive.

Passenger car means a unit of rolling equipment intended to provide transportation for members of the general public and includes self-propelled cars designed to carry baggage, mail, express and passengers.

Passenger train service means the transportation of 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.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail 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

(ii) 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 and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Rebuilt locomotive, caboose or passenger car means a locomotive, caboose or passenger car that has undergone overhaul which has been identified by the railroad as a capital expense under Surface Transportation Board accounting standards.

Side facing glazing location means any location where a line perpendicular to the plane of the glazing material makes an angle of more than 50 degrees with the centerline of the locomotive, caboose or passenger car.

Windshield means the combination of individual units of glazing material of the locomotive, passenger car, or caboose that are positioned in an end facing glazing location.

Yard is a system of auxiliary tracks used exclusively for the classification of passenger or freight cars according to commodity or destination; assembling of cars for train movement; storage of cars; or repair of equipment.

Yard caboose means a caboose that is used exclusively in a single yard area.

Yard locomotive means a locomotive that is operated only to perform switching functions within a single yard area.

3. In § 223.9, paragraph (d) is added to read as follows:

§ 223.9 Requirements for new or rebuilt equipment.

* * * * *

(d) *Marking.* Each railroad providing passenger train service shall ensure that:

(1) All emergency windows are conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Each railroad shall post clear and legible operating instructions at or near such exits.

(2) All windows intended for emergency access by emergency responders for extrication of passengers are marked with a retroreflective, unique, and easily recognizable symbol or other clear marking. Each railroad shall post clear and understandable window access instructions either at each window or at the car ends.

4. Part 239 is added to read as follows:

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

Subpart A—General

Subpart B—Specific Requirements

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

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

Appendix A to Part 239—Schedule of Civil Penalties (Reserved)

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; Sec. 215, Pub. L. No. 103–440, 108 Stat. 4623–4624 (49 U.S.C. 20133); and 49 CFR 1.49 (c), (g), (m).

Subpart A—General

§ 239.1 Purpose and scope.

(a) The purpose of this part is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies.

(b) This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, and requires each affected railroad to instruct its employees on the plan's provisions. This part does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 239.3 Application.

(a) Except as provided in paragraph (b), this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation;

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area [as described by 49 U.S.C. 20102(1)], including public authorities operating passenger train service; and

(3) Freight railroads hosting the operation of passenger train service described in paragraph (a)(1) or (a)(2) of this section.

(b) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation;

(2) Operation of private cars, including business/office cars and circus trains; or

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system.

§ 239.5 Preemptive effect.

Under 49 U.S.C. 20106 [formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)], issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce.

§ 239.7 Definitions.

As used in this part—

Adjacent rail modes of transportation includes other railroads, trolleys, light rail, and heavy transit.

Crewmember means a person, other than a passenger, who performs either:

(1) On-board functions connected with the movement of the train or

(2) On-board service.

Control center means a central location on a railroad with responsibility for directing the safe movement of trains.

Division headquarters means the location designated by the railroad where a high-level operating manager (e.g., a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency or emergency situation means an unexpected event related to the operation of passenger train service involving a significant threat to the safety or health of one or more persons requiring immediate action.

Emergency preparedness plan means one or more documents focusing on preparedness and response in dealing with a passenger train emergency.

Emergency responder means a qualified member of a police or fire department, or other organization involved with public safety, who responds to a passenger train emergency.

Emergency window means that segment of a side facing glazing location which has been designed to permit rapid and easy removal in an emergency situation.

Joint operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of:

(1) Contractual arrangements between the railroads;

(2) Order of a governmental agency or a court of law; or

(3) Any other legally binding directive.

Passenger train service means the transportation of persons (other than employees, contractors, or persons riding equipment to observe or monitor railroad operations) by railroad in intercity passenger service, commuter, or other short-haul passenger service.

Private car means a rail passenger car used to transport non-revenue passengers on an occasional contractual basis, and includes business/office cars and circus trains.

Qualified means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

Railroad means:

(1) Any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul rail 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

(ii) 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 and

(2) A person that provides railroad transportation, whether directly or by contracting out operation of the railroad to another person.

Railroad officer means any supervisory employee of a railroad.

System headquarters means the location designated by the railroad as the general office for the railroad system.

§ 239.9 Responsibility for compliance.

Although the requirements of this part are stated in terms of the duty of a railroad, when any person, including a contractor for a railroad, performs any function required by this part, that person (whether or not a railroad) is required to perform that function in accordance with this part.

§ 239.11 Penalties.

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311 (formerly codified in 45 U.S.C. 438(e)) for knowingly and willfully falsifying reports required by this part. Appendix A contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Specific Requirements

§ 239.101 Emergency preparedness plan.

(a) Each railroad to which this part applies shall adopt and comply with written emergency preparedness plan procedures for implementing each plan element, including those listed below.

(1) *Communication.* (i) *Initial and on-board notification.* An on-board crewmember shall quickly and accurately assess the passenger train emergency situation and then notify the control center as soon as practicable by the quickest available means. The train crewmember shall then inform the passengers about the nature of the emergency and indicate what corrective countermeasures are in progress.

(ii) *Notifications by control center.* The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred. Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) *Employee training and qualification.* (i) *On-board personnel.* The railroad's emergency preparedness plan shall address individual employee

responsibilities, and provide for initial and periodic training at least once every two years on the applicable plan provisions, including, as a minimum:

(A) Rail equipment familiarization;
(B) Situational awareness;
(C) Passenger evacuation;
(D) Coordination of functions; and
(E) ''Hands-on'' instruction concerning the location, function, and operation of on-board emergency equipment.

(ii) *Control center personnel.* The railroad's emergency preparedness plan shall require initial and periodic training at least once every two years of responsible control center personnel on appropriate courses of action for each potential emergency situation.

(iii) *Testing of on-board and control center personnel.* A railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan. The testing methods selected by the railroad shall be:

(A) Designed to accurately measure an individual employee's knowledge of his or her responsibilities under the plan;

(B) Objective in nature;

(C) Administered in written form; and

(D) Conducted without reference to open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(iv) *On-board staffing.* Each passenger train shall have a minimum of one on-board crewmember who is qualified under the applicable emergency preparedness plan's provisions.

(3) *Joint operations.* (i) Each freight railroad hosting passenger train service shall have an emergency preparedness plan addressing its specific responsibilities consistent with this part.

(ii) Each railroad that operates passenger train service over the line of a freight railroad shall coordinate the applicable portions of its emergency preparedness plan with the corresponding portions of the freight railroad's emergency preparedness plan, to ensure that an optimum level of preparedness is achieved. Nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part among those railroads through a joint operating agreement or other binding contract. However, the assignor shall not be relieved of responsibility for compliance with this part.

(4) *Special circumstances.* (i) *Tunnels.* When applicable, the railroad's emergency preparedness plan shall reflect readiness procedures designed to ensure passenger safety in an emergency situation occurring in a tunnel of 1,000 feet or more in length. The railroad's emergency preparedness plan shall address, as a minimum, availability of emergency lighting, access to emergency evacuation exits, benchwall readiness, ladders for detraining, effective radio or other communication between on-board crewmembers and the control center, and options for assistance from other trains.

(ii) *Other operating considerations.* When applicable, the railroad's emergency preparedness plan shall address passenger train emergency procedures involving operations on elevated structures, including drawbridges, and in electrified territory.

(iii) *Parallel operations.* When applicable, the railroad's emergency preparedness plan shall provide for coordination of emergency efforts where adjacent rail modes of transportation run parallel to either the passenger railroad or freight railroad hosting passenger operations.

(5) *Liaison with emergency responders.* Each railroad to which this part applies shall establish and maintain a working relationship with the on-line emergency responders by, as a minimum:

(i) Distributing applicable portions of its current emergency preparedness plan at least once every three years, or whenever the railroad materially changes its plan in a manner that could reasonably be expected to affect the railroad's interface with the on-line emergency responders, whichever occurs earlier, including documentation concerning the railroad's equipment and the physical characteristics of its line, necessary maps, and the names and telephone numbers of relevant railroad officers to contact;

(ii) Maintaining an awareness of each emergency responders' capabilities; and

(iii) Inviting emergency responders to participate in emergency simulations, including tabletop exercises.

(6) *On-board emergency equipment.* (i) *General.* Each railroad's emergency preparedness plan shall designate the types of on-board emergency equipment and indicate their location(s) on each passenger car. This equipment shall include, at a minimum:

(A) One fire extinguisher per passenger car;

(B) One pry bar per passenger car; and

(C) One flashlight per on-board crewmember.

(ii) *On-board emergency lighting.* Consistent with the requirements of 49 CFR Part 238, auxiliary portable lighting must be accessible.

(iii) *Maintenance.* Each railroad's emergency preparedness plan shall provide for scheduled maintenance and replacement of on-board emergency equipment and lighting.

(7) *Passenger safety information.* (i) *General.* Each railroad's emergency preparedness plan shall provide for passenger awareness of emergency procedures, to enable passengers to respond properly during an emergency.

(ii) *Passenger awareness program activities.* Each railroad shall conspicuously and legibly post emergency instructions inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards) and shall utilize one or more of the following additional methods to provide safety awareness information:

(A) On-board announcements;
(B) Laminated wallet cards;
(C) Ticket envelopes;
(D) Timetables;
(E) Station signs or video monitors;
(F) Public service announcements; or
(G) Seat drops.

(iii) *Passenger surveys.* Each railroad shall survey representative samples of passengers at least once during each calendar year to determine the effectiveness of its passenger awareness program activities, and shall improve its program, as appropriate, in accordance with the information developed.

(A) The survey shall be designed to examine passenger awareness of the location(s) on the passenger car of the available safety information and verify passenger knowledge of the safety procedures to be followed in the event of an emergency.

(B) The railroad shall inform each surveyed passenger that completion of the survey is strictly voluntary.

(C) Each railroad shall maintain records of its passenger surveys at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

(b) [Reserved]

§ 239.103 Passenger train emergency simulations.

(a) *General.* Each railroad operating passenger train service shall conduct emergency simulations, either full-scale or tabletop exercises, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations.

(b) *Frequency of the emergency simulations.* Each railroad that provides commuter or other short-haul passenger train service shall conduct a sufficient number of emergency simulations so that each major line will be included at least once during every two calendar years and the number of simulations performed during any given calendar year will include at least 50 percent of the total number of major lines. Each railroad that provides intercity passenger train service shall conduct at least two emergency simulations during each calendar year for each business unit or other major organizational element.

(c) *Definition.* As used in this section, in the case of a railroad that provides commuter or other short-haul passenger train service, *major line* includes each principal route and its branches.

(d) *Actual emergency situations.* Provided that a railroad conducts a debriefing and critique session meeting the requirements of § 239.105 of this subpart, a railroad may count the activation of its emergency preparedness plan during an actual emergency situation toward the minimum number of simulations required under this section. However, a railroad may substitute the activation of its emergency preparedness plan to satisfy no more than 50 percent of the total number of simulations required under this section.

§ 239.105 Debriefing and critique.

(a) *General.* Each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or simulation to determine the effectiveness of its emergency preparedness plan, and shall improve and/or amend its plan, as appropriate, in accordance with the information developed.

(b) *Purpose of debriefing and critique information.* The debriefing and critique session shall be designed to determine, at a minimum:

(1) Whether the on-board communications equipment functioned properly;

(2) The elapsed time between the occurrence of the emergency situation or simulation and notification to the emergency responders involved;

(3) Whether the control center promptly initiated the required notifications;

(4) How quickly and effectively the emergency responders responded after notification; and

(5) The efficiency of passenger egress from the car through the emergency exits.

(c) *Records.* Each railroad shall maintain records of its debriefing and critique sessions at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.107 Emergency exits.

(a) *Marking.* Each railroad operating passenger train service shall ensure that each of the following occur.

(1) All door exits intended for emergency egress are either lighted or conspicuously and legibly marked with luminescent material on the inside of the car. Each railroad shall post clear and understandable instructions at or near such exits.

(2) All door exits intended for emergency access by emergency responders for extrication of passengers are marked with retroreflective material. Each railroad shall post clear and understandable instructions at each such door.

(b) *Inspection, maintenance, and repair.* Consistent with the requirements of part 223 of this chapter, each railroad operating passenger train service shall provide for scheduled inspection, maintenance, and repair of emergency window and door exits. Each railroad shall test a representative sample of emergency window exits on its cars at least once every 180 days to verify their proper operation, and shall repair a defective unit before returning the car to service.

(c) *Records.* Each railroad operating passenger service shall maintain records of its inspection, maintenance, and repair of emergency window and door exits at its system headquarters and applicable division headquarters. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing.* Each railroad to which this part applies shall file one copy of its emergency preparedness plan with the Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, not more than 180 days after (the effective date of the final rule), or not less than 90 days prior to commencing passenger operations, whichever is later. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the plan, and shall include a summary of the railroad's analysis supporting each plan element and describing how each condition on the railroad's property is addressed in the plan. Each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA not less than 60 days prior to the proposed effective date.

(b) *Approval.* (1) Within 180 days of receipt of each initial plan, and within 60 days in the case of a railroad commencing or hosting passenger operations after the initial deadline for plan submissions, FRA will conduct a formal review of the emergency preparedness plan. FRA will then notify the primary railroad contact person of the results of the review, whether the emergency preparedness plan has been approved by FRA, and if not approved, the specific points in which the plan is deficient. If an emergency preparedness plan is not approved by FRA, the railroad shall amend its 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 approved.

(2) FRA will review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary railroad contact person 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. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) 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 railroad to which this part applies shall retain one copy of its emergency preparedness plan and one copy of each subsequent amendment to its emergency preparedness plan at its system and division headquarters, and shall make such records available to representatives of FRA 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 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 specify the name of the railroad officer who administered the test and the name of each employee tested. The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) These records shall be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA for inspection and copying during normal business hours.

§ 239.303 Electronic recordkeeping.

(a) 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:

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

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

(3) 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 FRA representatives;

(4) 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

(5) The railroad provides representatives of FRA with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

(b) [Reserved]

Appendix A to Part 239—Schedule of Civil Penalties [Reserved]

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Jolene M. Molitoris,

Federal Railroad Administrator.

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