



Memorandum

U.S. Department
of Transportation

**Federal Railroad
Administration**

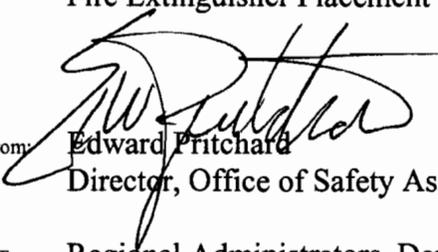
JUL 25 2007

Date:

Re: T 07-02

Subject: Application and Enforcement Guidance Related to Interpretation of Rule Provision Governing Fire Extinguisher Placement on New On-Track Roadway Maintenance Machines

From:


Edward Pritchard
Director, Office of Safety Assurance and Compliance

To:

Regional Administrators, Deputy Regional Administrators, Track Specialists and Inspectors

The Federal Railroad Administration (FRA) has received some recent inquiries concerning the proper placement of fire extinguishers on new on-track roadway maintenance machines pursuant to the requirements in 49 CFR §§ 214.507 and 214.527. This letter is meant to provide clarification and guidance on the intent of those provisions.

Section 214.507(a)(7) requires that each new on-track roadway maintenance machine be equipped with “[a]n operative and properly charged fire extinguisher of 5 BC rating or higher which is securely mounted and readily accessible to the operator from the operator’s work station.” (Emphasis added.) The preamble to the July 2003 final rule (“final rule”) further explains the intent of this provision:

The fire extinguisher required by this section must be operative and properly charged, securely mounted near the operator’s work station, and designed with a rating of 5 BC or higher. A fire extinguisher with a “BC” rating is suitable to combat fires generated by flammable liquids or electrical equipment. The “5” designation indicates the extinguisher’s volume and fire-fighting capacity. A requirement of a 5 BC rating is consistent with workplace standards in other industries.

68 FR 44388, 44395 (July 28, 2003)(Emphasis added).

The term “accessible” is defined by Merriam-Webster’s Collegiate Dictionary (10th ed. 1996, def. 2a) as “capable of being reached” and also “being within reach.” Thus, the requirement to have the fire extinguisher mounted near the operator’s work station (as discussed in the preamble) and readily accessible would mean that the fire extinguisher would effectively need to be within arm’s length or within easy reach of the operator from the operator’s work station. It should be noted that, while § 214.507(a) also requires that a first aid kit be “readily accessible,” the phrase “from the

operator's work station" was added only to the fire extinguisher requirement, indicating the importance of having the fire extinguisher within the operator's reach. The operator's work station is the location at which the operator of the machine would normally sit or stand while operating the machine. In vehicles with enclosed cabs, a fire extinguisher that is placed inside the cab would normally be considered compliant. For example, if the fire extinguisher were placed in such a position that the operator would need to stand up and/or walk a couple of steps to access it, this placement would be permissible so long as the operator did not need to exit the vehicle (or access the outside of the vehicle) to do so. The main purpose of the requirement for a fire extinguisher is to protect the operator and ensure his or her safe exit from the vehicle; the placement of the fire extinguisher on the outside of the vehicle, even if nearby, would defeat this safety purpose. The smaller, 5 BC fire extinguisher, was selected, as the minimum, in part, to accommodate those operator work station areas with little space for a full-sized fire extinguisher.

The above language can be contrasted with the "schedule for repairs" provision for missing, defective, or discharged fire extinguishers found in § 214.527(c)(3):

A fire extinguisher readily available for use may temporarily replace a missing, defective or discharged fire extinguisher on a new on-track roadway maintenance machine for a period not exceeding 7 calendar days, pending the permanent replacement or repair of the missing, defective or used fire extinguisher[.]

(Emphasis added). With respect to this section, the preamble to the final rule provides that "[a] temporary, portable fire extinguisher that is readily available for use" may serve as a replacement "for no more than seven calendar days, after which time the permanent fire extinguisher must be repaired or replaced." See 68 FR 44403. A portable fire extinguisher would not need to be securely mounted and would not need to be readily accessible from the operator's work station; rather, it would only need to be readily available for use, presumably by another employee that is attempting to aid the operator in escaping from the vehicle. Thus, under this limited exception, the fire extinguisher may be located outside of the operator's work station area for up to seven days. This would be consistent with how the term "available" is defined by Merriam-Webster's Collegiate Dictionary (10th ed. 1996, def. 3), since a fire extinguisher located on the outside of a machine (e.g., in the back flatbed area) would be considered "present or ready for immediate use."

As indicated by the above, the terms readily accessible (as used in § 214.507) and readily available (as used in § 214.527) have distinctly different meanings in the application of the regulation. That this distinction was deliberate was further evidenced in the final rule when FRA declined to change the words "readily accessible" in § 214.507 to "readily available" in response to a comment made by Transtar on the NPRM. See 68 FR 44395. It should be noted that FRA reviewed Transtar's comment with the Task Group before making its decision. The Task Group, which included representation from all interested parties, recommended that FRA decline this change, and FRA agreed with this recommendation. See *id.*

In our ongoing effort for consistency, we should continue to approach enforcement of these provisions consistent with this interpretation in a manner that will ensure a thorough understanding by the railroad industry. Initially, our foremost objective should be one of guidance and education to personnel affected by the regulations. For railroads that have been proceeding under a different understanding of the regulation, some time will obviously be required for them to adjust to this interpretation. While the process of adjustment is underway, and to the extent it is clear that the railroad is making the appropriate response, it will serve little purpose to spend time documenting large numbers of deviations from the regulation as interpreted.

After a reasonable period has been provided for adjustment, we will apply the regulation as any other regulation would be applied. The FRA policy on enforcement discretion remains as it has been. When conditions of noncompliance are identified, an accurate record of such conditions should be made on an inspection report (*i.e.*, citing deficiencies). Determining an appropriate level of enforcement action may require that various factors be considered regarding whether such conditions merit civil penalty recommendations. These factors include the inherent seriousness of the condition or action, a railroad's normal or general intent to comply with relevant regulations, and the degree of potential safety hazard a condition or action poses. (*See* 49 CFR Part 209, Appendix A.)

This memorandum is based on consultation with FRA's Office of Chief Counsel. Anyone desiring a formal legal interpretation on any issues discussed in this memorandum should contact that office.

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