

Chapter 3

Enforcement Actions

General

A Motive Power & Equipment Inspector is not required to initiate formal enforcement proceedings each time a non-complying condition is discovered. To achieve compliance the Inspector has a choice of options:

- # Verbal Repair Order. The **Locomotive Inspection Act** Sec. 9. (February 17, 1911, April 22, 1940.) (45 U.S.C., § 34.), in part, provides.

That any common carrierviolating this Act or any rule or regulation made under its provision or any lawful order of any Inspector shall be liable to penalty. . . . (emphasis added)

The Locomotive Inspection Act does not say that the lawful order has to be written; therefore a verbal order to correct a non-complying condition on a **locomotive** is legally binding.

A record will be retained by the Inspector when a verbal order is issued to achieve compliance. This could be as simple as a note in the Inspector's notebook. If a follow-up inspection reveals non-compliance of the verbal order, the documented record can be referenced in a written report, violation, or individual liability.

- # Exception. Documenting the non-complying condition on the proper form and requiring only that the condition be corrected before using the equipment.
- # Violation. Used in conjunction with the requirements of an exception, a monetary penalty violation can be issued against the carrier.
- # Special Notice for Repairs. Used in conjunction with the requirements of issuing a penalty violation, equipment not in compliance with 49 CFR Parts 215, 229, 230, or 238 can be removed from service until it is in compliance. *See 49 CFR 216.*
- # Individual Liability. Action can be taken against individuals in conjunction with the requirements of an exception and, with or without, issuing a violation or special notice for repairs against the carrier. This topic is discussed extensively later in this manual.

Federal Railroad Administration

Determining When and What Enforcement Action is Necessary

FRA does not have to take a formal enforcement action every time it discovers or learns of a deviation from the Federal railroad safety laws or regulations. FRA has enforcement discretion. FRA can choose which cases to pursue based on resources and on what it believes to be the best method of promoting compliance. Moreover, when FRA decides that enforcement action is called for, it has a range of enforcement tools (discussed below) and has the authority to choose those best suited to the circumstances. One of these tools (the emergency order) can be used to address an immediate hazard, even if no existing law has been violated.

The existence of this broad enforcement discretion concerning when and what enforcement action is necessary calls for general guidelines to ensure effectiveness, fairness, and an acceptable level of consistency in the exercise of this discretion. The purpose of the guidelines is not to dictate absolutely identical treatment of identical situations. That would be an unrealistic ideal based on the false assumption that each of the many variables going into an enforcement decision could be objectively and accurately quantified. Instead, the purpose of these guidelines is to control the necessarily subjective elements of this process, as much as is feasible, by requiring that those making enforcement decisions weigh the same factors and make full use of objective information bearing on those factors. In this way, the appropriate enforcement tool is applied, responsible discretionary judgements are made, and an acceptable level of consistency in similar situations is achieved. Application of these factors should preclude abuses of discretion such as basing enforcement decisions on personal bias.

FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws (49 CFR Part 209, Appendix A) stresses that discretion is exercised at the field and regional levels. Although Inspectors make the initial determination on the need for enforcement action, regional personnel play an active role in reviewing those determinations with an eye toward effectiveness and consistency. Inspectors should periodically access the FRA secure website to review and analyze relevant data to support enforcement actions. The Specialists should periodically analyze relevant data on accidents, incidents and inspections to detect patterns or problem areas at the regional level and communicate this information to the appropriate Inspector(s). This information should be used not only to decide where to inspect but is also used to decide when and what enforcement action is necessary. Office of Safety headquarters personnel are responsible for spotting national trends in the data that require enforcement action, and for providing guidance to the regions on difficult enforcement policy issues.

FRA's policy statement sets forth seven factors to be considered in making enforcement decisions. The following discussion is intended to describe the thought process that should go into weighing each factor.

Motive Power and Equipment Compliance Manual

1. **The Inherent Seriousness of the Condition or Action.** In the abstract (i.e., when the immediate circumstances are not considered), every violation is more or less severe than others. For example, a freight car wheel that is loose on the axle is far more serious than a freight car with a missing reporting mark. The inherent severity of some defects are to some extent, reflected in FRA's schedule of civil penalties. For example, a wheel flange height of 1 ½ inches or greater, but less than 1 ⅞ inches has a civil penalty of \$2500. However, a wheel flange height of 1 ⅞ inches or more has a civil penalty of \$5000.

This factor is very hard to apply between disciplines because the Inspectors and Specialists are not cross-trained in the various disciplines. Thus, inherent seriousness will usually be considered as a relative matter within each discipline. This is where regional and headquarters Specialists can play a significant role in explaining the relative severity of the various violations. Special care should be taken to keep the Inspectors aware of any specific types of violations which are filed in areas that are known to cause an increasing proportion of accidents, so that the Inspector can focus on those violations as possible enforcement actions.

Moreover, a violation which creates a relatively minor safety hazard is not automatically excluded from candidacy for enforcement. If that were true, some portions of the law would never be enforced, which is unacceptable. Only when all of the criteria have been considered, can a decision be made. Nevertheless, consideration of the inherent seriousness of a violation is a good place to begin. If the other factors do not point toward enforcement action, a violation that creates a relatively minor safety hazard is a poor candidate for enforcement action, as it is likely to produce little safety benefit in return for the FRA resource expended on the enforcement activity.

2. **The Kind and Degree of the Potential Safety Hazard a Condition or Action Poses in Light of the Immediate Factual Situation.** While the first factor focuses on seriousness in the abstract, this factor focuses on the potential for injury or property damage posed by the violation in the context of the actual facts. For example, a broken freight car wheel is inherently serious but may pose a lower safety hazard if found on an inbound inspection at a major repair point where FRA is confident repairs will be made. Conversely, record keeping may not result in enforcement action because the safety hazard posed is usually remote. Yet compliance with record keeping rules is vital to FRA's ability to enforce many other rules and regulations. Therefore, a conclusion that lower safety hazard was caused by a violation does not automatically rule out the need for enforcement action.
3. **Any Actual Harm to Persons or Property Already Caused by the Condition or Action.** The ultimate goal of our regulatory and enforcement programs is to prevent death or injury to persons or damage to property caused by unsafe behavior. Where a violation of the railroad safety laws has actually caused or contributed to the severity of such actual harm, there is every reason to take

Federal Railroad Administration

enforcement action and it should be taken in every such instance.

The violation report itself must document the link between the violation and the harm. For example, if a train crew member is killed while dismounting equipment and post-accident investigation analysis reveals an improperly applied sill step, a direct cause and effect may be easy to establish. The violation need not have been the sole or primary cause, and need not to have been a cause at all if it contributed to the severity of the harm. For example, if the locomotive engineer was under the influence of a controlled substance, which impaired his/her ability to properly perform assigned duties and a train runs by a red signal causing a collision, the cause of the accident is running by the signal. However, the cause is mitigated by the individual's impairment. To simply say a violation and some actual harm coincided (e.g., a handhold on a car with insufficient clearance is discovered in a train involved in a fatal accident, but the defect played no apparent role in the accident's cause or severity) will not suffice. If no relationship between the violation and the harm can be shown, the violation may still be a strong candidate for enforcement, but not based on consideration of this factor. A violation report in such a case must explain the extent of the injuries. These cases are inherently strong candidates for extraordinary penalties so the report should provide information necessary to support such a claim.

4. **The Offending Party's General Level of Current Compliance as Revealed by the Inspection as a Whole.** Most FRA inspections or investigations entail observation of more than one event or piece of equipment. This enables the Inspector to draw a conclusion about the railroad's general level of compliance at the current time. At one end of the spectrum, this factor could lead the Inspector to conclude that a violation is merely an aberration and enforcement action is not needed to encourage compliance. At the other end of the spectrum, violations may be so common that enforcement action, perhaps even an extraordinary remedy such as an emergency order if the violations are serious enough, is obviously in order.

Ordinarily, of course, the facts will be somewhere in between, requiring the Inspector to balance this factor against the seriousness of the violations and other factors. For example, an equipment Inspector might inspect one hundred cars in one day and find very few defective conditions. So the Inspector might conclude the company's current compliance efforts are generally good and decide that enforcement action is unnecessary or is necessary only on the serious violations found. On the other hand, the inspection might reveal a multitude of violations that, even though not serious in relative terms, indicate a very poor compliance program on the part of the company. This could lead the Inspector to recommend enforcement action on some or all of the violations discovered.

5. **The Party's Recent History of Compliance with the Relevant Set of Regulations, Especially at the Specific Location or Division of the Railroad Involved.** A company's (or individual's) historical record of compliance is an important factor to be weighed. This is an

Motive Power and Equipment Compliance Manual

important area where Office of Safety Headquarters and the Regional Specialists will help the Inspectors sift through the data for important indicators. The Inspectors, of course, form their own impressions about companies and specific locations based on experience, but national and regional analyses of the data should help the Inspector determine problem areas. The Inspector who is forearmed with national and/or regional data on that inspection point, along with SACP data, will be better prepared to narrow the focus of the inspection process and take appropriate enforcement action based upon the facts and history of compliance on a broader scale.

This factor is aimed primarily at either spotting patterns of noncompliance that might not be apparent from a single, isolated inspection point or patterns of good compliance that might temper an Inspector's reaction to an otherwise unsatisfactory inspection. Although the consideration of this factor should be based on the available data, there is no rigid prescription for which data to include in the decision process. Generally, the older the information, the less useful it is (noncompliance four years before the inspection is not very meaningful). The more specific and current the information, the more useful it is (e.g., a clustering of violations of a particular regulation over time may indicate the need for aggressive enforcement, especially if serious).

Focusing the review of the historical data at a particular facility is the best approach. If one facility or division manages to achieve a very high level of compliance as compared to the rest of the company or the industry, generally that argues for rewarding such efforts by limiting punitive enforcement actions to the most serious issues. On the other hand, if one facility is clearly out of line in terms of historical and current compliance, that argues for taking enforcement action on less serious items in order to increase the deterrent effect. Spotting broader trends in data (e.g., a particular railroad's frequent noncompliance with the periodic single car test requirements) that may have a systemic cause is the responsibility of the regional and headquarters Specialists. Collaboratively, they can develop strategies, leveraging FRA's resources to achieve compliance.

6. **Which Enforcement Remedy is Most Appropriate Under the Circumstances.** FRA has more than two options (civil penalty against the company or a warning) available when it detects noncompliance. Civil penalties and/or disqualification actions against individuals are one option. Emergency orders, compliance orders, and injunctions are also a possibility. In several areas, the Inspector may issue a special notice for repairs, immediately removing the equipment or track from service. See 49 CFR Part 216. A combination of these options (e.g., a special notice and a civil penalty) may be the best way to ensure safety and compliance.

7. **Such Other Factors as the Immediate Circumstances Make Relevant.** The foregoing list is not all-inclusive; specific situations may involve specific facts that do not fall under any of those headings but need to be figured into the decision of whether to take enforcement action. Perhaps the most common of these additional factors is the violator's culpability, i.e., the relative degree of

Federal Railroad Administration

blameworthiness. Most of the railroad safety laws do not make a person's mental state an element that FRA must prove to establish a violation. Most of those laws provide for strict liability, *i.e.*, if the violation occurred the offender may be penalized whether its actions were purposeful or accidental. In some areas, however, FRA must prove a certain level of knowledge in order to assess a penalty. In hazardous material cases, FRA must establish the violations were committed "knowingly." In civil penalty cases against individuals, FRA must establish the violation was committed "willfully." In track cases, FRA must establish the violator knew or had notice of the noncomplying conditions.

Even where the law does not require FRA to establish the offender's mental state, culpability is a factor that should be considered in deciding whether to take enforcement action. For example, the violation may have been the result of good faith misunderstanding of the relevant law, which often happens when a regulation is brand new or inherently ambiguous. Unless the violation is very serious, enforcement action would ordinarily not be appropriate where there is solid evidence that such good faith mistake was actually the cause. Such good faith mistakes, which imply an honest attempt to know and obey the law, should not be confused with simple ignorance of the law resulting from failure to attempt to know.

Culpability is also lower where the violation is discovered on the property of one company that has not had a reasonable opportunity to correct it but the violation was clearly more attributable to another company. For example, this may be true with regard to an equipment defect where the receiving railroad has hauled the car only a short distance from the interchange to a major repair point and FRA is confident, based on its experience at that location, that the violation would have been caught and corrected by the receiving railroad even had FRA not been present. There, the better candidate for enforcement action would be the delivering railroad if the evidence indicated that the defect was present when the railroad delivered the car. Likewise, where a placarded tank car is found on a railroad property with loose fittings that could not be observed from the ground and with no evidence of a leak, the culpable party is nearly always the car's offeror. The offeror had the primary responsibility to ensure all closures on a car are secured in such a manner as to remain secured under normal operating conditions. To get at the root cause of the problem, the violation should be taken against the offeror (unless there is some evidence of vandalism or extremely rough handling since the car left the offeror).

While lower culpability might tip the Inspector's discretion toward not taking enforcement action, very high culpability might have the opposite effect. For example, a clearly willful violation may warrant enforcement action even if isolated or not especially serious. Blatant disregard for the law even on relatively lesser matters may indicate an overall poor attitude toward compliance which could carry over to very serious matters. Where a violation is willful, FRA's penalty schedules provide for higher than normal penalties. If a willful penalty is recommended, the violation report

Motive Power and Equipment Compliance Manual

must explain the basis for concluding that willfulness (as defined in 49 CFR Part 209, Appendix A) was present. Willful penalties should not be recommended without support, as this will only slow the processing of the violation report.

Inspectors and regional personnel are not expected to spend hours deliberating about every possible enforcement action. Instead, these guidelines are intended to provide a framework for enforcement personnel to incorporate into their entire approach to enforcement so these factors are weighed quickly and effortlessly in most situations. Of course, the time spent weighing these factors should correspond to the seriousness of the situation. Application of these factors should produce positive results: (1) enforcement should be more effective because Inspectors should be better able to recommend the enforcement action appropriate to the circumstances; (2) enforcement should be more fair because enforcement decisions will not be made on the basis of inappropriate factors; and (3) enforcement should be more consistent because it will be to some extent guided by empirical compliance data and by the application of criteria which should minimize the arbitrariness of necessarily subjective judgments.

Enforcement Actions Against Individuals

1. **General Principles.** Motive Power & Equipment individual liability cases will be addressed pursuant to 49 CFR Part 209, Appendix A.

Before taking enforcement action against an individual, the Inspector will determine from the totality of the facts and circumstances whether actual knowledge or reckless disregard for the regulation existed. The more clear-cut example occurs when the act in violation was committed by or at the direction of the individual following a specific warning from an FRA Inspector to that individual that such an act would be a violation of Federal law. However, that is not the only possible situation which establishes individual liability. The Inspector will investigate to gather all relevant information, and determine from that information if the criteria for individual culpability can be met. **Remember, never threaten a person with an individual liability enforcement action.** Any recommendation for individual enforcement action shall be thoroughly discussed with the appropriate regional supervisor and/or HQ personnel prior to any action being taken.

2. **Decision to Issue a Regional Level Warning.** When an Inspector determines that an individual should be issued a regional level warning for a violation, the Inspector shall orally advise the individual of the facts, including the fact that the Inspector intends to recommend that a written warning notice be issued to the individual. This will ensure that the individual immediately knows that he/she has performed an unlawful act and should not do it again. The circumstances, including the time of the violation and the time the individual was so notified, shall be carefully noted by the Inspector.

Federal Railroad Administration

As soon as practicable, the Inspector will contact his/her Regional Specialist, who will arrange a conference call with the Regional Administrator or regional staff member delegated by the Administrator or regional staff member delegated by the Administrator. If the Specialist is not available, the Inspector shall directly contact the Regional Administrator.

If the facts support at least the issuance of a regional level warning against the individual, the Inspector will submit a completed F6181.80 to the Regional Administrator, making sure to check item 4 "NO" to indicate that no formal enforcement action will be recommended. The Regional Director will then co-sign the form and mail the original (first copy) to the individual by registered mail. Further, the Regional Administrator will insert the region's sequential calendar year report number (e.g., 3-90-1) in the space provided in the upper right corner on the copies only and will mail the appropriate copy to RRS-1 in an individual envelope with "F6180.80" marked on the outside, mail the "Employer" copy to the individual's employer, and retain the appropriate copy in the secure regional file.

Note: If it is subsequently determined that no violation occurred, the Inspector will contact the individual and discuss the circumstances that led to the verbal warning and explain why the warning was not valid.

3. **Decision to Recommend a Formal Warning Letter or Assessment of a Civil Penalty.** When an Inspector, or Regional Administrator, determines that an individual should be issued a warning letter from the Office of Chief Counsel or assessed a penalty, the Inspector shall orally advise the individual of the circumstances surrounding the violation, including the fact that the Inspector intends to recommend formal enforcement action against the individual. This will ensure the individual immediately knows he/she has performed an unlawful act. The circumstances, including the time of the violation and time the individual was notified, shall be carefully noted by the Inspector.

As soon as practicable, the Inspector shall contact his/her Regional Specialist, who will arrange a conference call with the Regional Administrator or regional staff member delegated by the Administrator. If the Specialist is not available, the Inspector shall directly contact the Regional Administrator.

The Regional Administrator will contact the Director of Safety Assurance and Compliance, and the Assistant Chief Counsel for Safety and advise them of the circumstances. When headquarters concurs in the need and basis for formal enforcement action, the Inspector will submit a completed F6180.80 (checking Item 4 "Yes") and a narrative memorandum detailing the facts to the Regional Administrator, which should show as its subject: "Violation Report concerning (fill in individuals name) with a recommendation for (fill in with formal warning letter or penalty)." The memorandum

Motive Power and Equipment Compliance Manual

must specifically address each element necessary to make a case against an individual in the format prescribed in Chapter 5. The Regional Administrator will co-sign the F6180.80 and mail the original to the individual by registered mail. The Regional Administrator will insert the region's sequential calendar year number in the space provided in the upper right corner on the copies.

The appropriate copy of the F6180.80 and the original and one copy of the memorandum and any attachments, shall be forwarded to the Assistant Chief Counsel for Safety, RCC-10, for further action. (Do not use violation report transmittal form FRA 6180.72 for this transmission or include these documents in any envelope with unrelated violation reports against railroads or offerors.) The appropriate copy of the F6180.80 and a copy of the memorandum shall be forwarded to RRS-1 in an individual envelope with "F6180.80" marked on the outside, and the appropriate copy shall be retained in the secure regional file. The "Employer" Copy will be mailed to the individual's employer.

4. **Preparation of Civil Penalty or Action Against Individuals.** In any violation report recommending assessment of a civil penalty or issuance of an RCC warning letter, the FRA Inspector must address the following subjects under separate headings in a separate narrative memorandum:

Factual Details. All factual details of the violation(s) must be explained, with specific references to sources of proof if other than the Inspector's own observations. The Violation Report (Form FRA F6180.67) should not be submitted but should provide some assistance as a guide to the basic facts that must be explained.

Severity of the Violation(s). The memorandum should describe in detail any harm (e.g. derailment, personal injury, leakage and/or evacuation) that resulted from the violation or was seriously threatened by the violation. Any aggravation of the offense caused by the degree of the violation should be discussed here.

Culpability of the Individual. Keep in mind that a civil penalty may be assessed against an individual only if that individual has actual knowledge of the law or acts in reckless disregard of legal requirements. This section should address four factors:

1. **Knowledge of the facts.** The memo should explain whether the individual, with regard to each alleged violation, actually knew or had a duty to know of each fact constituting the violation. If actual knowledge (e.g. broken safety appliance, non-complying wheel) is alleged, explain what supports that allegation (e.g. a crewman's conversation with a yardmaster in which the crewman pointed out the defect). An admission of knowledge is not necessary, but there must be sufficient information from which the reasonable inference can be drawn that the individual knew of the facts.

Federal Railroad Administration

If the allegation of violation consists of a failure to meet a duty to know the facts, explain the basis for concluding that the person had the duty and failed to meet it (e.g. an employee assigned to conduct an inspection under Part 215, 229, or 232 does not fully complete his/her task and fails to discover obvious defects).

2. **Knowledge of the law.** This section should explain what the individual knew of the particular law allegedly violated: Had it been discussed with FRA prior to the incident? Had the person been trained on the particular law or corresponding railroad or offeror rules? Is the requirement of the law so fundamental to safe transportation that any violation of the law should be seen as reckless disregard of the law?

3. **Compliance history.** This section should address any previous enforcement actions against or warnings (even informal) given to the individual concerning compliance with the particular requirement(s) now violated or other railroad safety laws, and any railroad disciplinary record relevant to compliance with safety requirements.

4. **Mitigating factors** (if any). In some situations certain factors will be present that tend to lessen the severity of the violation or the culpability of the individual (e.g. the requirement was new and the individual had not been fully trained on it). These factors should be addressed in fairness to the individual.

Recommendation. This section will briefly state the Inspector's recommendation as to whether a RCC warning letter or civil penalty is appropriate. (Disqualification is not an option for hazardous materials violations.)

Note: The Inspector should keep in mind that he/she may be called on to testify under oath concerning each and every allegation in the report, either before an administrative law judge or in Federal district court. As with any violation report, great care must be taken to substantiate all assertions, but this is especially true where, as here, the individual's livelihood is at stake.¹

Privacy Act Restrictions

The Privacy Act makes individuals, including FRA employees, personally liable for unauthorized release of information from any "system of records" about individuals maintained by the Federal government. FRA has two systems of records (one kept by the Office of Safety, the other kept by the Office of Chief Counsel) concerning noncompliance with the railroad safety laws by

¹Requirements for testifying are found in 49 CFR Part 9.

Motive Power and Equipment Compliance Manual

individuals. Included in those systems are (i) information contained in a form 6180.80 notice concerning the individual to whom the notice is addressed or (ii) any other information contained in a "system of records" concerning the individual's noncompliance, such as a computer or paper file on a particular violation by an individual who is being investigated, warned, or cited for a penalty as an individual.

Agencies are, however, permitted to make certain disclosures from their Privacy Act systems of records when necessary to further certain "regular uses" if notice proposing such regular uses has been published in the Federal Register and a comment period has run. FRA has established the following regular uses for information contained in the Office of Safety Individual Enforcement Case System:

- To review these records to determine whether cases should be forwarded to the Office of the Chief Counsel for prosecution.
- To otherwise review these records to accomplish the mission of the Office of Safety.
- To disclose pertinent information in these records to any source from which additional information is requested in the course of conducting an investigation to the extent necessary to identify the purposes of the request and to identify the information requested.
- To provide notice of the investigation and its outcomes to the individual's employing railroad or offeror or another railroad related to the case through joint facilities or tracking rights in order to give those entities information they may need to assist in preventing a recurrence of noncompliance.
- To provide information concerning enforcement action for violations of safety statutes and regulations to government agencies and the regulated industry in order to provide them with information necessary to carry out their responsibilities.
- To provide information concerning actions for violations of safety statutes and regulations to the public in order to increase the deterrent effect of the actions and keep the public informed about how the laws are being enforced.

These regular uses provide regional personnel and field Inspectors sufficient flexibility to accomplish their mission without running afoul of the Privacy Act. For example, the third use clearly permits Inspectors to disclose information about individuals to any source from which additional information is requested in the course of conducting an investigation, to the extent necessary to identify the purpose of the information requested and identify the information requested. Ordinarily, only the

Federal Railroad Administration

fact that an investigation is being conducted and the name of the individual should be provided to the person from whom you are requesting information. The fourth regular use is what permits the regional office to send a copy of the 6180.80 notice to the individual's employing railroad or offeror.

However, in order to ensure that the regular uses are not misapplied or applied inconsistently, disclosure of information on individuals to those outside FRA other than the types of disclosures discussed in the preceding paragraph may not be made without prior approval from the Office of Safety Headquarters, which will consult with the Office of Chief Counsel on the propriety of any such disclosure. Moreover, certain rules on storage of records on individuals must be observed in order to comply with the Privacy Act.

Accordingly, Inspectors are not to maintain file copies of records about noncompliance of an individual after they have forwarded a notice concerning that individual to the region; instead, Inspectors will submit their file to the region. Regional Administrators will establish a secure file for all such records and will ensure that, except as discussed above, no information contained in this file is released without the authorization of Office of Safety Headquarters. Information submitted by the individual will be placed in that file along with the other pertinent records. The files will be stored in file cabinets that will be locked after working hours. Automated files will be password-protected and will be retrievable only by direct terminal access with the selection of the data elements determined by the authorized user. Manual (paper) records will be retained for a period of three years. Automated (computer) records will be maintained for five years. (Consult the Office of Chief Counsel prior to disposing of any records that may still be subject to an enforcement action.) Disposal will be by shredding, except that certain automated records will be retained indefinitely to provide complete compliance histories.

To avoid problems in this area, regional and field personnel should follow this general rule: except for sending the individual's employer its copy of the 6180.80 notice, do not disclose records about individuals to, or discuss information in those records with, anyone outside the agency as is necessary to complete the investigation and any resulting enforcement action or as specifically authorized by Office of Safety Headquarters.

Actions Against Railroads

Extraordinary measures to take action against railroads are available to properly address particularly serious and dangerous situations. These measures are addressed in 40 CFR Part 209, Appendix A, and include the following processes:

Motive Power and Equipment Compliance Manual

FRA Emergency Orders

- Under Section 203 of the Federal Railroad Safety Act of 1970, Emergency Orders may be issued by the Federal Railroad Administrator when he/she has determined, through testing, inspection, investigation, or research, that an unsafe condition or practice, or a combination of unsafe conditions or practices, creates an emergency situation involving hazard of death or injury to any person. The Administrator may impose such restrictions or prohibitions as may be necessary to correct the emergency situation.

Compliance Orders

- The Administrator is also authorized by Section 109(a) of the Hazardous Materials Transportation Act (HMTA) to issue compliance orders, *i.e.*, orders directing compliance with the regulations issued under HMTA. Procedures for issuance of such orders are found at 49 CFR Part 209.

Injunctions

- Section 111 of the HMTA authorizes the Administrator to seek injunctive relief from a court to redress violations of these regulations or any imminent hazard related to hazardous materials transportation by railroad. Note that, unlike civil penalties, this remedy is not confined to violations committed knowingly.