



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

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Reply to Att. of: MP&E 98-50

Subject: Movement of Defective Locomotives

From: Edward R. English
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To: Regional Administrators, Deputy Regional Administrators,
Motive Power & Equipment Specialists and Inspectors

Guidelines for enforcement of 49 CFR 229.9 (b), Continued use of locomotive developing en route non-complying condition.

Section 229.9 (b) allows for the continued use of a locomotive that develops an en route non-complying condition until the earlier of : (1) the next calendar day inspection, or (2) the nearest forward point where the repairs necessary to bring it into compliance can be made. Use of a locomotive under this provision is permitted only if the requirements of § 229.9(a) are fully met.

If the non-complying condition can be brought into compliance by shifting the position of the locomotive in the consist, the non complying condition should be rectified by doing so at the next forward location. This could be a siding, a wye, or any location where it is physically possible to reposition the locomotive. Railroad employees performing this task may do so if it does not endanger the safety of employees, locomotives or train. This location should not be construed or designated as a repair point.

Section 229.9(a)(1) requires that, "A qualified person shall determine - (i) That it is safe to move the locomotive; and (ii) The maximum speed and other restrictions necessary for safely conducting the movement." Difficulty in the interpretation and enforcement of Section 229.9 arises as this section does not provide guidance with respect to the criteria used to "qualify" a person to make the determination required above. The decisions to continue use of a non-complying locomotive in some cases are being made by persons not qualified to make these decisions. A person qualified to perform a daily inspection may not necessarily possess the qualifications to make the determination that it is safe to move a defective locomotive.

The qualified person must have demonstrated to the railroad, at a minimum, the

knowledge and ability to inspect locomotives and provide recommendations regarding the criteria listed in Section 229.9(a). This does not imply that the qualified person must possess intimate knowledge of and experience with all of the components and functions of a locomotive. Additionally, there are varying levels of qualified persons. As an example, a journeyman electrician may not have the necessary knowledge to make safety recommendations concerning locomotive running gear, however, that person should be qualified to address problems associated with the electric control apparatus.

Section 240.123 requires that each railroad provide for initial and continuing education of certified locomotive engineers to ensure that each engineer maintains the knowledge, skills, and ability with respect to (among other areas) the mechanical condition of equipment. As such, the locomotive engineer is considered qualified to provide safety recommendations concerning certain en route non-complying conditions. Normally, these conditions are limited to those which are evaluated during the calendar day inspection required by Section 229.21 such as headlights, speed indicators, cab seats, air brakes, wiper, and alerter malfunctions. The locomotive engineer would also be expected to identify certain obvious mechanical problems such as major wheel defects and some running gear problems. However, the engineer would not be expected to properly assess the safety implications of continued movement of the locomotive for most mechanical defects. In these cases, recommendations regarding the continued safe movement of a non-complying locomotive in accordance with 229.9(a)(1) need to be made by a person that is more qualified such as a mechanical department employee. These recommendations may be based on telephone or radio conversations between the engineer and the more qualified individual. If the non-complying condition cannot be resolved solely via voice communication, a qualified individual must conduct a physical on-site inspection to identify all appropriate restrictions for continued safe movement of the locomotive.

While it is the transportation/operating department that controls the daily operation of the railroad, operating personnel may not possess the qualifications and technical expertise to make safety recommendations regarding non-complying locomotives. When investigating an issue involving enforcement of 229.9, MP&E inspectors must carefully examine the qualifications of the individual who made the safety recommendations to determine if the railroad acted in compliance with the regulations.

A locomotive which develops a non-complying condition en route must be tagged before continued use is permitted in accordance with 229.9 (a) (3).

Certain non-complying conditions require a locomotive to be removed from the lead position at the first available location, but would not require it to be removed from service. Examples of such conditions include, but are not limited to: speed indicators, headlights, cab windows and audible warning devices. When conditions such as these exist, the railroad must, in order to be in compliance, remove the locomotive from the lead position. Inspectors must exercise sound judgement. For example, a defective cab heater during warm weather would not necessitate removal of the locomotive from the lead or controlling position. In the interest of safety, when a locomotive is repositioned from the lead position to correct a non-complying condition, the "non-complying locomotive tag" should remain attached to the locomotive until repairs are

made.

Guidelines for the movement of a locomotive beyond a repair location.

Part 229.9 is silent on the repair location question. It depends on the power penalty built into the regulation to convince the railroad to maintain the locomotive fleet. Movement of a lite or dead locomotive not only limits the power available but adds tonnage to the train.

Where an MP&E inspector has knowledge that a railroad permits locomotives which develop en route non-complying conditions to continue in service past mechanical facilities, he or she should investigate to determine that the requirements of Section 229.9 (a) are being complied with. If the inspector is made aware that a non-complying locomotive was moved beyond a forward repair location, that has previously demonstrated the ability to effect repairs of the non-complying condition, he or she must ensure that subject locomotive would no longer be used as a propelling or lead locomotive. There is no implication in 229.9 (b) that each repair location must be capable of repairing all en route non-complying conditions which could occur.

Guidelines for movement of a locomotive from one repair location to another repair location.

Part 229.9 allows a railroad to move a non-complying locomotive as a lite or dead locomotive to a more distant repair point of its choice provided it meets all other requirements of Section 229.9 and such action does not endanger the safety of employees, locomotives or train.

Guidelines for movement of a locomotive with power brake and or safety appliance defects.

Nothing in this section authorizes the movement of a locomotive with power brake or safety appliance defects. Such locomotives can only be moved under provisions of §20303 (Recodified § 13 of the Safety Appliance Acts).

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