

CHAPTER 4

Exceptions to the Standards

Introduction

The Track Safety Standards (TSS) contained in Title 49 CFR Part 213 are the minimum requirements for safe track and roadbed. The TSS contain many separate standards that must each be met by the railroad. If these standards are not met and train operations are permitted to continue without appropriate remedial action being taken, enforcement action should always be considered. When circumstances indicate enforcement action is the best method of improving compliance, a violation report should be prepared.

Because a multitude of factors are involved, no specific instructions can be provided as to when an Inspector should initiate a specific enforcement action. An Inspector must exercise professional judgment, guided by the enforcement discretion criteria set forth in 49 CFR Part 209, Appendix A (Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws), when deciding whether to recommend legal action for noncompliance with the TSS. Among those criteria are “the inherent seriousness of the condition or action” and the “kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation.” This chapter will assist the Inspector in making enforcement determinations by providing guidelines for assessing the seriousness of any defect in the specific context of the TSS and the conditions observed during a particular inspection. This is intended to promote FRA’s policy of *focused enforcement* (i.e., use of our limited enforcement resources to attack the most serious and persistent compliance problems).

In fulfilling the duties of a Federal or State Track Inspector, it must be remembered that our primary purpose is to carry out the intent of Congress contained in the Federal Railroad Safety Act of 1970, which is “to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.”

Improved safety performance, achieved by adherence to prescribed standards, certainly accomplishes this objective. Therefore, obtaining compliance with the TSS satisfies the purpose of the act, and whether improved compliance is needed to reduce the risk of accidents in a particular situation should be a primary factor in determining whether or not enforcement action - including the imposition of civil penalties - should be recommended. The Inspector can initiate enforcement action of various types, which can be used individually or in combination. The enforcement tools available to a Track Inspector include, in order of increasing severity:

- # Defect report.
- # Violation report recommending a civil penalty.
- # Special Notice for Repairs (Slow Order).
- # Compliance Order recommendation.
- # Notice of Track Conditions (Emergency Order).

The Inspector should remember that the purpose of the Safety Laws, the TSS, and enforcement activity is to reduce train accidents, casualties and property damage resulting from defective conditions in tracks and roadbed. While adherence to each requirement of the TSS will help lessen the risk of track-caused accidents, the Inspector must be able to distinguish the varying levels of safety risk presented by violations of different standards. Each condition identified in the TSS has a different effect on the performance of the track structure and, accordingly, different conditions have a widely varying effect on the immediate hazard to train operations. For example, all other things being equal, in most cases a broken rail presents a greater immediate hazard to trains than does vegetation adjacent to the roadbed.

In determining which of the five enforcement actions to pursue, the Inspector must consider the risk of an accident presented by the defect itself, the possible consequences of an accident that could be caused by the condition, whether or not the railroad representative knew the defective condition existed, previous track-caused accident performance on the particular rail line, and the railroad's track standards compliance program. The consequences of an accident are influenced by train speed at the particular location, type of traffic handled on the line (hazardous materials, passengers), population proximity, and terrain.

Defect Reports

All enforcement activity begins with an inspection during which the Inspector will record all defects on Form F 6180.96. (See [Chapter 2](#) of this manual for instructions). Defect reporting constitutes the most frequently used enforcement action and may lay the groundwork for more severe enforcement action, if necessary. Care must be taken to conduct a thorough inspection, recording the location, type and size of each defect discovered. While defect reporting is usually sufficient to bring about compliance, the Inspector must remember that every defect report may become part of a violation report, if defects are not repaired. It is imperative that these reports are legible, accurate and complete. Any future legal action is substantially weakened by poor Inspector performance in inspecting and reporting during this initial inspection.

Violation Reports

In the 1970s and 1980's, the railroad industry experienced a significant reduction in track-caused accidents. However, in recent years, the trend has leveled off and the number of track-caused accidents is increasing. Therefore, it is important that Inspectors use all the enforcement tools, including the Track Violation, to help ensure compliance. It is the

responsibility of each Regional Track Safety Specialist to ensure that the violation is being used as effectively as possible.

A defect is a condition that is not in compliance with the TSS. Defects are noted on inspection reports, which serve as notification to the railroad of FRA's awareness of the defect's existence (and may also serve as evidence of the railroad's knowledge of the defect; see discussion below of the knowledge standard). An FRA inspector may choose to also take a violation for the defect, and so note the decision on the inspection form. A violation serves two purposes: 1) It notifies the railroad that FRA has concluded that a condition does not comply with the TSS; and 2) It notifies the railroad that the inspector has reviewed the circumstances associated with the condition(s) of noncompliance and is recommending that a civil penalty be assessed.

In many cases, documenting conditions of noncompliance is sufficient to achieve compliance with the TSS. However, there are many instances where a condition warrants a violation. When recommending a violation, the inspector must prepare a well-documented narrative report describing the seriousness of the condition.

Once the Inspector has determined that a violation report is warranted, all facets of the conditions and circumstances must be carefully considered in order to make a judgment as to the degree of violation. Any person (see 213.15 (a) for definition of a person) who violates, or causes the violation of, any requirement of Part 213 is subject to a civil penalty of at least \$500 and up to \$11,000 per violation. A penalty not to exceed \$22,000 may be assessed under conditions described in 213.15(a). Therefore, the Inspector must present the facts of the situation in the narrative report and a recommendation for prosecution should leave no doubt as to the degree of seriousness of the violation.

The Inspector should be familiar with the penalty amount normally assessed for a particular violation under the penalty schedule for Part 213 (see Appendix B). If the circumstances seem to warrant a higher penalty and/or the assessment of penalties for multiple days that a violation continued, the Inspector should discuss these factors with the regional specialist. If both agree that the extraordinary penalties are appropriate, they should prepare a cover memorandum for a regional manager to send to the Office of Chief Counsel. The memorandum should explain the factors that warrant higher-than-normal penalties and/or an assessment for multiple days, note what the amount of the recommended assessment would be, and explain why such an extraordinary assessment is needed in this situation.

Knowledge Standard

Section 213.5 requires that any track owner who "knows or has notice that the track does not comply" with the TSS must bring the track into compliance or halt operations over that track. This knowledge standard has been in the TSS since they were initially issued, and FRA decided to retain the standard when revising the TSS in 1998. The standard holds a track owner liable for violations of which it has actual knowledge or of which it would have known if

had exercised reasonable care (e.g., violations of which it has constructive knowledge). The standard is thoroughly discussed in the preamble to the 1998 final rule, found at 63 Fed. Reg. 33992, 33995-33996 (1998).

In submitting a violation report recommending the issuance of a civil penalty, the Inspector must fully support the conclusion that the track owner had actual or constructive knowledge of the defect at a time when operations occurred over the track. One way to establish actual knowledge is for the Inspector to record and notify the track owner of the defect found, then reinspect later to see if the track owner has taken appropriate remedial action. If track owner has not taken appropriate action, the Inspector should cite the track owner for a violation of the TSS. Another way to show actual knowledge is to show that the defect has been noted in the track owner's own inspection records, including records of automated inspections. In demonstrating actual knowledge, the violation report should clearly trace each defect to a specific item in an FRA inspection report and/or railroad inspection records.

In some situations, the defect has not been noted on a previous FRA inspection report or the railroad's own inspection records. Citing such a defect as a violation requires that the Inspector demonstrate the track owner's constructive knowledge. Establishing constructive knowledge of a defect requires proof that the track owner would have known of the defect if it had conducted its previous inspection with reasonable care. Track owners cannot simply wait for FRA to provide notice of defects the track owner should find itself. The track owner's duty to inspect its track gives it notice of any defect that such a required inspection would reveal, whether or not the railroad did detect it. When constructive knowledge is demonstrated and a violation recommended, the Inspector should attach a copy of the railroad's last required report of inspection. The Inspector should explain why the defect is of such a nature that it would have had to exist at the time of the last inspection. For example, crossties generally deteriorate slowly over time, so a crosstie condition found by an FRA or State Inspector to be so defective that it cannot maintain proper track gage probably was defective when the track owner last inspected the track. Similarly, rust on a surface of a component that would be exposed to moisture only when it is in non-complying condition (e.g., on the broken surface of a joint bar) may demonstrate that the defect must have existed at the time of the last inspection.

Criteria Affecting the Seriousness of a Non-Complying Condition

A non-complying condition under one set of circumstances may warrant a defect, while the same condition under a different set of circumstances may warrant a violation. The enforcement discretion considerations in Part 209, Appendix A require the Inspector to consider the inherent seriousness of the condition. For example, in the TSS context, is the defect among the leading causes of track-caused accidents nationwide? Does the nature of this particular defect (e.g., wide gage of a particular dimension) substantially increase the risk of an accident? Application of these criteria requires that the Inspector be generally familiar with the leading causes of accidents in his or her discipline. Appendix B shows the top twenty causes of track-caused accidents over between 1995 and 2000. For more detailed

information (e.g., track causes by railroad for a given period), the inspector should consult the Office of Safety's accident/incident data base.

In addition to the inherent hazard posed by the defect, the enforcement discretion considerations also require the Inspector to consider factors present in the immediate factual situation that may exacerbate (or lessen) the risk of serious consequences should an accident occur due to the inherent hazard posed by the defect. The Inspector must also consider the track owner's compliance history at this location; repeated noncompliance is generally more deserving of enforcement action than is a rare noncomplying condition. Some examples of criteria that should be taken into consideration when making a decision whether or not to file a violation include:

- # Passenger trains
- # Hazardous materials
- # Population density (urban or residential areas)
- # Speed
- # Tonnage
- # Involvement of a bridge or bridge approach
- # Proximity to schools and highway-rail crossing
- # Curve or tangent
- # Compliance history
- # Accident history
- # Potential for negative environmental impact

A violation report should stress the importance of the violation in light of the immediate circumstances, as well as the inherent hazard posed by the condition.

Complaint and Accident Investigations

If allegations of non-compliance with FRA's TSS are substantiated during a complaint investigation and if consideration of the criteria discussed above indicates that it is the appropriate course, a violation report should be submitted.

During an accident investigation in which a track condition not in compliance with FRA's TSS is determined to be a causal factor, and the knowledge standard can be satisfied, a violation report must be submitted. In such a situation, the causal relationship should be explained in detail, and a cover memorandum noting the causal relationship and recommending aggravated penalties should be submitted to the Office of Chief Counsel with the violation report.

Situations Where Enforcement Action Will Usually be Warranted

As discussed above, the Inspector must exercise good professional judgment and weigh the enforcement discretion criteria when deciding whether to recommend a violation. However, the Inspector is exercising discretion on behalf of the agency, not personal discretion. Accordingly, the Inspector's exercise of discretion is subject to review by the Inspector's supervisors and discipline specialists. Moreover, as an agency, FRA has the duty to guide the exercise of that discretion and, when necessary, the authority to exercise that discretion above the level of the individual inspector in order to ensure that enforcement is being properly focused on important compliance problems.

FRA's Track Team has identified certain circumstances (listed below) that will usually warrant a violation. This list is based on a general application of the enforcement discretion criteria to common factual patterns involving defects known to be leading causes of track-caused accidents, extremely persistent noncompliance, and/or willful noncompliance. While it is not possible to list all circumstances that warrant a violation, these conditions should result in a violation unless the Track Inspector determines that special circumstances are present to indicate the contrary. Such special circumstances may include immediate and comprehensive remedial action, or factors that lessen the severity of the defects (e.g., dramatic reductions in traffic volume or changes in the railroad's management). If no violation has been recommended for these conditions, the special circumstances must be discussed with the Track Specialist following the inspection. This review is necessary to achieve a reasonably uniform and consistent enforcement policy. Violations should be recommended in each of the following situations unless the Inspector and regional specialist agree that special circumstances dictate otherwise:

- # When follow-up inspection(s) discloses that unsatisfactory remedial action or no action was taken for conditions of noncompliance previously noted by track inspectors for FRA or the track owner.
- # When systemic defects that should have been known to the track owner are part of a pattern of repeated, similar substandard conditions on the same line, same subdivision, same yard, or same supervisor's territory.
- # A poor tie condition which resulted in excessive wide gage, crosslevel or alinement.
- # A rail documented as defective by the railroad's continuous rail flaw inspection where required remedial action was not taken.
- # A rail with a "breakout in rail head" in §213.113 that has existed since the last required inspection by the railroad.
- # A track defect caused by improper repairs or deliberate installation of a joint bar that is not of a structurally sound design and dimension for the rail on which it is applied, or failure to drill holes in rail ends that does not comply with the TSS.

- # A center-cracked or broken joint bar about which the railroad (as shown by specific evidence) knew or should have known and that is part of a track segment that has an excessive number of center-cracked or broken joint bars.
- # A spring rail frog with excessive clearance between the hold-down housing and the horn(s) caused by defective turnout ties or poor support. (Note: Include a description of gouging or contact by the outside of the wheels against the gage side of the wing rail).
- # Excessively chipped or worn switch points so chipped or worn as to present a significant derailment hazard.
- # A track geometry condition that requires a reduction of two or more track classes and that has existed since at least the last required railroad inspection. (Note: A 58-inch gage measurement in class 3 or higher would be subject to this guideline.)
- # A switch stand or derail that can be thrown with the lock or hasp in place.
- # When the railroad does not comply with the conditional requirements under 213.4, Excepted track.

The above list is not intended to be all-inclusive of conditions which should result in a violation. However, if FRA and State Track Inspectors consistently address these situations through the use of enforcement action we will effectively focus enforcement where it will count the most, and will be an important catalyst in helping the industry make significant reductions in track-caused accidents.

A regular cycle of inspection, notification by Form F 6180.96, and reinspection is the best and most desirable means of promoting compliance and acquiring evidence of deliberate noncompliance. Care should be taken to cite the same defects in the original report and the report recommending civil penalty. The original report should be included as background information supporting the material forwarded for legal action. In addition, each item number in the original report should be referenced individually.

Instructions for completing a Violation Report Package

Supportive Material and Inspector Considerations: FRA Form F6180.67, "Violation of Federal Railroad Safety Regulations," is used to submit violation reports for all regulations within the Hazardous Materials, Operating Practices, Signal and Train Control, and Track disciplines [except for the statutory requirements of the Federal Hours of Service Law (use FRA Form F6180.33), and Part 225 "Railroad Accident Reporting," failure to report (use FRA Form F6180.61)]. It is also used for Motive Power and Equipment discipline violations except for Parts 215, 229, 230, 231 and 232, which have specific forms for those purposes.

The RISPC Program, F6180.96 and F 6180.67 Forms: F6180.96 Inspection Report preparation is mandatory for all violations where a civil penalty action is recommended. When using the RISPC inspection report program, some of the items will automatically transfer from the F6180.96 inspection report to the F6180.67 violation report.

Submission of Photographs as Evidence: Photographs can be very strong evidence in support of a violation. If photographs are included in the violation, the inspector will attach (mount) each photograph to a piece of paper and explain what each photograph shows. Two copies of each mounted photograph must be submitted to FRA's Office of Chief Counsel so that when one copy is furnished to the respondent, the respondent will have the same evidence FRA has in its possession. Copies of digital photographs are acceptable. Photographs that have been altered in any way will not be included as violation evidence.

Statements of Witness:

- Unless a violation is substantiated by an inspector's personal knowledge, the railroad's own records, or admissions of railroad officials contained in reports of interview, the violation report should be accompanied by one or more witness statements on the appropriate Statement of Witness. (That form is designed for use by railroad employees; if a statement is being obtained from a non-employee, consult the Office of Chief Counsel about how to proceed.) The witness statement must clearly substantiate any element(s) of the violation not established by other evidence. As in any type of case where a violation report is based on information received from a complainant, neither the report nor any of its attachments should reveal that the case arose from a complaint or identify any person as a complainant. The safety laws (49 U.S.C. § 20109(e)) prohibit revealing the identity of anyone who brings a safety complaint to FRA without that person's written permission, or until litigation occurs.
- Each witness statement must contain the time, date, full name, title, and mailing address of the person who was interviewed.

Copies of Railroad's Records:

- When necessary, the violation report must be accompanied by legible copies of the railroad's relevant records containing information that will provide the FRA's Office of Chief Counsel with substantiating documentation of the violation. The violation report should give a clear understanding of how the documents help demonstrate the violation of Federal safety regulations.
- This information may be submitted in the form of duplicated copies of the railroad's records or through comprehensive, word-for-word extracts taken from the railroad's records.

Instructions for Completion of Form FRA F6180.67

The following instructions shall be strictly followed when completing Form FRA F 6180.67.

- 1. Subject:** Enter the subject of the regulation violated.

EXAMPLE: **TRACK SAFETY STANDARDS**

- 2. Violation of 49 CFR:** Enter the Part, Rule, and Subrule of Title 49 of the Code of Federal Regulations that has been violated (if not already generated by the RISPC program).

EXAMPLE:	PART	RULE	SUBRULES
	213	109	(e)

Note: If a violation report is being submitted for multiple instances of rule non-compliance, such as is common with reports regarding the Track Safety Standards, type "See Below" in this section and begin Block 15 (Violation Narrative) with a listing of the rules covered by this report. "**See**" will be typed in the rule box and "**below**" will be typed in the subrules box.

- 3. RPT Number:** Enter the **inspector's violation report number**. The consecutively numbered report remains with the writer throughout the term of employment with the FRA. Numbering is unaffected by fiscal or calendar year.

EXAMPLE: **35**

- 4. FF6180.96 RPT.:** Enter the number of the F6180.96 inspection report submitted with the violation report (if not already generated by the RISPC program).

EXAMPLE: **110**

- 5. Railroad:** Enter the full corporate name of the railroad which is cited as having violated FRA regulations and also the railroad's initials in the same way as they are entered on the inspection report (if not already generated by the RISPC program).

EXAMPLE: **CSX TRANSPORTATION CSX**

- 6. Name of Inspector(s):** - Enter the name(s) of the inspector(s) submitting the violation report and the 5 digit inspection I.D. number of the primary inspector (if not already generated by the RISPC program).

EXAMPLE: **John R. Inspector 99999**

7. **Location:** Enter the city, state and GSA geographical code for the location where the violation occurred (if not already generated by the RISPC program).

EXAMPLE: **Louisville**

2	0	9	0
		2	1

KY

8. **Date of Violation:** Enter the date of the violation. The date of the violation is the actual date of the triggering event and not necessarily the day the violation was discovered.

EXAMPLE: **09/10/2000**

9. **Time of Violation:** Enter the time the violation occurred. If unknown, leave blank.

EXAMPLE: **6:30 a.m.**

10. **Operation/Facility:** When the violation is against a person other than a railroad, enter the full corporate name and address of the responsible party where the violation occurred. If the violation is against a railroad, enter the type of operation that is in violation or the name of the facility where the violation occurred.

EXAMPLE: **Osborne Yard**

11. **Division:** Enter the code for the name of the division, service unit, business unit, district, region, or other equivalent geographic boundary where the violation occurred (if not already generated by the RISPC program). For railroads with no division, service unit, etc., show the appropriate designation, or, enter N/A.

EXAMPLE: **LOUISV**

12. **Track:** Enter the track number.

EXAMPLE: **Track No. 2**

13. **Locomotive Initials and Numbers:** Enter the locomotive initials and numbers or N/A whichever is applicable.

EXAMPLE: **CSX 3150**

- 14. Train Designation:** Enter the full train number, train symbol, yard job number, or other proper designation for the consist being operated. If no train or other on-track equipment is involved, enter "N/A."

EXAMPLE: **NTLI-274**

- 15. Violation Narrative:** Write a thorough description of the violation. The inspector may quote a portion of the applicable regulation if this will assist the reader's understanding of the nature of the violation. The narrative should include comments concerning the type of corrective action taken by the railroad to correct the non-complying condition. For the proper format to use in drafting the narrative, see below.

The RISPC program should automatically generate continuation sheets if needed. If continuation sheets must be manually produced, each continuation sheet must be prefaced, "Violation Narrative, Report No. xxx, Continued."

- 16. Date Report Prepared:** Enter the date the report was prepared.

EXAMPLE: **9/13/00**

- 17. Signature of Inspector(s):** The inspector's name must be typed or printed, and, the inspector's signature signed in blue ink to enable the original to be distinguished from copies.

EXAMPLE: /signed in blue ink
 John R. Inspector

- 18. Carrier Notification:** - Enter the name and title of the railroad official who was notified of the violation, and the date and time that the notification was made.

EXAMPLE: **TIME: 8:30 a.m.**
 NAME: John Johnson
 TITLE: Division Superintendent
 DATE: 9/10/00

The Violation Narrative portion of the report (**Block 15**) shall be written in the following format:

SYNOPSIS

1. Opening paragraph that briefly describes what the report is about and generally includes “who,” “what,” “where” and “when.” When citing the regulation it should be done in this manner: 49 CFR §213.109(e).

VIOLATION DESCRIPTION

1. Include a statement, “I was accompanied by railroad representative(s).” Full name and title of the representative should be included, as well as the full names and titles of any other persons accompanying on the inspection. Summarize the reason for the inspection and information from the inspection report (Form FRA F 6180.96) that recommends a civil penalty. Include a description of each deviation and the relevant regulation. Then discuss why you recommended these deviation(s) as violations (condition of ties, rust on the break, lateral and vertical movement, etc.). Address the inherent seriousness of the condition and the safety hazard it poses. If you allege actual knowledge of the violations based on previous FRA or railroad inspections, explain how each violation you recommend can be traced to a specific entry on those inspection records. If actual knowledge of the defect by the railroad cannot be shown by earlier FRA or railroad inspection records, state the basis for concluding that the railroad had constructive knowledge of the defects (for example, deviations were obviously old enough that they must have been present at the time of the railroad’s last inspection). The Form FRA F 6180.96 will be your first exhibit (not attachment) and should be identified as “Exhibit A.” This exhibit is the original copy of the inspection report Form FRA F 6180.96.
2. Next describe other deviations documented during this inspection that are not being recommended as violations. This should include totals and types of deviations. A copy of these inspection report(s) Form FRA F 6180.96 should be attached and marked as an exhibit. All exhibits that follow Exhibit A will be in sequential alphabetical order.

BACKGROUND

1. In this section include background information that describes the results of previous inspections and history of noncompliance. Include statements which address past similar deviations and violations that have been identified in the area where the violation is being cited. Identify any previous inspections, or actual incidents that have involved harm to persons or property, that further establish that the railroad had prior knowledge of either specific instances of noncompliance or noncompliant conditions in general. If previous inspections before the one directly resulting in the violation

provide further evidence of prior knowledge of specific instances of noncompliance, those inspection reports (Form FRA F 6180.96) should be identified as an exhibit.

2. Include statements of what you have done in the past to persuade the railroad to sustain a compliance program consistent with the Federal regulations. Document any meetings or discussions where you have expressed your concerns to the railroad. Include track-caused derailment accident history if available, and how it reflects your decision to recommend violation.

LOCATION AND OPERATION

1. This section will include the operations of the railroad, including subdivision length, method of operation, signaled or non-signaled, maximum timetable speed for subdivision and any speed restrictions that are related to the condition of the track. Type of train service; passenger, freight or both. Identify volume and types of traffic including hazardous material being handled, geographic conditions (e.g., schools, hospitals, densely populated areas, etc.), and the class and speed of track where the violation is being recommended.
2. Establish and document railroad operations (dispatching records) for the days that the violation is being recommended. If not included as an exhibit, show location where railroad documentation of operation is kept and furnish the name or title and address of the custodian of records.

List of Attachments:

1. Original Form FRA F 6180.96 containing the recommendation for civil penalty. (Exhibit A)
2. Form FRA F 6180.96 reports for the inspection that includes the defects not recommended as violations. (Identified as an Exhibit)
3. Prior Form FRA F 6180.96 inspection reports should be included in sequence they were conducted. (Identified as an Exhibit)
4. Copies of pertinent pages of timetable, and any other instructions such as a temporary speed restriction that amend the authorized speed, that are in effect at the time of violation. (Identified as an Exhibit)
5. Photos - Should indicate the severity of the violation, any movement being added to a measurement or anything to further document why you have determined to recommend the defect as a violation. Do not include photos if they do not show something that is significant in supporting the violation. (Identified as an Exhibit)

6. Provide copies of railroad records when they are available and are part of your determination to recommend a violation. (Identified as an Exhibit)
7. Include any other items which may further substantiate that a violation is in order. (Identified as an Exhibit)

Arrangement of the FRA F6180.67 Violation Report Package

The Violation Report Package will include a copy of the Inspection Report and supporting data. The inspector will prepare and submit to the Regional office an original and three copies of the report with the appropriate Form FRA F6180.72d, Transmittal of Violation Report. If the report includes photographs, prepare duplicates and copies of photographs as follows:

- One original report with photographs;
- Two additional copies of the report with duplicate sets of photographs. (Do not use photocopies of photographs.)

After review by the Regional Office, the region will distribute the three reports received as follows:

- The original report with photographs and one copy of the report with a duplicate set of photographs to FRA's Office of Chief Counsel.
- One copy, including photographs, for the regional file.

NOTE: In addition to the above, one copy of the transmittal form only shall be submitted to the Track Division (RRS-15). The inspector may wish to retain a copy for his or her file.

The violation report (FRA Form F6180.67) should be arranged in the following order:

- Form FRA F6180.67 including any continuation sheets.
- Form FRA F6180.96, "Inspection Report", including any continuation sheets.
- Statements of Witness
- Evidence and exhibits that support the factual statements in the violation.
- Photographs mounted as described above.
- Other documentation to support alleged railroad non-compliance.

For identification purposes, each attachment to the violation report package must have the inspector's initials and the violation report number typed in the upper right-hand corner of each sheet. Any documentation attached should be annotated on the document in the upper right-hand corner as to date, time and location the document was received, and should indicate the name and title of the person (custodian of records) the document was received from.

Example: *JRI - 35 09-10-00 9:15 a.m.*
New Orleans, LA John Johnson - CSX Shop Mgr.

If you feel that the violation needs special handling, such as a penalty above the amount shown in the penalty schedule (Appendix B to Part 213), up to or including the maximum penalty of \$22,000, or when numerous counts of multiple day are recommended, you must submit an additional cover memo over the signature of the Regional Administrator justifying your recommendation.

When you have recommended a violation, process reports in the manner prescribed in **Chapter 2** of this manual. Once you have identified a violation, the narrative report (Memorandum) must be completed and submitted to the Track Specialist within 30 days following the inspection.

Violation narrative reports are numbered sequentially throughout the Inspectors' career without regard to the end of any calendar or fiscal year. Form FRA F 6180.96 attachment(s) to the narrative will continue to be numbered independently based on the calendar year (see **Chapter 2** of this manual).

Special Notice for Repairs - Track Class

Section 216.15 of Title 49, Code of Federal Regulations, deals with written notification issued to the railroad when track does not comply with the requirements for the class at which the track is being operated as defined in the TSS. The notice will describe the conditions requiring the track to be lowered in class, specify the exact location of the affected track segment and state the highest class and corresponding maximum speeds at which trains may operate over that track. This slow order will remain in effect until repairs are completed. The Special Notice for Repairs (SNFR), Form F 6180.8, should be considered where voluntary compliance has not been undertaken by the railroad.

General Guidelines

- # All inspections will be conducted in accordance with the provisions of **Chapter 1** of this manual and the appropriate parts of the General Manual.
- # If, during an inspection, a Track Inspector determines that the track does not comply with the requirements of the TSS, every attempt should be made to encourage the carrier to take the proper remedial action to correct the existing defects.
- # If the carrier refuses to take appropriate remedial action for the defective conditions found by the Track Inspector or, the Track Inspector finds defective conditions and determines that a pattern of noncompliance exists over an extended period of time, as evidenced by repeated violations that demonstrate a disregard by the carrier for

performing comprehensive inspections and taking appropriate remedial action, the Track Inspector should consider issuing an SNFR.

- # The Inspector should evaluate the seriousness of the defects. If it is determined that the existing defect(s) presents a threat to safety, the Inspector may issue an SNFR, requiring the carrier to reduce the maximum authorized operating speed over the affected track.
- # If an SNFR is issued to the carrier, complete documentation must be made. This will include field measurements, photographs, location of defects in relation to known fixed points and a written narrative. The narrative will give details concerning the track structure, the amount and type of rail traffic, and what type of condition was found. In addition, conditions or defects throughout the inspection area should be noted. Furthermore, the reaction and response of the railroad and any other information that may affect the SNFR must be noted.
- # The SNFR must be filled out in the field. The track description must indicate track number or other designation that will specify the track to which the order applies. The location of the defects must be indicated and referenced to a known, fixed point (e.g., a mile post, road crossing, switch, etc.).
- # The SNFR must be in writing and personally presented to the appropriate carrier official. This will eliminate the possibility of misinterpretation of the information being received by someone who does not have the authority or ability to carry out the provisions of the notice.
- # If a delay in this action is encountered, a telephone warning could be used to advise the railroad that a SNFR is to be issued.
- # The Track Specialist and/or the Regional Administrator will be notified by phone as soon as possible.
- # Less serious conditions that do not meet the requirements of the TSS may not warrant issuing an SNFR. This fact should be taken into consideration when determining the seriousness of the condition. This should be handled in accordance with instructions in this chapter.
- # A thorough description of each defect must be made on the SNFR form using the language of the TSS and measurements made in the field. It must be exact and contain sufficient detail to describe each defect. Reference may be made to the completed F6180.96 at the time of inspection.

When the defects noted on the SNFR form are representative of general conditions identified on the track segment, the Track Inspector should include a note on the Track

Inspection Report form stating that the conditions reported are representative of the conditions on the identified track segment.

Copies of the Form F 6180.96 must be attached to the SNFR form.

- # The Inspector will fill out the original and three copies of the SNFR form. The original is to be given to the appropriate carrier official and copies distributed as follows:
- The first copy is to be sent to the Track Specialist.
 - The second copy will be forwarded to the Office of the Associate Administrator for Safety, attention Track Division, RRS-15.
 - The third copy is for the Inspector's file.

Upon receipt of an SNFR, the railroad may appeal the decision of the Inspector to the Regional Administrator. Such appeal must be in writing. The Regional Administrator will then assign an Inspector, other than the Inspector who originated this action, to reinspect the track. If the decision of the original Inspector is sustained, the Regional Administrator will notify the railroad that the appeal is denied.

If the track is found to be safe to operate at the class deemed proper by the railroad, the Regional Administrator will immediately notify the railroad that the restriction of the notice is no longer in effect. In the case where doubt exists as to the seriousness of the conditions, the Regional Administrator can postpone the effective date of the slow order until a reinspection can be made. Only the Regional Administrator has this authority. The Inspector will not make any statements which may be construed to be an indication of how FRA will resolve the appeal.

Reinspection

- # When an Inspector is assigned to reinspect track involved in an SNFR, the inspection shall take place immediately.
- # The inspection will be conducted in accordance with the provisions of **Chapter 1** of this manual.
- # The inspection will be made over the entire limits covered by the SNFR.
- # The Inspector will determine if the defects present support the decision to issue an SNFR.
- # A thorough and complete written report must be submitted to the Regional Administrator. This report must include:

- A written description of the conditions found.
 - Field measurements (where applicable).
 - Photographs.
 - A statement giving reasons for either denying or approving the appeal.
- # The reinspection will take into consideration all aspects of the TSS and shall not be limited to the defects shown on the SNFR.
- # It is the responsibility of the Track Specialist to keep the Regional Administrator advised of developments as they occur.
- # If a reinspection reveals that the conditions noted in the SNFR are not properly being addressed, refer to the sections entitled, "Violation of FRA Emergency Order or FRA Special Notice For Repairs," below.

Instructions for completion of Form F 6180.8, Special Notice for Repairs:

- # **Railroad** - Indicate the complete name of the railroad responsible for the maintenance of the track identified in the report.
- # **Railroad Official's Name** - Print the name of the railroad official to whom the report is to be given.
- # **Railroad Official's Title** - Print the title of the responsible carrier official to whom the report is to be given.
- # **Location** - Enter the city and state where the railroad official named in Block 2 will receive the report.
- # **Date** - Indicate by a two-digit number the year, month and day the report will be given to the railroad official. For example, May 11, 1998, would be 98/05/11.
- # **Time** - Indicate the time at which the SNFR will be presented to the railroad official. Local time in effect at the location indicated in Block 4 must be used. A.M. or P.M. must also be shown.
- # **Place an X** in the space to the left of the class information.
- # **Class** - Indicate the class to which the track will be lowered. The class information is specified in §213.9(a) of the TSS.

- # **MPH Passenger/Freight** - Indicate the maximum allowable operating speed for passenger and freight trains. This speed must correspond with the maximum speed permitted by §213.9 (a) and §213.307(a) for the new class assigned to the track segment. If the affected track does not support passenger train service, enter "N/A" in the appropriate box.
- # **Track Description** - Enter the name of the track, yard, branch or other designation that identifies the railroad location of the track to which the order applies.
- # **Railroad Division** - Identify the railroad division by its name. If the railroad is not divided into divisions, regions or districts, enter the word "system."
- # **Railroad Subdivision** - Identify the subdivision by name, if applicable. Otherwise leave blank.
- # **Track Number** - Indicate the number of the track to which the notice applies. If the track is not designated by number, enter the track (e.g., eastbound, southbound, single, etc.).
- # **Location From** - Enter the name of the State, city and mile post to indicate where the reduction in class begins. The mile post will be shown to the nearest one-tenth of a mile. If the location is not in a city, town or other municipality, enter the county name.
- # **Location To** - If the notice applies to a single location, leave blank. If the notice applies to track between two points, enter the name of the State, city and the mile post at the ending location.
- # **Reference Measurement** - The restricted limits indicated in both, "location from" and "location to" must be referenced to a known fixed point such as a mile post, road crossing, switch point, etc.
- # **Defects** - Enter the mile post location and a thorough description of each defect. This description must be in the language of the standards and contain measurements made in the field. This description and location of defects can be referenced to a Form F 6180.96, Track Inspection Report, attached to the SNFR.

The Inspector will sign the report at the bottom left-hand corner and instruct the carrier representative to complete Part 2, Special Repair Report, Form F 6180.8A and return it to the FRA Regional Office.

Completion of the Special Repair Report, Form F 6180.8A

This form is to be completed in its entirety by carrier officials

- # **Railroad** - Indicate the complete name of the railroad to whom the SNFR was issued.
- # **Location** - The city and state from which the carrier is returning Form F 6180.8A.
- # **Date** - Indicate the date the report was returned to FRA.
- # **Instructions** - The Inspector should bring to the attention of the carrier representative the instructions detailed under Item 4, on Form F 6180.8A.
- # **Description of Repairs** - The carrier is to provide the requested information, which will include details concerning the repairs made to the defects shown on Form F 6180.8.
- # **Certification** - Signature and title of the person who made the repairs.
- # **Officer in Charge of Repairs** - The signature of the individual who directed the repairs to be made.
- # **Chief Engineer** - The signature of the Railroad Chief Engineer. If the title Chief Engineer is not applicable, the signature of the carrier official who has overall control of track maintenance.
- # **State and County** - Indicate the state and county where the certification Item 6 was signed.
- # **Notary Public** - Not required for track defects. This Form F 6180.8A is to be forwarded by the carrier to the Regional Administrator. It will be the responsibility of the FRA or State Inspector to place the address of the regional office in the space provided. After review, the Regional Administrator shall mail a copy of the Form F 6180.8A to the Associate Administrator for Safety, attention Track Division, RRS-15.

If Form F 6180.8A has not been received from the carrier in 30 days, a follow-up inspection will be made. This inspection will be for the purpose of determining if the carrier is complying with provisions of the SNFR. If the provisions are not being complied with, the Inspector is to follow the instructions shown under Emergency Situations.

Compliance Orders and Compliance Agreements

Under 49 CFR U.S.C. §20111, FRA has the authority to issue compliance orders when the agency has reason to believe that the respondent is engaging in a continuing pattern of conduct that involves violations of the TSS. Procedures for issuing a compliance order are found in 49 CFR Part 209, Subpart C.

A compliance order normally will require remedial actions necessary to assure compliance with the regulations, and may impose restrictions until compliance is achieved. A compliance order involving the TSS may include a requirement that the track owner make specified repairs by a specific deadline. The compliance order does not necessarily remove track(s) from service. If the railroad does not comply with the terms of the order, FRA may seek penalties for violation of the order or seek enforcement of the order in federal court.

Procedures

If, during an inspection, a Track Inspector determines that a railroad is engaging in a continuing pattern of conduct that involves repeated violations of the TSS, the Regional Administrator, through the Track Specialist, should be notified. General guidelines for determining this continuing conduct or pattern are as follows:

- # A number of inspections have been made.
- # These inspections continue to reveal defects and repeated noncompliance.
- # The carrier refuses to bring the track into compliance with the standards.
- # The Inspector has made every attempt to have the carrier take remedial action through actions such as:
 - Repeated inspections.
 - Submission of violation reports.
 - Meetings with carrier officials explaining the seriousness of the existing conditions.
 - Slow order through the use of a SNFR.

If it is determined by the Regional Administrator, with technical guidance from the Track Specialist, that there is a pattern of repeated noncompliance and conditions present a threat to safety, consideration should be given to recommending the issuance of a Compliance Order. The Track Division Chief (RRS-15) in the Office of Safety Assurance and Compliance and the Assistant Chief Counsel for Safety (RCC-10) should be notified and consulted at this

time. The recommendation containing the information noted below under “Documentation” must be forwarded to both of those offices.

Documentation

Complete documentation of the entire area must be developed and included with the Regional Administrator’s recommendation. This documentation will include the following:

- # Location of all defects including measurements where required. This is to be recorded on Track Inspection Report Form FRA F 6180.96.
- # Copies of Track Inspection Report Form F 6180.96, for relevant previous inspections at this location.
- # Copies of all relevant violation reports concerning the area in question.
- # List of all track-caused accidents, reportable and non-reportable, that occurred during previous 12 months.
- # Copies of carrier inspection reports for previous 6 months.
- # **A written narrative should be prepared detailing, but not limited to, the following:**
 - Amount and type of rail traffic.
 - Proximity of tracks to homes, schools, stores, etc.
 - The carrier’s inspection and maintenance programs and procedures.
 - The seriousness of the defects.
 - The basis for the determination that a pattern of noncompliance exists.
 - Details of each meeting held with carrier officials including dates, names and titles of those in attendance and items discussed.

Based on the information submitted, the Offices of Safety and Chief Counsel will decide whether to recommend to the Administrator that a compliance order proceeding be initiated. With the Administrator’s approval, the Office of Chief Counsel would then issue a Notice of Investigation based on the documentation submitted. If the railroad requested a hearing, FRA’s hearing officer would preside over a trial-type hearing, at which FRA would have the burden of proving its factual allegations and the reasonableness of the remedial action sought. The hearing officer’s decision could be appealed to the Administrator, and the Administrator’s

decision could be challenged in court. At any time during this process, FRA and the railroad could agree to a Consent Order and present it to the Administrator for signature. A Consent Order would impose requirements on the railroad and preclude further litigation of the issues.

In recent years FRA has developed a simpler way of using the compliance order authority. Under a Compliance Agreement, the railroad agrees to take certain remedial actions and, should those actions not occur to FRA's satisfaction, to not oppose issuance of a Compliance Order or Emergency Order imposing those conditions. While the preparatory work necessary for a Compliance Agreement is substantially the same as outlined above for a Compliance Order, the agreement presents FRA and the railroad with certain advantages. FRA obtains remedial action quickly and informally and, if the terms of the agreement are not met, can issue a Compliance Order or Emergency Order without the time, expense, and litigation risk of a formal proceeding. The railroad achieves improved compliance without being subject to an actual order unless it fails to meet its obligations under the agreement. In some agreements, FRA waives its right to pursue civil penalties for specified violations if the railroad meets all conditions of the agreement. In other agreements, the railroad agrees to pay civil penalties on certain extremely serious violations that FRA may find during the period the agreement is in effect. If a compliance problem appears to be a good candidate for such an agreement, regional managers should contact RRS-15 and RCC-10.

Emergency Orders

Under 49 CFR U.S.C. §20104, FRA has authority to take special remedial action to handle emergency situations. If, through testing, inspection, investigation, or research, FRA decides that "an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury," FRA may immediately issue an emergency order. The order may impose restrictions or prohibitions necessary to bring about the abatement of the emergency situation. The authority to issue such an order rests with the Federal Railroad Administrator.

Unlike a Compliance Order, FRA may issue an Emergency Order without first providing the opportunity for a hearing. This is an extraordinary power. Accordingly, FRA has used the authority sparingly, and issued just 22 orders from 1970 through 2000. While the statute does not define the "emergency situation" that must be present for FRA to issue such an order, FRA believes it refers to conditions and/or practices that present an imminent hazard of death or injury. The authority can be used to address both conditions that are not in compliance with FRA's rules and conditions that are not addressed by those rules.

General Procedures

FRA has issued procedures (49 CFR Part 216, Subpart C) for issuance of track-related emergency orders. Those procedures require that an inspector who detects an apparent emergency situation begin by issuing a Notice of Track Conditions. The regional administrator then decides whether to recommend, based on that notice, that the Administrator issue an Emergency Order removing the track from service. Those procedures also note (49 CFR § 216.27) that the Administrator can issue an Emergency Order without following this process. Ordinarily, a true emergency will not permit the use of a cumbersome process. Therefore, we leave it to the discretion of the region to determine the degree of urgency and, for more urgent situations, dispense with the process set forth in Part 216.

An inspector who discovers or is informed of conditions that may constitute an emergency situation shall immediately contact the regional office. If, during an inspection, an apparent emergency situation is brought to the Inspector's attention, the Inspector shall immediately inspect the alleged condition or practice to determine whether an emergency situation exists. If, during an inspection, the Inspector discovers an emergency situation, or determines after inspecting an alleged situation that such a situation does or may in fact exist, the Inspector must immediately follow the procedures outlined in this chapter. If the Inspector has any doubt as to whether a condition or practice constitutes an emergency, the Inspector must consult the Track Specialist.

- # The Track Specialist shall immediately ascertain whether there is a reasonable basis for the allegation and alert the Regional Administrator and Washington headquarters to the situation. The Regional Administrator will keep Washington headquarters advised.
- # The Track Specialist shall make a preliminary determination as to whether further inspection is necessary.
- # If the allegation of an emergency situation appears to have merit, the Track Specialist shall contact the track owner immediately, ascertain as many pertinent details as possible concerning the situation and attempt to obtain immediate voluntary abatement prior to the inspection. The Track Specialist should ascertain and evaluate the steps, if any, the track owner indicates that they will use to abate the danger. An investigation shall then be conducted in accordance with the procedures outlined in this chapter.

Technical Considerations

After the determination to investigate has been made, the inspection should be thoroughly planned to the extent time permits. The Track Specialist and Inspector should review the known facts and ascertain what technical equipment and personnel may be necessary to conduct the inspection.

Scheduling

Any allegation of an emergency situation received by a regional office, whether written or oral, must be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations must not interfere with the expeditious and thorough handling of these cases.

If it is determined that an inspection should be made, it will be scheduled and conducted at the earliest possible time. Except in extraordinary circumstances, the inspection should be conducted within 24 hours of receipt and preliminary evaluation of the alleged emergency situation.

Inspection

- # In an inspection conducted because of an allegation of an emergency situation, the alleged situation shall be inspected first.
- # Any additional inspection activity should take place only after resolution of the emergency situation. Where the emergency situation has been resolved, a complete inspection of the facility may be conducted.

Voluntary corrective action

- # As soon as it is concluded that conditions exist that constitute an emergency situation, the Inspector shall attempt to have the situation immediately corrected through voluntary corrective action by the carrier. The track owner or a representative of the owner should be promptly advised that such a situation exists.
- # The track owner is ultimately responsible for determining the manner in which they will correct the dangerous condition. Before leaving the premises, FRA or State personnel must determine that the emergency situation has been resolved and will not recur.
- # The track owner shall be deemed to have resolved an emergency situation if they eliminate exposure to the situation or eliminates the condition or practice that resulted in the situation.
- # If corrective action is taken voluntarily, the Inspector shall make the appropriate notation on the FRA track inspection report.

Refusal to correct

- # If conditions that are of a serious nature are not corrected, the Inspector shall immediately notify the regional office. Depending upon the degree of urgency, the Regional Administrator will decide whether to proceed directly to recommend to headquarters that an Emergency Order be issued, or to have the Inspector issue a Notice of Track Conditions to the appropriate railroad official informing the carrier that the track does not comply with the requirements of the TSS. Whichever route is chosen, the inspector will issue a track inspection report.
- # The Inspector has no authority to order the closing down of the operation or to direct employees to leave the area in the case of imminent danger. His or her only authority is to inform the Regional Administrator of the conditions observed and provide the basis on which the Regional Administrator can make a recommendation to the Administrator through the Associate Administrator for Safety.

The Notice of Track Conditions

Where the region decides to use the Notice of Track Conditions process set forth in Part 216, the following procedures must be followed.

- # The notice shall set out and describe in detail the conditions found, specifying the location, track number and any other information necessary to properly describe the defects and the track involved.
- # A copy of the Notice of Track Conditions given to the carrier, along with a written narrative, must be provided to the Regional Administrator within three calendar days of the issuance of the notice. A copy of this notice will also be sent to the Office of the Associate Administrator for Safety, attention RRS-15, as soon as possible.
- # **The written narrative with complete documentation will include:**
 - Field measurements.
 - Photographs.
 - Location of defects referenced to a known fixed point.
 - Details concerning the track structure.
 - The amount and type of rail traffic, not only at the location of the emergency order but throughout the entire inspection area.
 - The reaction and response of the railroad.

- Other information that may affect the order.

Distribution of Copies of Notice of Track Conditions

- # **Original and First Copy** - Mail promptly to the Track Specialist.
- # **Second Copy** - Retained by the Inspector.
- # **Last Copy** - Issue to the carrier representative.
- # The Track Specialist will review the report, retain the first copy for regional records and forward the original to the Office of Safety Assurance and Compliance, RRS-15.

Information Needed to Support Issuance of an Emergency Order

The Regional Administrator considers the Inspector's report, input from the Track Specialist and any material submitted by the railroad in developing his recommendation to the Administrator. Where the Regional Administrator decides that emergency action is necessary, the recommendation should be supported by ample documentation of the imminent safety hazard and previous attempts to address related safety issues on the particular railroad. To the extent time permits, the supporting documentation should include all of the following information.

General Information required

- # Track Inspection Report, Form F 6180.96 for the entire segment recommended for Emergency Order showing each defect found during the inspection. (Repetitive entries may be summarized if a significant number of specific conditions are itemized, portraying an accurate view of overall conditions.)
- # Previous inspection reports served on the carrier for the particular line segment, including returned reports showing corrective action.
- # Relevant violation reports filed with Chief Counsel (by report number and date of transmittal; FRA case number, if known); and waiver investigation reports, if any.
- # Description of method of operation.
- # Operating speeds, temporary and permanent (copies of timetable, special instructions, slow orders).

- # Facts demonstrating that defect(s) pose(s) an imminent hazard of death or injury to persons.
- # ATIP data (including summary), if available.
- # Narrative report of discussions with carrier representatives in chronological sequence, providing dates, locations, names and titles.
- # Number of trains (passenger, through freight, local, by category) and annual tonnage.
- # Motive power employed on line; maximum train lengths; carrier-imposed limitations on axle loads or particular equipment.
- # Hazardous materials information:
 - Volume of hazmat traffic over line, based on review of waybills or consists for period of two to four weeks prior to date of investigation.
 - Type of hazmat traffic (illustrative listing of recent hazmat data identifying number of cars carrying explosives, poison gas, flammable gas, chlorine, anhydrous ammonia, etc.).
 - Hazmat violation history on line as related to derailment risks (train placement, etc.).
- # Demographic information:
 - Towns and cities along line by name, referenced by railroad mile post and approximate population.
 - Illustrative description of the area (including homes, schools, businesses, hospitals, etc.), indicating proximity to right-of-way, railroad mile posts, and estimated number of persons affected. Include major highway-rail grade crossings and railroad bridges over public streets. Provide photographs showing track in foreground and areas potentially at risk in background and street maps, if readily available.

Topographic information

- # General description of curves and grades. (Provide track charts, if available).
- # Railroad bridges and sharp drop-offs adjacent to right-of-way. (Photographs, as appropriate).
- # Clearances with reference to other active track and structures along right-of-way. (Photographs, as appropriate).

Accident history

- # Rail Equipment Accident/Incident Reports for the past 6 months, regardless of carrier-identified cause (affected line only).
- # FRA accident investigation reports, if any (affected line only).
- # Carrier internal reports of accidents not reported to FRA.

Special factors

- # Abandonment plans and status, if applicable.
- # State agency interest in rail service continuation, if applicable.
- # Planned rehabilitation efforts, if any.
- # Involvement of State in inspections/investigations, if any.
- # Press reports, complaints from public officials and/or union officers, etc.

Economic impact of proposed order (only readily available information)

- # List of major industries on line (with indication of hazardous materials traffic, if known), obtained from the railroad, and likely effect that order will have on their business.

Railroad response

- # Current information on planned remedial action, adequacy of response, projected completion dates, resources actually committed, progress of work to date of recommendation.

FRA Actions Needed to Support Issuance of an Emergency Order

- # Inspector serves Notice of Track Conditions to railroad representative. (Note: the Regional Administrator can choose to bypass this step and, instead, simply inform the railroad that he intends to recommend issuance of an Emergency Order based on the inspection results).
- # Regional Administrator makes assignments of responsibilities to complete field investigation.
- # Track Specialist alerts RRS-15 Track Division, requesting assistance as needed. Track Division alerts Assistant Chief Counsel for Safety.
- # RRS-15 Track Division assists in the development of accident history information.
- # Office of Chief Counsel and Office of Safety Assurance and Compliance, Track Division, work together to draft emergency order.
- # Administrator issues order.
- # Wherever an Emergency Order has been issued by FRA, the Track Specialist shall arrange to make a follow-up investigation immediately to determine if the track owner is complying with the terms of the order. Regional Administrator arranges follow-up inspections, as requested by railroad, to determine whether conditions for lifting the order have been fully met on all or a portion of the line affected.
- # Where follow-up inspections indicate that relief from the order is fully or partially warranted, the Regional Administrator notifies RRS-15 and RCC-10. Those offices draft Federal Register notices necessary to grant relief from the order.

These procedures are intended to provide general guidance. Additional information may be required in some instances. If there is any delay in the development of any elements pertaining to an Emergency Order such as typing field reports, Office of Safety Assurance and Compliance, Track Division, RRS-15, should be consulted.

Violation of FRA Emergency Order or FRA Special Notice For Repairs

When an Inspector's investigation, inspection or surveillance activity discloses that a carrier has violated a provision of an FRA Emergency Order or SNFR, the Inspector will immediately report the circumstances of the violation to the Regional Administrator. The Regional Administrator will promptly transmit this information to the Associate Administrator for Safety

and Office of Chief Counsel, for advice as to what action should be taken and what information will be required to support that action.

An Emergency Order or SNFR violation report shall be made in memorandum form. The "Subject" at the heading of the memorandum should read, "Violation Report Concerning Emergency Order No. (fill in number of order) Issued Against (fill in name of railroad)" or "Violation Report Concerning Special Notice for Repairs (fill in number of notice) Issued Against (fill in name of railroad or other track owner)". The first paragraph of the memorandum report should refer to the order or notice involved and provide a brief summary relative to the circumstances and evidence to support the violation report in accordance with the advice and instructions provided by the Office of Chief Counsel.

Enforcement of the Safety Laws and Regulations Against Individuals

For a further discussion of individual liability see the General Manual, Part III, Chapter Three.

Criminal Enforcement

Under 49 U.S.C. § 21311, substantial criminal penalties may apply to individuals or companies who "knowingly and willfully" falsify records or reports required to be kept or submitted under the railroad safety laws. The TSS contain specific recordkeeping requirements (e.g., section 213.241) and a specific reference to the criminal provision (section 213.15(b)). The "knowingly and willfully" standard essentially requires that the government be able to demonstrate that the person knew what they were doing was wrong and did it anyway with a criminal intent. The government, of course, would need to be able to prove all elements of its case beyond a reasonable doubt. Because of the high standard for knowledge and difficult burden of proof in such cases, they are not easy to bring. Moreover, failure to record track defects on a railroad's inspection records is most often the result of incompetence, negligence, or haste rather than willful conduct. Nevertheless, where an inspector has reason to believe that a railroad might purposely be falsifying its inspection records, the inspector should contact regional staff, who should contact the Office of Safety headquarters and the Office of Chief Counsel. Where appropriate, those offices will make the necessary referral to request a criminal investigation.

End of Chapter Four