FEDERAL RAILROAD ADMINISTRATION

OFFICE OF RAILROAD SAFETY

Operating Practices Compliance Manual

November 2012

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CHAPTER 1
PROGRAM GOAL, REQUIREMENTS BASED ON POLICY OR LAW, ROLES AND RESPONSIBILITIES, AND SOURCE DOCUMENTS

Program Goal

The goal of the Operating Practices Division in FRA's Office of Safety Assurance and Compliance is to promote safety in railroad operations by reducing accidents, deaths, and injuries to persons, occupational illnesses, and property or environmental damage attributed to noncompliance with Federal railroad safety or hazardous materials regulations, orders, and statutes pertaining to human factors and railroad operating rules, practices, and procedures.

Our primary methodology is to achieve this goal through a properly conceived, executed, and balanced safety program, uniformly implemented by informed personnel. Using this methodology, FRA can reassure the public that the risk of accidents will be progressively reduced. We believe the guidance in this manual will enable us to achieve our goal in a consistent manner.

Requirements of OP Inspectors Based on Policy or Law

- Inspectors are **NOT** to offer directives, instructions, advice, or become involved in any advisory capacity with any person during emergency response or recovery operations involving railroad accidents or incidents. An inspector may refer responders to published FRA regulations, orders, and guidance (e.g., Title 49 Code of Federal Regulations (CFR) Parts 200–299), the Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulations, orders, and guidance (e.g., 49 CFR Parts 100–185), and the Federal railroad safety and hazardous materials transportation safety laws (primarily, Title 49 U.S. Code (U.S.C.) Chapters 51, 201–213) to respond to a query. FRA allows an inspector to warn the on-scene coordinator if he or she believes an imminent hazard exists.
- Inspectors **MUST NOT** operate or handle railroad equipment for any purpose, unless necessary to alleviate an imminently hazardous situation. (Reference section "FRA OP Inspectors Handling Railroad Equipment" in this chapter for further guidance.)
- Inspectors may request the railroad to move a piece of equipment to facilitate the investigation of accidents or incidents, or to preserve evidence. (Reference section "FRA OP Inspectors Handling Railroad Equipment" in this chapter for further guidance.)
- Although FRA does not permit railroads to pre-condition inspections, inspectors must make every effort to comply with railroad rules and procedures while in the railroad working environment. FRA policy requires inspectors to have and use personal protective equipment whenever possible.
- Inspectors should not reveal the name of any individual who provides information alleging noncompliance by a railroad or other company (typically a hazardous materials shipper) unless they have that person's consent. If the allegation is in the form of a

complaint, the consent must be in writing. (Reference: General Manual, Appendix A, Guidelines for Conducting Interviews, Item L.)

Best Practices for FRA and State Inspectors

There are numerous things inspectors can do to leverage their sphere of influence and foster a good safety culture within their assigned districts. Following are a few examples.

- Strive to build cooperative relationships with labor representatives, railroad and other company managers, and with other FRA and State inspectors.
- Know the physical characteristics of your district (geography and railroad profile), understand the corporate cultures you are dealing with, and know the complaint history of a facility or subdivision. A good indicator for evaluating the overall culture is if you are receiving a large number of complaints and the allegations prove to be legitimate.
- Learn the attitudes of railroad supervisors toward safety and compliance. Determine if operational pressures lead to shortcuts in safety. Assess the staffing ratio (the number of supervisors compared to the number of employees), and determine if supervisors actually have the time necessary to properly evaluate employee safety and compliance.

Statutory Authority

Reference General Manual, Chapter 1.

Definitions and Roles

Inspector. As used in this manual, *inspector* refers to a Federal Operating Practices (OP) inspector or a qualified State OP inspector. Inspectors are the front-line representatives of the agency and must be thorough while conducting themselves in a safe, professional, ethical, and courteous manner. (Please reference the General Manual for various roles inspectors serve in carrying out FRA's mission.)

Specialist. As used hereafter in this manual, *specialist* refers specifically to the regional OP railroad safety specialist. The specialist is responsible for technical evaluation and oversight of all operating practices inspections, analyses, and activities within the region and provides technical guidance, training, and advice in the OP areas. (Please reference the General Manual for various roles specialists serve in carrying out FRA's mission.) Headquarters specialists are subject to the same requirements and guidance of this manual.

Stakeholders. *Stakeholders,* as used in this manual, include those the agency regulates as well as those it serves. Stakeholders sometimes partner with FRA to develop safety initiatives and technology, while others help review, develop, and/or enforce FRA's safety regulations. All stakeholders depend on FRA to fulfill its mission to promote safe, environmentally sound, and successful railroad transportation to meet current and future needs.

Publications and References Related to Operating Practices

The following list comprises the essential publications and references concerning OP. These materials can be accessed via REG-Trieve or via FRA's Web site: www.fra.dot.gov.

- FRA Operating Practices Compliance Manual.
- FRA Office of Railroad Safety General Manual. http://www.fra.dot.gov/Pages/359.shtml
- 49 CFR Parts 200–299.
- Office of Railroad Safety OP and Motive Power and Equipment (MP&E) technical bulletins, relevant FRA emergency orders, and relevant FRA safety advisories. http://www.fra.dot.gov/Pages/19.shtml
- FRA Guide for Preparing Accident/Incident Reports. This can also be accessed on REG-Trieve or by going to http://safetydata.fra.dot.gov/officeofsafety and scrolling to Item 7.09.
- Federal Railroad Administration: Safety Policy, Procedures, and Recommendations.
- FRA Drug and Alcohol Program: Program and Guidance Materials. http://www.fra.dot.gov/Pages/1790.shtml
- FRA Drug and Alcohol Program Compliance Manual. http://www.fra.dot.gov/downloads/safety/ADComplianceMan.pdf
- Hazardous Materials Reference–49 CFR Parts 100 to 185; 2008 Emergency Response Guidebook.
- Federal railroad safety and hazardous materials transportation safety statutes (available on the REG-Trieve Program)

Part 227—Occupational Noise Exposure

All activities are conducted by the Industrial Hygiene Staff. Contact the Industrial Hygiene Staff for further information.

Personal Safety

The inspector's first concern is for his or her own safety and that of any accompanying personnel. Inspectors should always remain alert to the dangers of moving equipment and third rail/electrified equipment.

Inspectors must comply with any railroad's request to use safety equipment, such as hard hats, safety shoes, safety glasses, etc. Inspectors should also comply with all of the railroad's safety rules, to the extent that it would not materially interfere with FRA's capability to conduct investigations. FRA inspectors are not required to establish Blue Signal Protection while conducting inspection activities. Nonetheless, FRA OP inspectors should be very cautious when around equipment, including when checking railroad equipment for securement.

Inspectors should read and be familiar with the (1) Safety precautions listed in Part IV, Chapter 1, of the General Manual; and (2) Occupational Safety and Health Administration standards, as well as rules, regulations, and orders established by FRA that can be found in Appendices A-1 and A-2 of the General Manual.

FRA OP Inspectors Handling Railroad Equipment

An inspector shall never operate any piece of railroad equipment. There is no exception to this rule under anything less than an extreme emergency situation. This includes the handling of any equipment for any purpose, unless necessary to alleviate an imminently hazardous situation.

However, an inspector may request that a railroad representative move or operate a piece of equipment, or perform a test for investigation purposes. (Reference guidance found in this manual under § 232.103(n).)

The policy that prevents FRA OP inspectors from handling railroad equipment includes, but is not limited to:

1. Switches – hand operated or remote control.
2. Handbrakes on railroad cars or track machinery
3. Handbrakes on locomotives
4. Locomotive controls or switches
5. Railroad vehicles
6. Stop banners
7. Red flags
8. Signal shunts
9. Etc.

FRA OP Inspectors Approaching Railroad Employees Engaged in Safety-Sensitive Tasks

FRA OP inspectors should never distract railroad employees engaged in safety-sensitive tasks. When approaching railroad employees engaged in safety-sensitive tasks, such as switching or operating a locomotive, the inspector should subtlety make their presence known, and then wait until the railroad employee has completed or stopped the safety-sensitive task prior to beginning a discussion, or making any inquiries. Most discussion should always include a safety briefing prior to the discussion and one at the end of any discussion.

Delaying Trains

Inspectors have no authority to prohibit the departure or movement of any train, locomotive, car, etc. Inspectors should point out any hazardous conditions that could result in an accident if the defective train, locomotive, or car departs without appropriate attention. If a railroad elects to move equipment without taking appropriate action, the inspector should notify their regional office immediately and develop information to pursue civil penalties against the railroad and/or initiate enforcement action against an individual.

Interpreting Railroad Operating Rules

FRA OP inspectors are never allowed to interpret railroad operating rules. If the inspector disagrees with a railroad operating rule interpreted by a railroad employee, the inspector should contact their regional specialist and perhaps the railroad's manger charged with the responsibility

of interpreting railroad operating rules. If the matter cannot be resolved, the regional specialist should contact FRA HQ for guidance.

Handling Confrontations with Railroad Employees

FRA OP inspectors should never allow themselves to be drawn into an argument with railroad employees. If the discussion rises to the level of an argument, the FRA OP inspector should discontinue the discussion and contact their regional specialist immediately.

Intervening When Railroad Employees Perform Unsafe Acts

(Also reference the General Manual Chapter 2; Behavior)

FRA expects inspectors to act when they observe railroad employees engaging in unsafe conduct. Nonetheless, an FRA inspector does not have authorization to stop railroad operations or instruct employees to perform tasks. Consequently, if an FRA inspector feels it is required to instruct employees to perform specific tasks, or to order railroad employees to stop performing railroad operations in a specific manner immediately, the regional specialist should be notified immediately. The proper method of an FRA OP inspector intervening is by safely approaching the railroad employees (reference "FRA OP Inspectors Approaching Railroad Employees Engaged in Safety-Sensitive Tasks" found in this chapter), or by immediately contacting a railroad official.

All noncompliance behavior should be recorded on an inspection report. The reasons for the unsafe acts can be complicated, such as unintended human error resulting from problems at home, poor training, poor supervision, or a deficient work environment. The unsafe acts may also be intentional violations of Federal regulations or railroad rules, which may or may not be condoned by railroad managers. Determining if it was condoned by the railroad managers is a high priority for FRA OP inspectors.

Regardless of whether the unsafe acts are unintended human errors or intentional violations, FRA personnel must take remedial action at the appropriate time to help ensure the safety of the individuals and operations involved. To overlook unsafe acts is to compromise the value FRA places on the safety of individuals or operations. When considering the appropriate action, be governed by the following:

- Report your findings factually. Express concern, but do not become emotional. FRA OP inspectors can discuss operating rules, behavior, observations, but should never argue with, or disrespect, the railroad employees.
- Where possible, communicate directly with the employees involved and advise them of your concerns. Remember, you do not have authority to stop railroad operations.
- Always be polite and show respect when communicating with anyone from the regulated community. A good method is balancing the feedback: advise them of things you observed them doing correctly and then mention the unsafe act. Ask the employee(s) if

they were aware of the unsafe act, and whether they believe the act was noncompliant with any Federal or railroad rules.

- Advise a railroad manager of your findings as soon as possible.
- Properly record your observations on an inspection report.
- Do not get involved in discussions regarding discipline. That is a labor-management issue.

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CHAPTER 2
INSPECTION AND COMPLIANCE PROCEDURES

Introduction

Uniform enforcement of the railroad safety laws is FRA's primary mission. In very general terms, our enforcement must be reasonable, fair, and firm; and focused on the most important safety issues we confront. Referencing current data regarding a railroad's safety record and regulatory compliance is essential when performing inspections. Enforcement based on these principles will be a powerful tool for promoting compliance with the safety laws and thereby advancing FRA's goal—shared by the entire industry—of zero accidents and zero injuries.

Best Practices for FRA and State Inspectors

- Federal inspectors should review the National Inspection Plan (NIP) for their inspection territory when planning inspections.
- They should place a high priority on a well-organized plan, including all relevant reinspections, using the proper required filing system.
- They should place greater emphasis on getting to root causes of systemic safety problems.
- Inspectors have the responsibility to ensure that unsafe conditions and practices receive prompt corrective action. An unsafe condition, practice, or a combination of an unsafe condition or practice that causes an emergency situation that could result in a death, serious injury, substantial property damage, or significant harm to the environment takes precedence over all other inspector duties.

Analysis of data

Inspectors will study accident trends in their inspection territories as required in Chapter 18 of this manual. Inspectors should focus on those accidents that are reported with human factor codes. For example, if a recent accident caused by a human factor was related to improper use of radio communications, inspectors should concentrate inspections on the railroad's radio operating rules and compliance with those rules and the relevant FRA regulations.

Inspector Priorities

The allocation of resources will often deviate from the desired goal because of unforeseen events. When these events occur, regional administrators (RA), specialists, and inspectors will base human resource allocation decisions on the following priorities (listed in the order of importance, beginning with the highest):

1. Accident/incident investigations
2. Congressional complaint investigations
3. Petitions for waiver investigations

4. Compliance order or compliance agreement audits
5. Regular complaint investigations
6. Data analyses inspections
7. Follow-up reinspections
8. NIP inspections

OP Report Timelines

Work products are investigated and prepared in accordance with FRA published guidelines/procedures and submitted in a cost effective and timely manner.

Inspectors should reference their Performance Appraisal Plan for specific timelines. Inspectors should provide written notice to the specialist and/or Deputy Regional Administrator (DRA) if a timeline will not be met.

Allocation of Resources

Within a region, the RA, DRA, and OP specialist are responsible for coordinating OP inspection activities and assignments to maximize effective use of limited inspector resources. The specialist will coordinate inspector activity consistent with program objectives. There are a number of mechanisms by which inspector allocation is determined:

- NIP requirements
- Accident/incident information, including the focused inspection process
- Complaints received
- Extent of noncompliance
- Violations recommended
- Consolidation, relocations, and mergers of railroad operations
- New railroad operations

Advance Notice of Inspection

Inspectors should not routinely provide railroads or other companies with advance notice of planned inspection activities. However, an inspector may exercise his or her discretion in determining when advance notice of inspection is necessary to ensure the availability of records, equipment, officials, or persons to be interviewed, thereby enhancing efficient use of resources.

Unannounced Inspections

FRA expects a large number of OP inspections to be “unannounced inspections,” meaning that there was not any advance notice provided to the railroad prior to the inspector performing these

observations of employee's compliance with Railroad Operating Rules, Railroad Safety Rules, or Federal regulations.

Creating Additional Inspection Reports for the Same Day

Inspectors should reference Chapter 3 of this manual.

Centralization of Records – 49 CFR Parts 217, 219, 225, 228, 240

At issue is the need to clarify FRA's position regarding the recordkeeping provisions of the Operating Practices regulations, relative to the points (locations) where required railroad carrier records are to be maintained.

FRA Policy: A railroad may elect to retain FRA-required records at a central location or at its system headquarters. This policy statement covers manually generated records required by Title 49 Code of Federal Regulations (CFR) Parts 217, 219, 225, 228, and 240. Electronic records generated under these Parts, with the exception of 49 CFR Section 228.11, may also be retained at a central location. All records so maintained shall be available for inspection and copying by the FRA Administrator, or the Administrator's agent, during the railroad carrier's normal business hours at its centralized recordkeeping location.

U.S. Department of Transportation policy regarding 49 CFR Parts 40 and 219 records is as follows:

> Maintenance of records required by 49 CFR Parts 40 and 219 can be delegated to an agent of the employer such as a consortium/third party service administrator (C/TPA), or a Medical Review Officer (MRO). The actual location at which the employer allows the records to reside will vary; the records could reside at the employer's or the C/TPA or the MRO's principal place of business, or at another authorized location. An employer will need to have an arrangement with any authorized maintainer of records to ensure that the records (copies, facsimile or electronic) could be made available at the employer's site on short notice (3 days) if requested by appropriate DOT officials.

Electronic records required by 49 CFR Section 228.11 are maintained under the provisions of an approved waiver with availability established as part of the waiver review process. Records maintained under this part shall be accessible for inspection, review, and printing at the established locations during the railroad carrier's normal business hours.

Centralized record retention systems shall be so designed, as to be capable of reproducing, electronically or mechanically, copies of records required by 49 CFR Sections 217.9; 217.11; 225.25(b), Supplementary Record; and Part 228 (except for Dispatcher's Record of Train Movements) for inspection upon request at each railroad carrier establishment, including but not limited to an operating division, general office, or major installation.

Signing Waivers

While on FRA official business, inspectors may not sign waivers that release railroads or other companies or their representatives from responsibility for any personal injury or for loss or damage to the inspector's belongings or U.S. Government property. Inspectors may sign visitor or guest registers in order to gain entry into the premises to be inspected, provided the signature constitutes no form of release or waiver of responsibility, or limits the inspector's access to areas germane to the inspection. When an inspector is uncertain of the legal effect of signing a visitor or guest register, the inspector should consult the regional specialist (or his or her designee) for advice prior to signing the register.

Corrective Handling with Railroad or Other Company

Upon completion of an inspection, inspectors must communicate with a railroad or company representative and advise the person of all noncompliance noted. When doing so, inspectors should specifically reference the applicable section of the law (in cases involving hours of service laws), or section and subsection(s) of the CFR or the FRA order. Inspectors must also provide the railroad or company representative with a copy of the completed inspection report, FRA Form F6180.96, immediately. If it is not feasible to do this, they must electronically mail or fax the report as soon as they can. At the end of the week, inspectors should electronically transmit all inspection reports to the general manager, division superintendent, or equivalent railroad or other company officer.

Enforcement Discretion

Reference General Manual Chapter 2.

Safety Action Plan

If inspectors encounter repetitive noncompliance by a railroad or other company, they should work with their specialist, railroad officials, labor, and other FRA inspectors to develop safety action plans that address that noncompliance. FRA will typically exercise enforcement restraint, provided that a company cooperates in development of such a plan. However, when a company has agreed to a safety action plan to address those issues and then fails to follow through on specified action items, any subsequent noncompliance by the company will be considered for enforcement action.

Reinspections

If significant noncompliance is disclosed during regular inspections, it should be corrected as soon as possible. Inspectors must schedule a reinspection within a short timeframe to confirm that the corrective action mitigated the noncompliance, and then correctly document the file number when filing the reinspection report. In any of the following situations, a reinspection by FRA is required within ***30 days*** after the day of discovery:

- If FRA has issued an emergency order to address the situation.

- If an inspection determined that the railroad failed to report a death, a serious injury, or a highway-rail grade crossing accident.
- If regional management directs that there be a reinspection.

The Importance of Documenting Reinspections (Source Code R)
The source code on Form 6180.96 for a reinspection report is:

Source code R: Reinspection (All disciplines) – Inspection activity carried out to examine, monitor, or further develop previously conducted work. Inspectors must use good judgment when deciding the appropriate interval for the reinspection, taking into consideration factors such as the inherent seriousness of the noncompliance and the railroad's general level of current compliance as revealed by the original inspection as a whole. Signal and Train Control and Track inspectors must also be governed by discipline-specific guidelines. **The File Number field must contain the Inspector ID and previous inspection report number.**

Reinspections validate an inspector's effort to follow through on his or her findings of noncompliant issues until they are recorded as complete (in compliance or no longer in noncompliance). This may take only one reinspection, or it may take several dozen reinspections. In any case, the FRA inspector should ensure that the proper file number is recorded so that proper credit of the issue being resolved can be recorded.

FRA managers will review noncompliance issues, providing adequate oversight to the field OP inspector, to ensure that reinspections are performed to determine whether the railroad has moved into compliance. If the railroad has progressed from noncompliance to compliance regarding an issue identified by an OP inspector, proper acknowledgement should be provided to both the railroad and inspector.

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CHAPTER 3
FIELD REPORTING PROCEDURES AND FORMS

Inspection Reports

Inspection reports are usually generated from the field OP inspector's laptop computer using the Form FRA F6180.96 (96 Report). Inspectors should use this form to document both compliance and noncompliance observed. When disseminating these inspection reports, inspectors must be cognizant that there are two specific versions produced.

1. FRA COPY

   FORM FRA F 6180.96 (Revised BLANK) **FRA COPY**

2. RAILROAD/COMPANY COPY

   FORM FRA F 6180.96 (Revised BLANK) **RAILROAD/COMPANY COPY**

Inspectors should be aware that the FRA COPY may contain information regarding file numbers and source codes that should not be provided to anyone outside of our agency. Consequently, the FRA COPY should not be included in any violation package.

Completing an Inspection Report

Adequate Information
Inspectors are expected to provide the railroad an inspection report that fully reflects their inspection findings. The inspection report must **provide enough information to identify the precise details of the compliance or noncompliance**. This will allow the railroad to provide feedback to the person(s) involved in the inspector's findings, and an accurate expectation of how to correct any noncompliance the inspector found during an inspection.

Example
An inspection report that merely indicates that a certification card was inspected is unacceptable regardless of if the inspector noted any deficiencies. Without enough information, the railroad manager receiving the report cannot provide feedback to the employees involved or take action to correct any noncompliance.

> ***Comment to the railroad***
> *On this date I reviewed the engineer certification card for the engineer Larry Smith, who was operating Locomotive NEBR 1236 at 12:30 p.m., near track 24.*

Inspection Report Guidance

When possible, an inspection report should be completed and provided to the railroad on the same day the inspection is performed. When it is not possible to provide the railroad with the inspection report on the same day as the inspection, the inspection report should be sent to the railroad in a timely fashion.

If an inspector cannot provide a completed inspection report to the railroad manager immediately following an inspection, the inspector should provide oral notification of an inspector's findings either verbally or via a telephone. This oral notification should be followed by the required 96 Report as soon as practical.

Creating Additional Inspection Reports for the Same Day

An additional 96 Report will be provided during field inspections whenever the OP inspector:

1. Crosses into a different county, unless performing a train ride inspection.
2. Crosses into a different State.
3. Does an inspection on a different railroad or on a railroad employee from a different railroad performing duties on the host railroad being inspected. A copy of the report will be provided to the host railroad as a courtesy.
4. Crosses into a different railroad division. Note: This does *not* apply to a different railroad subdivision.
5. Has a need for additional activity codes not accounted for on the inspector's prior 96 Report.

Inspection Point

Inspectors should always provide details about the location of an inspection (e.g., West Yard, Headquarters, Onboard 7123 West, etc.). Inspections from the inspector's office should not be any different, and should be properly indicated on the report.

Inspections from an FRA Office (Desk)

Sometimes an OP inspector will generate an inspection report at their office location after reviewing railroad data such as operational test data, accident/incident reports, injury claim reports, railroad radio tape/audio disk files, and other documents or data. If the inspection took place at an FRA office or at a home FRA office, the inspector should indicate on the report in the location field: "FRA office."

Remedial Action Option

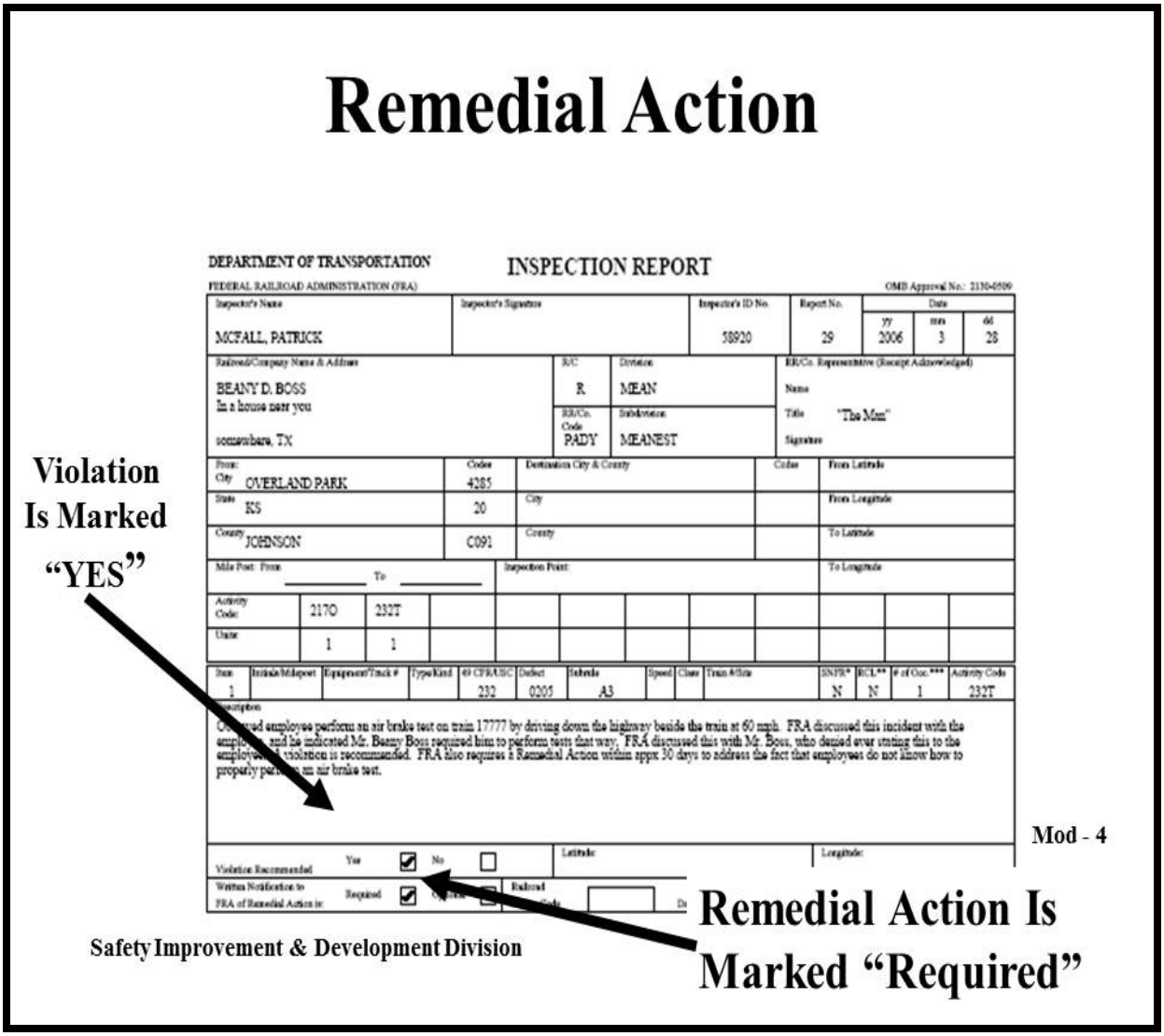
Please reference remedial action guidelines in Chapter 3 of the General Manual. For OP inspectors, checking the Remedial Action box on Form FRA F6190.96 is not mandatory for all inspections where a civil penalty action (violation report) is recommended. Chapter 3 of the General Manual, Reporting of Remedial Actions, provides more information on when to use the remedial action process. Check with your OP specialist if you have questions regarding when to use the remedial action process when recommending a violation.

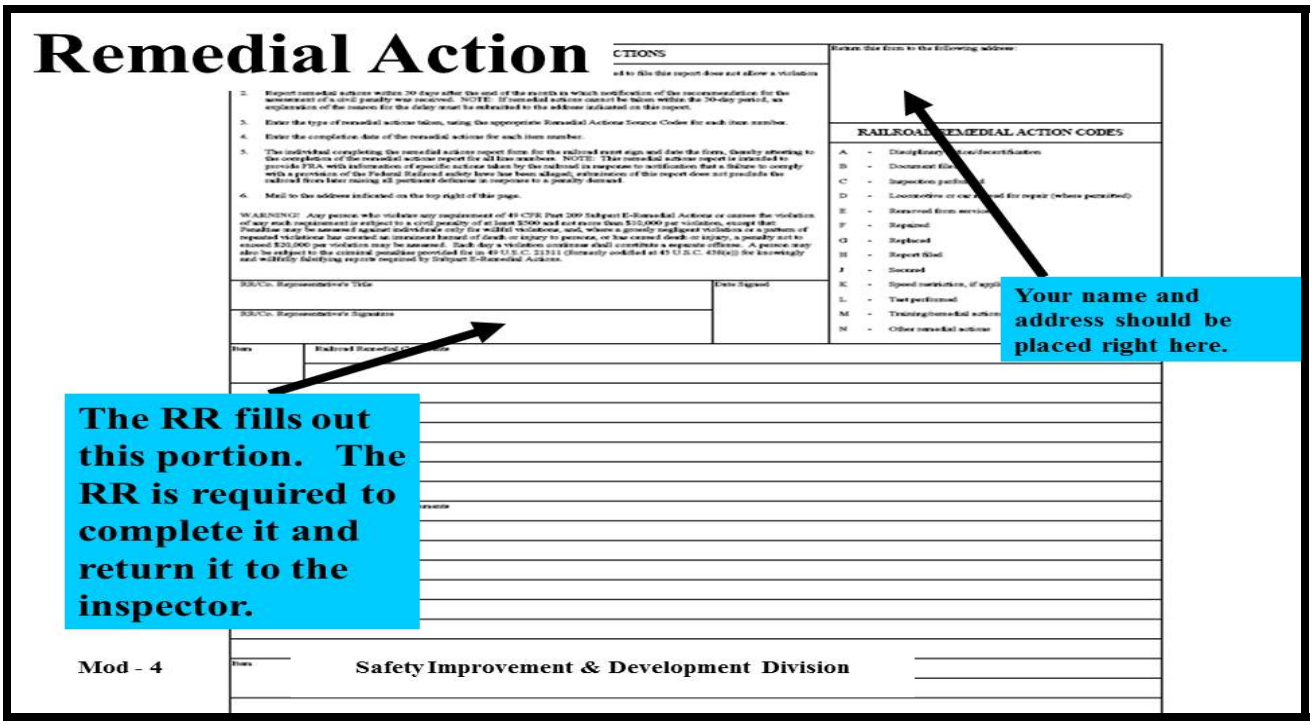
Railroads can only be required to submit remedial action reports for three types of violations:

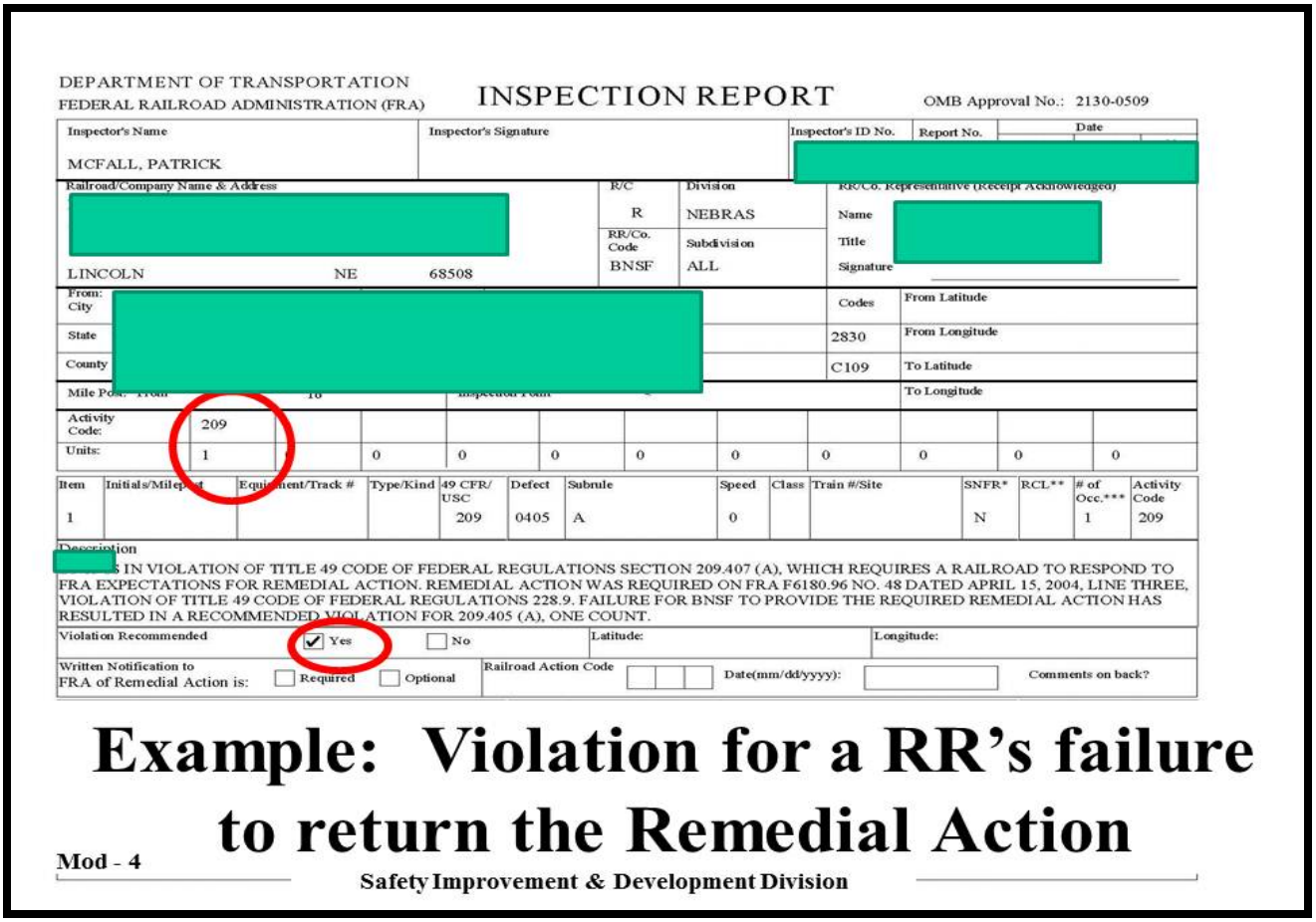
1. Physical defects

2. Recordkeeping and reporting violations
3. Filing violations

An example of an inappropriate use of the remedial action process is after citing a violation for a railroad's failure to follow its efficiency program by completing the required number of efficiency tests. (The railroad cannot go back in time and do the efficiency tests that it should have done already.) However, if the violations were taken for a failure to report or record efficiency tests, then the remedial action process is possible because the railroad can file a late report or create a record of efficiency tests that were actually done earlier.




Remedial Action
Your name and address should be placed right here.
The RR fills out this portion. The RR is required to complete it and return it to the inspector.
Mod - 4
Safety Improvement & Development Division


DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION (FRA)
INSPECTION REPORT
OMB Approval No.: 2130-0509
Inspector's Name
MCFALL, PATRICK
Inspector's Signature
Inspector's ID No.
Report No.
Date
Railroad/Company Name & Address
LINCOLN NE 68508
R/C
R
Division
NEBRAS
RR/Co. Code
BNSF
Subdivision
ALL
RR/Co. Representative (Receipt Acknowledged)
Name
Title
Signature
From: City
State
County
Codes
2830
C109
From Latitude
From Longitude
To Latitude
To Longitude
Activity Code:
209
Units:
1
0
0
0
0
0
0
0
0
Item
1
Initials/Milepost
Equipment/Track #
Type/Kind
49 CFR/ USC
209
Defect
0405
Subrule
A
Speed
0
Class
Train #/Site
SNFR*
N
RCL**
# of Occ.***
1
Activity Code
209
Description
S IN VIOLATION OF TITLE 49 CODE OF FEDERAL REGULATIONS SECTION 209.407 (A), WHICH REQUIRES A RAILROAD TO RESPOND TO FRA EXPECTATIONS FOR REMEDIAL ACTION. REMEDIAL ACTION WAS REQUIRED ON FRA F6180.96 NO. 48 DATED APRIL 15, 2004, LINE THREE, VIOLATION OF TITLE 49 CODE OF FEDERAL REGULATIONS 228.9. FAILURE FOR BNSF TO PROVIDE THE REQUIRED REMEDIAL ACTION HAS RESULTED IN A RECOMMENDED VIOLATION FOR 209.405 (A), ONE COUNT.
Violation Recommended
Yes
No
Latitude:
Longitude:
Written Notification to FRA of Remedial Action is:
Required
Optional
Railroad Action Code
Date(mm/dd/yyyy):
Comments on back?
Example: Violation for a RR's failure to return the Remedial Action
Mod - 4
Safety Improvement & Development Division

96 Reports – Recording SOFA Observations on Inspection Reports

See also Chapter 19 of this manual.
The requirement to record SOFA Recommendations in the speed column has been discontinued. All deficiencies should be recorded on the inspection report by clearly explaining the deficiencies in the narrative without referencing the SOFA Recommendations.

Inspection Report Best Practices

- Inspectors are required to analyze all of the data in their territories, and in accordance with regional guidance and National Inspection Plan (NIP) requirements, and conduct field observations of crews to determine whether they are complying with FRA regulations. This information includes the following:
    1. Part 225 accident/incident data, including the non-reportable accountable incidents.
    2. Part 217 operational testing data reviews that should be conducted on a routine basis for each railroad in the inspector's territory and tracked in such a manner the reviews can be explained to the inspector's supervisors.
    3. A constantly changing inspection plan that is developed using the available data noted herein. This plan will be used to guide the inspector's time and resources regarding his or her inspection activities. (Reference Chapters 4 and 18.)
- Use the first person in Form FRA F6180.96 reports. Write clearly and accurately
- Use the RISPC Spell Check function on your Form FRA F6180.96 report and proofread the inspection report before submitting it to the railroad.
- Within your inspection report, tell the story: who, what, when, and where. There should be enough information on the report so the railroad manager can provide feedback to those involved.
- Use the inspection report to document efforts to obtain records or discuss compliance with railroad managers.
- Use reinspection file numbers correctly when using the inspection reports to document the necessary or required follow-up inspection.
- Inspection reports should be concise, but include enough detail so the regulated entity can understand what you did and take follow-up action if necessary.
- Inspection reports must be factual in nature.
- Submit your inspection report to the railroad in a timely manner, on the same day as the inspection, if possible.
- Use photographs to support conditions noted in your inspection report, when practical. Photographs should be included in your inspection report at the time your inspection report is provided to the railroad manager, if possible.

- On your inspection report, document positive results in addition to noncompliant results. Informing the railroad of the areas in which you have observed compliance will assist the inspector's sphere of influence.
- Each line-item description should include a clear understanding on whether a line item is a "violation noted," an "exception noted," or "no exception is noted." Using the terms "civil penalty recommended" is acceptable, but terms such as "violation **taken**," "exception **taken**," or "no exception **taken**" should be avoided. Nonetheless, inspectors should use the style agreed upon or recommended by their regional OP specialist.

Violations

General Guidance and Instructions for All Violation Reports

Violation reports are a basic and vital link between FRA's Office of Safety Assurance and Compliance and FRA's Office of Chief Counsel. It is through this exchange of information and documentation that instances of noncompliance with Federal safety regulations are ultimately brought to the railroad's attention in the form of the civil penalty process.

Each violation report number shall state the inspector's consecutive report number. The consecutively numbered report remains with the writer throughout the term of employment with FRA. Numbering is unaffected by fiscal or calendar year.

The inspector **must** clearly cite the regulation allegedly violated in the first sentence of the violation's narrative.

The violation's narrative should include the railroad's response and/or corrective action when notified of the violation. The narrative should also include any defense or disagreement the railroad provided the inspector for the violation.

Include any potential safety risk or pervious noncompliance that is relevant.

Inspectors should the first person violation reports. Write clearly and accurately.

Clearly state the manager that was notified of the violation cited, as well as the time and date the manager was notified. Obtain receipts or signatures of the violation provided to the railroad as soon as practical.

Prompt Notification of Violations

When an inspector has determined that a violation of Federal safety regulations or statutes has occurred, the violation must be reported to the violator or his/her appropriate representative. If the violation presents an immediate safety risk, the inspector must immediately make such notification and not wait until the end of the day, and must not leave the area until the unsafe condition has been resolved.

The violation must be reported orally and by serving a copy of a completed 96 Report to the proper railroad representative. When practical, the inspector shall obtain the signature of the railroad official who was served the completed 96 Report.

Violation Best Practices

Upon receipt and examination of a violation report package (i.e., a violation report, including its attachments) by the FRA Office of Chief Counsel, a comprehensive review of the report is conducted. During this process, special attention is given to the availability of sufficient evidence being present to support a successful prosecution of the civil penalties against the railroad or person alleged to have committed the violation(s).

When attaching evidence to a completed violation report form, the inspector must provide a clear explanation of each attachment's relevance to the act in violation that is alleged in the form. Submitting a violation report with attachments that do not have an explanation of their relevance to the violation alleged in the violation report form could result in the violation report being returned to the inspector for clarification.

Quote the text of the regulation or railroad rule referenced in the narrative of the violation report that is alleged to have been violated.

Each element of a violation must be supported by useable evidence.

Reference the RCC/RRS Guidance Memo.

Examination by the Railroad

Since all material submitted with a violation report is available for examination by the railroad, the inspector must use discretion in preparing accompanying materials. The inspector must not use unnecessary or strong language, state unfounded opinions, express disparaging remarks, etc.

Violations from a Complaint

If the violation report is the result of a complaint, do not include the complainant's name or identity. The complainant's job description and work area must not be revealed or implied anywhere within the violation report package. The report must never contain a statement indicating that the violation resulted from a complaint investigation, or refer to a witness as a complainant. When the violation report is the result of a complaint investigation, the assigned control or complaint file number must not be referenced in the violation report form, the attached inspection report, the interview reports, or any other supporting documentation that is submitted.

Inspectors should be aware that the FRA COPY may contain information regarding complaint file numbers and source codes that should not be included in a violation package.

Identification of Attachments, Exhibit Lists, and Supportive Material

The Exhibit List should never be embedded into the narrative of a violation report. It should remain a separate document included in the violation report package. The Exhibit List should clearly be identified as the "Violation Exhibit List" at the top of the page. If the violation report specifically requires the Exhibit List to be placed in the violation report itself, the inspector should write "*Not Applicable*" or "*N/A*" in that box and continue to include the Exhibit List as a separate document.

Each attachment to the violation report, including copies of supporting data, must include a means of identification and a number in the upper right corner. This identification is helpful to reviewing personnel and will be useful if the report inadvertently becomes separated during processing. Examples: F6180.33 JEB-101-1, F6180.33 JEB-101-2, F6180.67 JEB-102-1, F6180.67 JEB-102-2.

It is important for Chief Counsel to be able to understand where and when these documents were obtained. For example, with accident reporting cases, it is good to know how and where the documents were obtained, and the date they were obtained. This allows Chief Counsel to distinguish documents changed at a later date, or obtained from a different source.

True Representation of the Evidence Submitted

The inspector must never tamper with the physical evidence prior to taking photographs to be later submitted as part of a violation report package. Photographs must show the evidence as it was found by the inspector. If the clarity of the photographs is insufficient, additional proper evidence for showing the physical condition may include a signed witness statement, a railroad record, etc. Do not mark the photographs as "not altered" as it is always assumed they are not altered.

Provide an explanation for each piece of evidence, including photographs, and its relevancy to the violation report. This explanation can be included in the evidence itself, or on a separate document.

Accuracy of Completed Violation Report Forms

Violation report forms must be prepared in a clear and concise manner, stating only those facts that pertain to the violation. They must also be free of spelling and grammatical errors. All narrative information must be listed in chronological order.

Statement of Witness. See Chapter 20.

Assembly, Review, Approval, and Transmittal of Violation Reports

The inspector is responsible for preparing and electronically uploading the original violation report package. The inspector will retain one electronic copy for their file. The original is then electronically provided to the regional OP specialist for review of technical accuracy, proper grammar, and completeness. The regional specialist is required to determine consistency with

national enforcement policy. Once he or she believes the violation report package is technically correct and contains sufficient evidence to enable successful prosecution, the region generates Transmittal Form F6180.72b. It is then forwarded to FRA's Office of Chief Counsel. FRA's database will be electronically populated, recording and archiving the violation until closed.

Transmittal Form F6180.72b is not to be sent to a railroad because, for example, it contains information as to whether the violation report arose from a complaint.

Violation Forms Used by OP

Within the OP discipline, there are three separate forms used in the preparation of violation reports. RISPC will guide the inspector to the correct violation form after the inspector downloads the inspection report containing a recommendation for a violation. These three forms and the specific purposes for which they are used are explained on the following pages.

Form FRA F6180.33, Violation of Hours of Service Law

This standard violation report form is used for submitting violations of the statutory requirements of the Federal hours of service laws (HSL) involving one or more employees involved in a single incident of excess service.

Instructions for Completing a Violation Report Package for a Violation of the Federal HSL – Form FRA F6180.33

Inspector's Synopsis

The inspector's synopsis is required with the Federal HSL violation report package because Form F6180.33 does not contain a place on the form for the inspector to provide a narrative description of the circumstances involved in excess service. The synopsis must be concise and factual, and include the events contributing to the excess service. Dates must be specified, as well as the times and places that the duty periods began and ended. Any discrepancy between the railroad's records and employees' statements must be explained.

The synopsis must include whether a report of excess service, F6180.3 (Hours of Service Report–Railroads), was submitted by the railroad.

In addition to the records, the synopsis must include the inspector's determination whether the employee(s) involved received the statutory off-duty period before and after the excess service. It should also name all of the employees involved in the violation.

Hours of Duty Records

The inspector must obtain legible copies of hours of duty records that are related to the excess service and submit them with the violation report. When the excess service relates to off-duty periods, copies of the hours of duty records for preceding or following tours of duty must also be submitted.

If signed hours of duty records for the employee(s) involved cannot be obtained or if the signed time return(s) obtained do not clearly support a violation, the inspector must obtain adequate evidence that the violation occurred.

Interview of Employees and Managers

A violation report must be accompanied by reports of personal interviews or witness statements. Include the employees who performed excess service, any managers who authorized the excess service, and any other employee or supervisor who has pertinent information.

The violation report should always include the railroad manager's explanation of the excess service.

Pertinent Messages or Instructions

A copy of any written message or instruction concerning the excess service should be included with the violation report. If the hours of service record relating to the violation appears to be inaccurate or falsified, the inspector must submit copies of payroll data, train movement graphs, train air brake test records, witness statements, or any other records that can substantiate the inaccuracy or falsification of the record.

Designated Terminal

When the excess service relates directly to a release period of at least 4 hours at a terminal, the violation report must be accompanied by a statement from the inspector providing information on whether the terminal is a "designated terminal" as defined by the Federal HSL.

Where release periods are provided at points other than the home or away-from-home terminals, the report should indicate whether any of the statutory exceptions to the designated terminal requirement were satisfied.

Statute of Limitations for Violations of the Hours of Service Laws

To collect a civil penalty for a violation of the HSL, a suit must be filed within 2 years after the date of the violation unless administrative notification (via demand letter from the Office of Chief Counsel) has been made within that time. If administrative notification has been made within that 2-year period, then a suit must be filed within 5 years of the date of the violation.

Instructions for Completion of Form FRA F6180.33

The following instructions shall be strictly followed in the preparation and issuance of Form FRA F6180.33:

1. Character of Violation: The inspector is to select and enter the most appropriate statement from the following statements that describe the type of Federal HSL violation:

1. Continuously on duty in excess of 12 hours.
2. On duty in broken service more than 12 hours
3. Off duty for a period less than that required (including requirements for 6/48, or 7/72).
4. On duty in excess of 9 (or 12) hours in a 24-hour period.
5. More than 30/40 hours of limbo time in a calendar month.
6. More than 276 hours of mandatory activity for a railroad in a calendar month.

The first three items may pertain to excess service performed by employees such as enginemen, trainmen, yardmen, hostlers, and signalmen. The fourth item relates to excess service performed by employees such as train dispatchers and operators. The last two items are only related to train employees.

Example: "Continuously on duty in excess of 12 hours"

2. Violation Report No.: The violation report number as assigned by the inspector.

3. Railroad: Enter the railroad's full corporate name.

Example: "Big Red Railroad Company"

4. Place: The city and State of the inspector's assigned duty location (i.e., inspector's headquarters). This field is auto-filled from the 96 Report.

Example: "Lincoln, Nebraska"

5. Officer: The railroad manager's name and title entered in this item must be responsible for the geographical territory and/or the employee(s) involved in this HSL violation.

Example: "Johnny Railroader, Division Superintendent"

6. Date: The date on which the inspector completes FRA Form F6180.33.

Example: "March 27, 2007"

7. Train No.: The full train number, train symbol, yard job number, or other proper designation. This designation must be shown as it appears on the employee(s) records or the dispatcher's record of train movements (train sheet). If the HSL violation involves a dispatcher, operator, or other employee for whom a train designation is not appropriate, enter "N/A." This field is auto-filled from the 96 Report, but manual entry is allowed.

Example: "CHCKC-29"

8. Engine No.: The initial and number of the designated locomotive for a train, an engine, and/or a yard crew involved in the excess service. If the HSL violation involves a dispatcher, operator, or other employee for whom a controlling locomotive is not appropriate, enter "N/A."

Example: "CNW 8550"

9. Name of Inspector: The inspector's name is filled from F6180.96 Inspection Report.

9a. Inspector's Payroll ID No.: This field is filled from the F6180.96 Inspection Report.

10. From: The city or station name and State are to be entered for the location where the train, engine, and/or yard employee(s) originally went on duty for this tour of duty.

Example: "Lincoln, Nebraska"

11. To: The city or station name and State are to be entered for the final destination location to where the train, engine, and/or yard employee(s) were intended to operate to during this tour of duty (Items 10 and 11 may be the same location).

Example: "Lincoln, Nebraska"

12. F6180.96 Report Number-Date: This field is filled from the F6180.96 Inspection Report with the report number and date of inspection.

13. Line Item Number: This field is filled from the F6180.96 Inspection Report with the line item number that corresponds to this violation.

14. Violation of Title 49, U.S. Code: Section and subsection will be filled from the F6180.96 Inspection Report.

15. Operation/Facility: When the violation is against an entity other than a railroad, enter the 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.

16. Division: The name of the division, service unit, business unit, district, region, or other equivalent of the operating division on which the violation occurred. For railroads with no division, service unit, etc., show the appropriate designation or enter "N/A."

17. Track: Name or number of the track involved in the violation, will be filled from the F6180.96 Inspection Report.

18. Name and Address of Employee: The name (first name or initial, middle initial, and last name), and the home address (street address, city, State, and ZIP Code), are to be entered for each employee for whom this violation report is being submitted.

Example: "Michael M. Rozier
1313 West 33rd Terrace
Lincoln, Nebraska 12345"

19. Occupation: Enter the occupation for each employee for whom this violation report is being submitted.

Example: "Engr."

20. On Duty: This item on the form calls for the entry of three separate lines of information: place, date, and time on duty for each employee for whom this violation report is being submitted. Do not use "ditto" marks.

1. **Place:** Enter the city or station name and State for the location where the train, engine, yard, dispatcher, operator, or other covered service employee(s) originally went on duty for this tour of duty.

2. **Date:** Enter the month, day, and year of when the train, engine, yard, dispatcher, operator, or other covered service employee(s) originally went on duty for this tour of duty.
3. **Time:** Enter the time (e.g., 6:30 a.m.) the train, engine, yard, dispatcher, operator, or other covered service employee(s) went on duty for this tour of duty. Military time may be used, if that is that is the form of time used by the railroad on the hours of duty record.

Example: "Lincoln, Nebraska"
January 6, 2010
6:30 a.m."

21. Off Duty: This item on the form calls for the entry of three separate lines of information: place, date, and time off duty for each employee for whom this violation report is being submitted. Do not use "ditto" marks.

1. **Place:** Enter the city or station name and State for the location where the train, engine, yard, dispatcher, operator, or other covered service employee(s) were relieved from duty for this tour of duty.
2. **Date:** Enter the month, day, and year of when the train, engine, yard, dispatcher, operator, or other covered service employee(s) were relieved from duty for this tour of duty.
3. **Time:** Enter the time (e.g., 6:30 p.m.) the train, engine, and/or yard service employee(s) were relieved from duty for this tour of duty. Military time may be used, if that is that is the form of time used by the railroad on the hours of duty record.

Example: "Lincoln, Nebraska
January 7, 2010
2:00 p.m."

22. Total Time On Duty: Enter the total number of hours and minutes on duty during this tour of duty for each employee for whom this violation report is being submitted.

Do not use "ditto" marks to indicate repetition of information. Use an apostrophe (') to mean hour(s) and a quotation mark (") to mean minute(s).

Example: 13' 15"

23. Total Time Off Duty: Enter the total number of hours and minutes that the employee was off duty prior to commencing this tour of duty, for each employee for whom this violation report is being submitted. Do not use "ditto" marks to indicate repetition of information. Use an apostrophe (') to mean hour(s) and a quotation mark (") to mean minute(s).

Example: 20' 35"

NOTE: When the violation involves an interim (release) period for rest at any site other than a designated terminal, the inspector must include a notation on the bottom of the front of the report that clearly explains all aspects of the interim release.

Example: "Includes interim period of release of 4 or more hours (10 a.m. to 3 p.m.) rest at Billings, Montana."

24. Synopsis of violation: See instructions on Page 3-8

25. Regular Office Hours of Dispatchers or Operators: Enter the assigned hours if the violation concerns a dispatcher or operator's hours of service. For all other covered service employees, leave blank.

Example: "8 a.m. to 5 p.m.
3 p.m. to 11:59 p.m.
11:59 p.m. to 8 a.m."

The above example identifies the assigned shifts for a dispatching office where a single dispatcher or operator performs covered service as a dispatching service employee during each of the three shifts. In cases of large dispatching centers, the information shown in the above block must be confined to the specific dispatcher or operator district (e.g., desk) that was involved in the HSL violation.

26. Cause of Excess Service: The inspector must indicate which of the following causes is applicable. Using the drop down menu choices, the inspector will first choose from the listed Causes of Excess Service, followed by the Extension to Causes of Excess Service options.

Causes of Excess Service Options:

1. Employee was permitted or required to remain continuously on duty for a period in excess of that provided by statute.
2. Employee was permitted or required to return to duty after 12 hours of continuous service without at least 10 consecutive hours off duty.
3. Employee was permitted or required to continue on duty without at least 8 consecutive hours off duty during the preceding 24 hours.
4. Employee was permitted or required to continue on duty in broken service in excess of that provided by statute.
5. Employee was permitted or required to perform mandatory activity for the railroad in excess of 276 hours in a calendar month.
6. Employee was permitted or required to exceed 30 hours in a calendar month of time waiting for or in deadhead transportation to a point of final release, following a period of 12 consecutive hours on duty.

7. Employee was allowed or required to remain on duty or continue on duty without receiving the required off-duty period as outlined in the HSL.

In addition, when applicable, one of the following must be added as an extension to one of the above "causes" to fully explain the reason for the excess service:

Extensions to Cause(s) of Excess Service Options:

1. Due to failure to consider as time on duty, a release period provided at a place other than a designated terminal.
2. Due to failure to consider as time on duty, the time spent in deadhead transportation to a duty assignment.
3. Due to failure to consider as time on duty, a release period less than that prescribed.
4. Due to considering as time off duty, the time spent in deadhead transportation from a duty assignment to a point of final release.
5. Due to failure to consider as time on duty, any time spent performing service not covered by statute when that service is commingled with service covered by the statute.

Example: "Employee was required to remain continuously on duty for a period in excess of that provided by statute due to failure to consider as time on duty, any time spent performing service not covered by statute when that service is commingled with service covered by the statute."

The above example combines the cause of excess service (Option 1), with an extension to the cause of excess service (Option 5), to fully describe the circumstances of the excess service violation. A possible reason for using this type of example would be when train and engine service employees have commingled service due to attendance at a required rules class.

27. Inspector recommendation: Inspector recommendations to correct activities leading to noncompliance.

28. Signature of Inspector(s): The inspector's signature.

29. Date of signature: The date the inspector signed the original copy. Use the date selection feature or type it directly.

30. Railroad 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: 9:30 a.m.
NAME: Eric Couch
TITLE: Division Superintendent
DATE: March 27, 2010"

31. List of Documents Attached: The exhibit list should never be embedded into the narrative of a violation report. It should remain a separate document included in the violation report package. The exhibit list should clearly be identified as the "Violation Exhibit List" at the top of the page. If the violation report specifically requires the Exhibit List to be placed in the violation report itself, the inspector should write "*Not Applicable*" or "*N/A*" in that box and continue to include the Exhibit List as a separate document.

Arrangement of Federal Hours of Service Law Violation Report Package: The report is to be assembled by the inspector in the following manner:

1. Completed Form FRA F6180.33, Violation of Hours of Service Law.
2. Exhibit List.
3. A copy of hours of duty records.
4. Statements and/or interviews of employees and officials.
5. A copy of any pertinent messages, instructions, and substantiating records.
6. A list of crews or employees available for relief service, or a statement from a railroad official that other qualified employees were available to relieve employees who performed excess service.
7. A copy of the railroad's report of excess service, Form FRA F6180.3, if submitted.
8. The original copy of the inspector's signed and completed Form FRA F6180.96, Inspection Report.
9. Any other documentation that supports this violation.

NOTE: The memorandum of transmittal from the regional office to the Office of Chief Counsel, Form FRA F6180.72(b), is not an attachment to or part of the violation report package.

Form FRA F6180.3, Hours of Service Report – Railroads

This form is to be used by railroads to report instances of excess hours of service in accordance with Title 49 Code of Federal Regulations (CFR) Section 228.19. The inspector should contact the FRA Hours of Service Specialist, confirm the form was submitted, and request a copy of the form.

For future reference:

- Railroads with electronic hours of service (HOS) recordkeeping systems are allowed, per 49 CFR § 228.19, to attach the F6180.3 directly to the individual HOS record associated with the excess service. In this case, the inspector will be able to print the F6180.3 directly from the railroad's electronic HOS recordkeeping system.

- Title 49 CFR § 228.19 also allows the submission of the F6180.3 using an electronic signature. FRA is in the process of developing a database for an F6180.3 submitted electronically that can be directly accessed by the inspector.

- We will attempt to keep inspectors updated as these new methods for handling the F6180.3 are instituted by the railroads and FRA.

- If an F6180.3 was not submitted by the railroad for the instance of excess service and the inspector decides to recommend a civil penalty for this failure, a separate violation report package using F6180.67 must be submitted.

Form FRA F6180.61, Violation of Accident/Incident Reporting Rules

This standard violation report form is used for reporting an instance of the violation of Part 225, Railroad Accident/Incident Reporting, for failure to report accidents/incidents. As such, the Form FRA F6180.61 is used for failing to create Forms FRA F6180.54, F6180.55a, and F6180.57.

NOTE: All other recordkeeping/reporting violations are recorded on Form FRA F6180.67.

FRA recently started providing the Class I railroads and Amtrak, which are subject to the statutorily mandated 2-year interval audits, with a 30-day window following an audit's closeout meeting within which to produce additional evidence or information in connection to a potential violation. When inspectors participating in these accident/incident audits are submitting their violation reports for audit cases, the inspectors must include one of the following statements and must provide additional explanation and evidence as appropriate:

1. FRA did not receive a response to the proposed violation from the railroad either during the audit or the 30-day window following the audit and/or a request for additional time to provide a response to the proposed violation.

2. FRA received the following response to the proposed violation from the railroad containing mitigating evidence and/or remedial action during the audit and/or following the audit. (If an inspector does not think that the mitigating evidence carries weight, he/she should respond and provide additional information if necessary.)[1]

3. FRA received the following response to the proposed violation from the railroad during the audit and/or following the audit. FRA does not believe that the railroad's argument has merit in this case because (provide sufficient discussion and evidence to support this statement). In response to this argument, FRA did (provide a detailed description of the follow-up investigation). As such, the proposed violation is still valid because (again, provide sufficient detail of reasons for why the violation remains valid).

If the violation is for failing to report an occupational illness, the violation report should indicate whether the railroad created a Form FRA F6180.107, and should contain a copy of the form. Moreover, the violation report should explain why a violation exists even in light of the railroad creating the Form FRA F6180.107.

Supportive Material: When investigating a potential "failure to report" violation report, the inspector must contact the Accident/Incident Reporting Officer for the railroad involved and attempt to obtain a copy of the railroad's report to FRA for the reportable accident/incident involved.

When contacting the Accident/Incident Reporting Officer for the railroad, the inspector should also provide the railroad with an opportunity to explain its basis for not reporting the injury or

[1] This response is focused on evidence or responses that are not meant to excuse the violation but the information is meant decrease the penalty.

illness. Moreover, the inspector should include this information in the violation report. It is also important that the violation report indicate how and when any documents were obtained. For example, the violation report should indicate if the records were obtained directly from the railroad or through a third party. Moreover, if it is unclear when the railroad came into the possession of certain records, it may be important to obtain that information.

Statements of Witness/Reports of Interview: See Chapter 20.

Copies of Materials Obtained from Third Parties: Often the railroad's records will not contain sufficient information to support a violation and the inspector must obtain documentation outside of the railroad's possession to prove an element of a violation. Again, these documents should be legible and the inspector should indicate where and when he or she obtained these documents.

Copies of Medical Records: In the case of an unreported injury or employee occupational illness, the violation report should be accompanied by copies of the railroad's medical records and contain information on the nature of the injury or illness, the medical treatment received, the medical prognosis, and the medical release for return to duty, if needed, as evidence to substantiate the violation. Again, an inspector may need to obtain medical records through another source if the railroad is not in the possession of the records and the violation is not otherwise sufficiently supported. However, it is FRA's general preference to obtain a copy of the medical records particularly when the case involves an occupational illness.

Instructions for Completion of Form FRA F6180.61

The following instructions are to be followed in the preparation and issuance of Form FRA F6180.61.

1. Name of Railroad: Enter the full corporate name of the railroad and the mailing address where the railroad's reporting officer is located (responsible for submitting the required accident/incident reports to the FRA).

Example: "Big Red Railroad, Inc.
500 Gaither Street, Lincoln, Nebraska 32202"

2. Division: Enter the name of the division, service unit, business unit, district, region, or other equivalent of the operating division on which the unreported or improperly reported case occurred. For railroads with no division, service unit, etc., show the appropriate designation or enter "N/A."

Example: "Corbin"

3. Violation Report No.: Enter the inspector's next sequential violation report number.

Example: "124"

4. Place of Accident/Incident: Enter the place where the accident/incident occurred; identify the name and/or geographical location such as a car repair shop, departure yard, track number, milepost, number, general office building, etc. Include the name of the town and the State.

Example: "Track No. 27, North Yard, Omaha, Nebraska"

5. Time: Enter the time of the accident/incident. In the event this is an unreported occupational illness, enter "N/A" if the time of the initial diagnosis is not available.

Example: "2:30 p.m."

6. Date: Show the month, day, and year (November 1, 2010) of the accident/incident or occupational illness initial diagnosis.

7. Type of Accident/Incident: Check one or more boxes to indicate the type of accident/incident. Check all boxes that apply. Check the "Other" box when reporting the violation of a requirement that is in the FRA Guide for Preparing Accident/Incident Reports.

Example: "Injury"

8a. Regulations Violated: Identify the section and, if any, paragraph of the FRA reporting rule that was violated.

Example: "225.11"

8b. FRA Guide: If applicable, cite the page and item number of the provision(s) within the FRA Guide for Preparing Accident/Incident Reports that is applicable to this violation.

Example: "Item 7, Page 8, Chapter 6"

9. F6180.96 Report Number – Date

10. Line Item Number

11. Violation of 49 CFR

12a. Name of Person: Enter the first name, middle initial, and last name of any person who was killed or injured, or who developed an occupational illness.

Example: "Tom J. Osborn
Worker on Duty–Employee (Class A)"

12b. Type of Person: Enter the type of person (i.e., employee on duty, employee off duty).

12c. Occupation (if employee): If an employee is named in 9a, state the employee's specific occupation. The term "employee" in this context would include worker on duty–volunteer and worker on duty–contractor.

Example: "Conductor"

12d. Nature of Occupational Illness or Injury and Treatment: Describe the illness or injury and the treatment received by the person named in 9a.

Example: "Right shoulder sprain; contusion right elbow, and right lumbosacral strain. Prescription medication prescribed."

12e. Employee's Occupational Illness or Injury Resulted In: Check each box for all items that show the reason why the injury is reportable.

Example: "Medical Treatment"

12f. Description of Injured Employee's Restriction of Work or Motion: Describe any employee injury or illness that resulted in the restriction of work or motion. If not applicable, enter "N/A."

Example: "Employee sustained 2 days of restricted duty, consisting of sitting in with the train dispatcher."

12g. Medical Release to Duty: Write all required information if the case involves an employee injury or occupational illness. If an employee was not involved, or if no medical release was issued, enter "N/A."

Example: "Issued: 6/15/07
Effective: 6/15/07"

12h. Remarks on Medical Release: If remarks are entered on the employee's medical release, enter them here. If no remarks were made on the medical release, or if no release was issued, enter "N/A."

Example: "May continue work. Given Indocin 75 mg., BID, and will return to doctor's office and begin physical therapy on 6/17/07."

12i. Name, Title, and Location of Physician or Registered Professional Who Provided Medical Treatment: Enter the name, title, and location of the physician or other registered professional who provided medical treatment to the person named in 9a. If no medical treatment was provided, enter "N/A."

Example: "Dr. Tom Osborn, M.D., 205 Randolph Street, Lincoln, Nebraska"

13. Details of How Accident/Incident Occurred and What Made it Reportable: Enter all details that will enable FRA's Office of Chief Counsel to fully understand how the accident/incident occurred and why it should have been reported. Violation reports must address each element of the violation.

Include the name, title, and mailing address of the railroad's official who was notified of the accident/incident, and the time and date of the notification. The name, title, and mailing address of the custodian of each document must also be included.

Example: "At 6:03 a.m., June 14, 1997, Conductor Johnny Rogers while on duty and performing her regularly assigned duties, was passing between Coaches BN 7282 and BN 7339 for purpose of collecting tickets, when train lurched, slamming the coach door on his right elbow. Conductor Rogers reported the injury to his trainmaster, Turner Gill, 222 Ave., Railroadtown, Nebraska, and was instructed to go to Dr. Tom Osborn's office. Mr. Rogers went to Dr. Osborn's physician's office on June 15, 2007, and was examined by the nurse, who found swelling at the tip of his right elbow bone."

14. Name of Inspector and ID No.: These will fill from the F6180.96 Inspection Report.

15. Signature of Inspector: Type or print your name, and write your signature in blue ink to assist in distinguishing the original violation report from copies.

Example: (signed in blue ink)
"Ndamukong Suh, FRA Inspector"

16. Date of Signature: Enter the date of your signature.

Example: "March 27, 2007"

Arrangement of Part 225, Railroad Accident Reporting, Violation Report Package: The report is to be assembled by the inspector in the following manner:

1. Completed Form FRA F6180.61, Violation of Accident/Incident Reporting Rules.
2. List of Exhibits. List all attachments to the completed Form FRA F6180.61.
3. The original copy of the inspector's signed and completed Form FRA F6180.96, Inspection Report.
4. The original copy of any Statements of Witness obtained in relation to this violation report.
5. A copy of all Reports of Interview.
6. A copy of all railroad accident/incident records appropriate to the violation report.
7. A copy of all medical reports pertinent to the violation report.
8. A copy of appropriate claims settlement records.
9. Any other supportive documentation including documents obtained from third parties in support of the violation and the FRA Form F6180.55 for the month showing the missing report.

Form FRA F6180.67, Violation of Operating Practices Regulations

This is the general violation report form.

Supportive Material and Inspector Considerations: FRA Form F6180.67, Operating Practices Regulations, is used to report violation of all regulations within the OP discipline, unless otherwise instructed.

Instructions for Completion of Form FRA F6180.67

The following instructions shall be strictly followed in the issuance of Form FRA F6180.67.

1. Subject: Enter the full title of the regulation violated. This entry should be the same as the title of the applicable Part and Subpart (if applicable) of the Code of Federal Regulations, (e.g., Hours of Service of Railroad Employees – Subpart B for violations involving Monthly Reports of Excess Service).

Example: "Qualification and Certification of Locomotive Engineers – Subpart B"

2. Viol. Rpt. No.: The inspector's violation report number.

Example: "0104"

3. F6180.96 Rpt. No.: Enter the number of the F6180.96 inspection report submitted with the violation report.

Example: "75"

4. Railroad: The full corporate name of the railroad that is cited as having violated operating practices regulations and the railroad's initials. Leave this section blank if the violation is against a person other than a railroad.

Example: "Union Pacific Railroad Company UP"

5. Name of Inspector(s): The name of the inspector submitting the violation report and the payroll identification number of the inspector.

Example: "Ndamukong Suh, Inspector 77350"

6. Location: Enter the city, State, and GSA geographical code for the location where the violation occurred.

Example: "North Platte, NE GSA geographical code – 21"

7. Date of Violation: Enter the date of the violation. The date of the violation is the actual date of the act that violated the regulation, order, or law; and not necessarily the day that the violation was discovered nor the day of the inspection.

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

Example: "4:30 a.m."

9. Operation/Facility: When the violation is against an entity other than a railroad, enter the 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: "Big Red Railroad Company, Elkhart Freight Department Yard, 21 Main Street, Railroad Universe, Nebraska"

10. Division: Enter the name of the division, service unit, business unit, district, region, or other equivalent of the operating division on which the violation occurred. For railroads with no division, service unit, etc., show the appropriate designation or enter "N/A."

Example: "Nebraska"

11. Track: Enter the track number.

Example: "Track No. 27"

12. Locomotive Initials and Numbers: Enter the locomotive initials and numbers, if applicable.

Example: "NS 3150"

13. Train Designation: Enter the full train number, train symbol, yard job number, or other proper designation for the consist being operated by crewmembers involved in the excess service. If no train or other on-track equipment was involved, enter "N/A."

Example: "ELPR-27"

14. Violation of 49 CFR: Enter the exact section number of the Federal regulation that has been violated.

Example: "225.31"

15. Violation Description: Write a short description of what act merits a penalty recommendation.

Example: "Railroad required a locomotive engineer to operate a train over territory and the engineer was not qualified. The Trainmaster Eric Crouch ordered the locomotive engineer of Train ELPR-27 to operate over East Sub Route to the Big Red Railway of NCAA ."

16. Details of Violation: The first line should be the exact Code of Federal Regulations section from the penalty schedule that the inspector is citing for noncompliance. Write a thorough

description of the violation using the first person. 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 conditions.

This section will be prepared in such a manner so as to provide all **details** of the specific incident in question. Inspectors will endeavor to include a complete chronology of events that will be supported by enclosed documentation. Specific dates, times, locations, and individuals involved should be included in the information contained in the report narrative. Inspectors shall refrain from making specific comments that are unsubstantiated or represent solely their personal opinions.

Report the name, title, and affiliation of any person contacted by the inspector in connection with the violation (except complainants unless they have signed a witness statement). In particular, **report any verbal admissions concerning the violation** made by any representative of the person committing such violation. Report such conversations in an objective manner without interjecting your opinions on the representative's character or veracity. Ensure rules or regulations cited are part of the story. Focus on the exact rule or regulation violated that is relevant. Explain its relevancy.

Ensure you ALWAYS include the railroad's response to the violation allegations, and any actions the railroad performed, or failed to perform, to rectify the noncompliance. Include any anticipated arguments the Office of Chief Counsel can expect from the railroad.

Violations must have data quality and be technically accurate. This refers to the basic information contained in the report. Make sure, among other things, these are accurate:

1. Defect code (Reference in narrative)
2. Location
3. Time

The data items are normally populated from the inspection report, but all of it is very important.

It is essential that the inspector include any counterarguments against mitigating circumstances the carrier will likely bring up at settlement**.**

Example: Address why the equipment was left in the foul at that location and include a defect summary noting previous FRA defects (or in some circumstances, accidents) in the area.

17. Date Report Prepared: Enter the date the report was prepared.

Example: "March 27, 2007"

18. Signature of Inspector(s): The inspector's name must be typed or printed, and signature must be written in blue ink to assist in distinguishing the original violation report from copies.

Example: "Eric Crouch - Inspector"

19. 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: 9:30 a.m.
NAME: Tom Osborn
TITLE: Division Superintendent
DATE: March 27, 2007"

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CHAPTER 4
RAILROAD OPERATING RULES – PART 217

Introduction

Inspectors must have a thorough knowledge of railroad operations in their assigned territory. This knowledge is acquired by studying each railroad's operating rules, timetables, special instructions, general orders, etc. Each inspector must become familiar with railroad operations in his or her own territory.

Within that territory, each inspector must conduct periodic inspections and observations to determine the degree of compliance with the operating and safety rules of each railroad.

In addition, inspectors must track accident trends in their assigned territory, especially those attributed to human factors. Site-specific inspections should be performed on the basis of the National Inspection Plan (NIP) and each inspector's knowledge of his or her territory.

- The NIP allocates inspections to higher risk areas.
- The NIP does not change how inspectors conduct their inspections.
- The NIP relies on accurate Regional Inspection Point data.

The guidance in this chapter is intended to be general in nature and does not replace language in any applicable rules or statutes. For a more detailed discussion on specific subject matter, refer to Part 217 of Title 49 Code of Federal Regulations (CFR), training reference guides, OP technical bulletins, and FRA letters of interpretation.

Analyzing Operational Testing Data Guidance

Inspectors should reference Chapters 18 and 19 of this manual for further guidance.

General Guidance

§ 217.1 – Purpose

Through the requirements of Part 217, FRA learns the condition of operating rules and practices with respect to trains and other rolling equipment in the railroad industry, and each railroad is required to instruct its employees in operating practices.

§ 217.7 – Operating rules; filing and recordkeeping

Inspectors should review and remain current on the code of operating rules, timetables, and special instructions of each railroad in their territory. If the inspector determines that a railroad does not have an acceptable level of these required documents, the inspector should consult with his or her OP regional specialist, and other inspectors whose territories may also be affected by the inspector's concerns. All parties involved are then expected to cooperate in a joint plan that will bring the railroad into compliance. This plan and its implementation efforts should be

documented on inspection reports and/or memoranda as instructed by the OP regional specialist in charge, and perhaps used as evidence of FRA's efforts if further enforcement action becomes necessary.

§ 217.9 – Program of operational tests and inspections; recordkeeping

The observation of railroad managers conducting operational testing is a primary and essential task of OP inspectors and is a nationwide agency priority. Operational testing inspections should be used to impartially assess the railroad's efforts to develop and maintain an effective safety oversight program, not to form a basis for employee disciplinary action or to criticize the railroad's manager for deficiencies in the program. An inspector should always be watchful to determine how operational tests are recorded, and should ensure the railroad adequately addresses any discrepancies noted.

Inspections regarding this important part of railroad operations are performed by reviewing the operational testing program and operational testing data, observing the railroad's operational testing efforts, and comparing the inspector's findings to FRA inspection data and accident/incident data for that specific territory. Effective FRA inspections rely heavily on the accurate recording of operational testing data by railroad managers.

§ 217.9(b) – Requirement to conduct operational tests and inspections

The section is reserved for a later date.

§ 217.9(c) – Written program of operational tests and inspections

A railroad's operational testing program on file with FRA should, at a minimum:

- Provide for operational testing and inspection under the various operating conditions on the railroad, at various times, and at a variety of locations.
- Address with particular emphasis those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, 6-month reviews, and annual summaries.
- Require a minimum number of tests and inspections per year covering the requirements of 49 CFR Part 218, Subpart F.
- Describe each type of operational test and inspection required, including the means and procedures used to carry them out.
- State the purpose of each type of operational test and inspection.
- State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is to be conducted.
- Identify by name, job title, and division or system, the railroad manager who is responsible for ensuring that the program of operational tests and inspections is properly implemented.

- Require a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with the railroad's program.
- Require a record that specifies the railroad manager that performed the operational test or observation and each employee tested.
- Mandate a review of operational testing results and require adjustments to the program of operational tests accordingly.
- Mandate a quarterly review when regulations require.
- Mandate a 6-month review when regulations require.

NOTE: Only the FRA Associate Administrator for Railroad Safety/Chief Safety Officer may, for cause stated, disapprove the operational testing program. Field OP inspectors should limit the scope of their review of the programs to determining whether the implementation of the program is in compliance with the operational testing program on file. Issues regarding the program itself must be elevated through the region's chain of command prior to discussing it with the railroad involved.

Inspectors should make the reviewing of operational testing data in their territories a high priority and perform this essential task frequently.

§ 217.11 – Program of instruction on operating rules

Guidance: Review of railroad operating training material

Railroad employees whose activities are governed by the railroad's operating rules are required to understand those operating rules. Each railroad to which this section applies shall periodically instruct each of these employees on the meaning and application of the railroad's operating rules in accordance with a written program. This program shall:

- Describe the means and procedures used for instruction of the various classes of affected employees.
- State the frequency of instruction and the basis for determining that frequency.
- Include a schedule for completing the initial instruction of employees who are already employed when the program begins.
- Provide for initial instruction of each employee hired after the program begins.

Guidance: Inspectors attending railroad operating rules classes

Inspectors may review training materials, tests, and monitor classroom training regarding this section. The purpose of the inspection is to determine whether the railroad is following its own § 217.11 program.

- Inspectors should review the operational instructional material prior to attending the training.

- The inspection report should include information regarding whether the inspector found the railroad properly complying with its own training programs.
- While monitoring an operating rules class, FRA's mission is to observe the rules class. Inspectors should avoid distracting the class, and should not offer any interpretation of railroad operating rules.
- FRA inspectors are forbidden from interpreting railroad operating rules. FRA inspectors may take exception to rules that conflict with Federal regulations, but should never offer any type of interpretation of a railroad operating rule.

If an inspector takes issue with a railroad's *implementation* of the training program, he or she should discuss it with his or her regional OP specialist **prior** to taking any exceptions, either verbally or on an inspection report. The regional OP specialist must consider whether this same program is in effect in another inspector's territory or another FRA region to ensure that FRA is consistent in its enforcement.

Inspection report example for monitoring a railroad's implementing of operating rules training classes or material:

Description: Comment to Railroad/Company **[Activity Code 217C]**
I observed a GCOR/Safety Rules Review class in Lincoln, NE for NEBR Railroad TY&E personnel. The instructor reviewed GCOR rules relating to 49 CFR Section 218.99 – Shoving or pushing movements, GCOR Rule 6.5; 49 CFR Section 218.101 – Leaving equipment in the clear, GCOR Rule 7.1; and 49 CFR Section 232.103(n) – Securement of unattended equipment, GCOR Rule 7.6. The rules class complied with elements of the railroad's program of instruction.

Inspection report examples for monitoring railroad employees' compliance with railroad operating rules:

Description: Non-FRA Defect **[Activity Code 217O]**
Exception Noted. I observed the crew on Locomotive NEBR 2130 conducting switching operations in the Great View Yard on October 31, 2009. At approximately 1103, I observed an employee on Track 25 in between equipment before the ontrack equipment had completely stopped. I identified myself and discussed the unsafe act with the employee and then I contacted the employee's supervisor and informed her that I had observed a failure to comply with ROR GCOR 2000.02, and will record an exception to Switching Operations Fatality Analysis Recommendation # 1.

Introductory 217O line item example for a multiline inspection report that includes Activity Codes 218O, 232X, 220, 218U, 218M, 240, and 217R within one yard:

Description: Comment to Railroad/Company **[Activity Code 217O]**
I conducted an inspection of the NEBR Railroad in Osborne Yard regarding railroad operating rules, railroad safety rules, switches, securement of unattended equipment, shoving movements, derails, radio procedures, utility employees, blue flag protection, and locomotive engineer

certification. My inspection also included riding with NEBR Railroad's afternoon switch job while they switched Osborne Yard Tracks 10–12. After notifying the crew of my intent to monitor radio procedures, I conducted the radio monitoring portion of my inspection while riding with the NEBR switch crew onboard NEBR Locomotive 111. I notified NEBR Railroad Johnny Rogers along with involved crewmembers of all exceptions noted in this report.

NOTE: If the OP inspector is observing crews employed by other than the hosting railroad, the inspector will provide an inspection report addressed to the railroad employing the railroad employees observed and provide a courtesy copy to the host railroad when warranted.

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CHAPTER 5
PART 218, SUBPARTS B, C, AND D

Part 218, Subpart B – Blue Signal Protection of Workers

OP inspectors should reference the Motive Power and Equipment (MP&E) Compliance Manual for general guidance regarding Title 49 Code of Federal Regulations (CFR) Part 218, Subpart B, Blue Signal Protection of Workers (blue signal regulations) and related provisions in Subpart A, General.

Introduction: OP inspectors share the responsibility for determining whether railroads are complying with the blue signal regulations with the MP&E discipline. OP inspectors should work collectively with MP&E inspectors by keeping them informed and advised of blue signal issues in the OP inspector's territory, and vice versa. Disagreements between inspectors regarding this regulation or FRA policy should be elevated to a higher level and not discussed in public.

Briefly summarized, Subpart B of 49 CFR Part 218 requires that railroads take certain measures to protect their employees engaged in inspection, testing, repair, or servicing of rolling equipment if the activity requires them to work on, under, or between such equipment, and subjects them to the danger of personal injury posed by any movement of such equipment. The requirements set forth in this regulation are minimum requirements, and a railroad may prescribe additional or more stringent requirements.

It is the railroad's obligation to provide Blue Signal Protection. Inspectors shall not order railroad personnel to stop working when Blue Signal Protection is required but not provided, nor should the inspector establish Blue Signal Protection. However, because noncompliance with blue signal regulations is serious and can lead to injury or death, inspectors should both immediately notify the subject employees that they are committing an apparent violation of the blue signal regulations, and also immediately notify railroad supervisors of the apparent lack of required Blue Signal Protection.

The railroad must provide Blue Signal Protection to its "workers" who are "on, under, or between rolling equipment." A "worker" is defined as a railroad employee assigned to inspect, test, repair, or service railroad rolling equipment or their components, including brake systems. Members of train and yard crews are excluded, except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. Utility employees assigned to function as temporary members of a specific train or yard crew (if meeting the conditions set out in § 218.22) are not workers only when they are so assigned and functioning.

FRA inspectors are not railroad employees; therefore, the blue signal regulation does not apply. Nonetheless, FRA inspectors must not enter under, between, or on locomotives and cars without first ensuring that such equipment is not subject to movement. Good judgment must be exercised in making this determination, not only from the standpoint of safety but also to prevent

interference with railroad operations. Under ordinary circumstances, FRA inspectors must not request the railroad to furnish protection solely for the inspector's benefit.

Inspectors that record a defect or recommend a civil penalty for a violation must indicate that a railroad employee was involved in a specific activity that required Blue Signal Protection at the time of the exception. If there is not a railroad employee on, under, or between the equipment, the OP inspector should not record a defect or violation on the inspection report. Concerns regarding Blue Signal Protection, without the evidence of an employee in noncompliance, should be documented as a comment to the railroad on the inspection report.

A weak blue light or a lighted or unlighted device that is inadequate in size cannot be considered to be clearly distinguishable and would not comply with the regulation. A damaged or mutilated blue signal or one that is badly deteriorated (e.g., covered with oil) is noncompliant.

Blue Signals Displayed on the Controlling Locomotive: When a blue signal is displayed on the controlling locomotive, it must be attached to that locomotive in such a manner that there is no doubt that it is readily visible to the employee seated at the controls of that locomotive. OP inspectors are advised to sit at the controls of the locomotive to determine whether the Blue Signal Protection is readily visible to the person sitting at the controls. A blue signal attached to the engineer's window ledge in front of his view cab window or attached to the control stand, throttle, or reverser handle would comply if the signal is an unlighted device displayed in a lighted cab at night; however, it must be attached to the controls to comply.

Remote Control Locomotives: Blue Signal Protection for a remote control locomotive is handled in the same manner as for a traditional locomotive. In most cases, this would require the locomotive to be removed from remote controlled status to conventional operating status. OP inspectors should ensure that all remote control locomotives are not subject to being moved by the remote control locomotives' operators when a blue signal is required on each.

Security Employees: Railroad security forces or clerical personnel boarding railroad cars (such as tri-level automobile carriers) for the purpose of checking lading for pilferage or vandalism are not considered to be workers as defined in this part because they are not assigned to inspect, test, repair, or service the railroad rolling equipment. Therefore, Blue Signal Protection is not required under the regulation.

Non-Railroad Employees, Including Contractors: The regulation applies only to "workers," and the term "worker" means an employee who is employed and paid directly by the railroad. Non-railroad employees (contractors, suppliers, etc.) are not workers and, therefore, are not required to be given or use Blue Signal Protection under the regulation. Although many railroads require these individuals to comply with blue signal regulations as part of the conditions of their contract, FRA cannot enforce the contractor's use of Blue Signal Protection.

Although Part 218, Subpart B, does not apply to non-railroad workers (including contractors), the railroad may have safety rules in effect that prohibit non-railroad employees from performing certain duties without Blue Signal Protection. Although noncompliance with these company safety rules is not a violation of the Federal regulations, FRA inspectors that observe

noncompliance with the railroad's own safety rules regarding non-railroad employees should record their findings on an inspection report citing a non-FRA defect.

Tasks That Do Not Require Blue Signal Protection: Many times, routine work will be combined with work that requires Blue Signal Protection. However, there may be times when this routine work can be isolated in such a manner that Blue Signal Protection would not be required. As an example, if an employee inspects equipment from a position on the ground alongside the equipment, this does not represent an activity that would require Blue Signal Protection. Testing[1] an air brake system, when purely visual in nature and only requiring an employee to read the air pressure gauge or to observe the position of an air brake piston while standing on the ground beside the rear car of the train, is another example of an event that would not require Blue Signal Protection.

Certain servicing[2] activities can also be carried out with a low likelihood of injury. Examples of such activities include the following:

- Bleeding the air brake system on cars.
- Fueling (by attaching a hose to an exterior outlet) or adding water to locomotives without use of ladders.
- Applying/removing standby electric lines.
- Performing mechanized track maintenance operations.
- Cleaning passenger coach interiors (not requiring use of ladders).
- Washing the exterior of passenger equipment either mechanically or manually (not requiring use of ladders).
- Evacuating and recharging passenger car holding tanks (without going under the equipment).
- Supplying passenger cars with water.

Similarly, certain activities, such as supplying locomotives and cabooses with ice, water, fusees, and paper towels can be carried out with a low likelihood of injury. These, and similar activities, when effectively confined to the specific work function and when not combined with work that poses a need for Blue Signal Protection, would not require Blue Signal Protection.

The blue signal regulation **does not** apply to derailment situations. Assuring protection for workers involved in such operations is the responsibility of the individual railroad in accordance with its own operating rules. Such operations are usually well coordinated, controlled operations under the direction of a wreck master and/or transportation supervisor at the scene. Requiring

[1] Testing does not include (1) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (2) rear end marker inspections made in accordance with the provisions of 49 CFR § 221.16(b).
[2] Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

blue signals under these circumstances would unreasonably hamper re-railing operations. All personnel involved in derailment situations should be aware of the special conditions that exist and are familiar with the necessary precautions to take when equipment moves take place.

Tasks That Do Require Blue Signal Protection: There are certain activities that will always require Blue Signal Protection when railroad employees are on, under, or between rolling equipment. Examples of such activities are as follows:

- Breaking or making air hose connections.
- Connecting or disconnecting electric control cables between equipment. (Even when exposure is diminished, as is the case when coupling irons are used to couple air hoses, the worker's position still exposes him or her to a potential injury.)
- Replacing broken coach windows.
- Changing out a broken knuckle or ruptured air hose at the end of a car.
- Changing out brake shoes.
- Inspecting electric pantographs (unless made outside the danger zone without being on, under, or between rolling equipment).
- Performing repairs to blower motors or steam regulators beneath the car.
- Performing initial terminal air brake tests when workers are required to go on, under, or between rolling equipment.
- Engaging in activities requiring the use of a ladder.
- Performing electrical repairs that involve an employee positioning himself partially or wholly within the confines of an electrical cabinet.
- Inspecting an undercarriage while in a pit.
- Inspecting, testing, repairing, replacing, or servicing an end-of-train (EOT) device.
- Inspecting, testing, repairing, replacing or servicing a rear marker. (Note: Non-train crewmembers may use alternative protection in § 221.16(b), to activate the switch or cover photoelectric cell to ensure it is in proper operating condition.)
- Closing or repairing a hopper car door.
- Sanding (including using sanding devices where an employee stands on the locomotive running board and fills the sandbox without getting on top of the locomotive; or using a gooseneck-type filler pipe to open the sandbox).

Note: When a hostler and a laborer (or an equivalent employee) are engaged together in sanding or refueling a locomotive consist in a locomotive servicing area on a track that is properly protected by Blue Signal Protection, and when visual contact is maintained between these two employees, the display of a blue signal at the controlling locomotive will not be required.

Train Service Employees: Trainmen, yardmen, and enginemen (TY&E) are excluded from the requirements of the blue signal regulation when performing work on rolling equipment that they are called to operate. This exclusion is based both on the public law that mandated issuance of blue signal regulations (now codified at 49 U.S.C. 20131[3]) and on the rationale that, as an assigned crew, they would have control over the movement of any rolling equipment on which they are working. Train crews are protected by rules that require an understanding of movements through safety briefings. This includes hostlers and utility employees (UE).

A hostler and a helper (i.e., laborer, mechanical employee, or other employee) working together as a common unit on, under, or between equipment do not require Blue Signal Protection as long as the hostler is positioned at the controls of the locomotive.

When a hostler and helper add a locomotive to the point of a train and a blue signal is not displayed at the end of the train, Blue Signal Protection is not required, provided the hostler remains at the controls of the controlling locomotive. If there is a crew on the train or consist, then the locomotive engineer of that consist must also be at the controls in the controlling locomotive and a member of the train crew should make the connections between the two locomotives. In addition, both the hostler and the engineer must communicate and understand that they are on a common track working on common equipment as required by railroad rules and special instructions.

Regulation § 218.22 – Utility employee

Inspectors should be aware that many railroads include mechanical persons as UEs. This is acceptable to FRA if the UEs meet all of the required regulations and laws, including the hours of service laws, operational testing, random drug test, etc., when applicable. Inspectors should work with the MP&E inspectors and their OP regional specialist when engaged with mechanical persons acting as UEs.

Inspectors should ensure that rules on the railroad property require the UE to comply with this provision of the regulation. Inspections should also include monitoring the duties of the UE when attached to train crews, including the proper procedure for attaching and detaching by all parties involved.

The scope of the UE's work is limited to the following six items listed in the regulation:

1. Setting or releasing hand brakes.
2. Coupling or uncoupling air hoses and other electrical or mechanical connections.
3. Preparing rail cars for coupling.

[3] Under 49 U.S.C. 20131, Restricted access to rolling equipment, "[t]he Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees *(except train or yard crews)* assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service." Emphasis added.

4. Setting wheel blocks or wheel chains.
5. Conducting air brake tests to include cutting air brake components in or out and positioning retaining valves.
6. Inspecting, testing, installing, removing, or replacing a rear end marking device or EOT device. (See 49 CFR § 218.22 for additional UE conditions regarding communication, position of engineer, etc.)

Guidance for UE Enforcement: The regulation limits the assignment of the UE to only one crew at a time. When conducting inspections, the inspector should monitor the following:

1. The communication between the UEs and ranking crewmember. UEs and crewmembers must follow the required operating procedures when attaching to and/or detaching from the crew.
2. The presence of a locomotive engineer or other crewmember in the control compartment or at the controls of the controlling locomotive when the UE performs duties on the rolling equipment assigned to that train or yard crew.
3. The nature of the work performed by the UE. FRA inspectors should be cognizant that there are no restrictions on a UE who performs duties that do not require Blue Signal Protection.
4. No more than three UEs may be assigned to a train or yard crew at the same time.
5. UEs are not assigned to or working with more than one train or yard crew at a time.
6. Inspection of the UE's hours of service records.
7. The UE has to be in the general vicinity of the crew. The UE may not be working at a remote site without the locomotive and the rest of the crew nearby.

Examples of When Blue Signal Protection May Be Required

Question 1: At locations other than crew change points: Does the regulation permit a crewmember of Train A to assist a crewmember of Train B for any purpose that would require the crewmember of Train A to go on, under, or between the rolling equipment of Train B? Note: This includes working on an EOT device – replacing, arming, and/or battery change.

> **Answer 1:** At any location, a crewmember from Train A may attach him/herself to assist the crew of Train B as a utility employee, provided that his/her work with Train A is completed. Concerning changing an EOT device battery, regularly assigned crewmembers may replace the EOT device battery but only on equipment they are called to operate. A UE, however, may not replace a battery, since this is not one of the six items permitted under Section 218.22 discussed above. Exception: Some railroads have a waiver to permit properly attached UEs to replace a battery on an EOT device, but only if these employees are from the TY&E ranks.

Question 2: At crew change points: Does the regulation permit inbound crewmember(s) that are instructed to assist outbound crewmember(s) for any purpose that would require inbound

crewmember(s) to go on, under, or between the rolling equipment that is controlled by the outbound crew? Note: This includes working on an EOT device – replacing, arming, and/or battery change.

Answer 2: See Answer 1.

Question 3: At any location: Does the regulation permit crewmembers of Train A that are instructed to assist crewmembers of Train B by shoving Train B up a hill, to go on, under, or between the rolling equipment of Train B?

Answer 3: This is a situation of one entire train crew, including those on the locomotive**,** assisting another entire train crew. In essence, the train to be shoved becomes equipment that both crews are called to operate. "Equipment that a crew is called to operate" means rolling equipment, as defined in Section 218.5 (i.e., locomotives and railroad cars), that the crew is handling, or will handle, as in couple to and/or move, as an operating crew. The two crews must be in communication with each other, and both crews must understand the moves to be made. It is therefore a non-blue signal and non-UE issue.

Question 4: At any location: Does the regulation permit crewmembers of Train A that are instructed to assist crewmembers of Train B by pulling Train B up a hill to go on, under, or between the rolling equipment of Train B?

Answer 4: See Answer 3.

Question 5: Does the regulation permit members of yard crew A to place railroad cars on Train B, or remove railroad cars from Train B? If Train B has a crew on the locomotive, are the crewmembers of yard crew A required to go on, under, or between the rolling equipment of Train B?

Answer 5: See Answer 3.

Question 6: At a yard location: Does the regulation permit members of yard crew A to add or remove railroad cars from Train B, which does not have a crew on it, if that work requires the crewmembers of yard crew A to go on, under, or between the rolling equipment of Train B?

Answer 6: Similar to Answer 3, except that arrangements must be made to ensure that the equipment will not move. If another crew will handle the same equipment, each crew must communicate with each other, and each crewmember must be notified that he or she will be handling the same equipment.

Question 7: At any location: Does the regulation allow members of yard crew A or road crew B to cross through standing Train C, which has a crew on it, for any purpose that would require the members of yard crew A or road crew B to go on, under, or between the rolling equipment of Train C?

Answer 7: Blue Signal Protection is not required, whether Train C has a crew on it or not. The railroad's own safety rules address this issue.

Question 8: At any location: Does the regulation permit members of yard crew A or road crew B to cross through standing Train C, which does not have a crew on it, for any purpose that would require the members of yard crew A or road crew B to go on, under, or between the rolling equipment of Train C?

Answer 8: See Answer 7.

Question 9: Is a railroad allowed to classify certain events as "emergency events" and therefore not require Blue Signal Protection for one crew assisting another crew? Furthermore, how does FRA define "emergency," and what types of events would preclude the requirement of Blue Signal Protection?

Answer 9: An example of a situation that FRA would consider to be a bona fide emergency is situation in which a train that is well outside of a yard and has become disabled (such as having a broken knuckle or a dragging brake rigging), and requires the assistance of others (either mechanical department employees or other TY&E); and the employees do not have the capability of providing Blue Signal Protection. The assisting employees would be required to follow the provisions of Section 218.25(c) while engaging in the repairs.

Another example is if a crewmember of Train A is dealing with a shifted load and the car has to be set out on line, and the crewmember of Train A requires assistance from a crewmember of Train B. In this scenario, FRA would likely not take exception, but will review each situation on a case-by-case basis.

Concerning blocked crossings, if a train is stopped by an emergency application of the air brakes (or for other reasons, such as a stop signal) and a grade crossing is blocked, this does not, in itself, constitute an emergency. However, each situation will be reviewed on a case-by-case basis. For example, in the event that an emergency vehicle was attempting to cross at the grade crossing, FRA would likely not take exception if a crewmember from another train assisted the standing train in cutting the crossing. The emergency procedures in Section 218.25(c) would, of course, still need to be followed.

Question 10: In any emergency situation, is any crewmember of Train A allowed to go on, under, or in between the rolling equipment of Train B?

Answer 10: FRA would consider the crew invoking the emergency provision (see Section 218.25(c)) if the circumstances were warranted, and would exercise its prosecutorial discretion accordingly. This would be handled on a case-by-case basis, wholly dependent on the circumstances of each particular situation.

Question 11: Are railroad operating rules such as "three-step protection" or "red zone" covered by Section 218.22?

> **Answer 11:** No. The so-called "three-step protection" **may not** be used as a substitute for Blue Signal Protection. A railroad's operating rule requiring "three-step protection," "red zone," or "double-check" programs is separate and apart from the requirement that employees comply with Section 218.22.

Guidance for § 218.24 – One Person Crew

As previously announced, FRA granted AAR's petition to stay indefinitely, the effectiveness of the single member crew provisions of the UE rule (new Section 218.24). Effective date for the rule was originally May 15, 1995 (see 60 FR 11047, March 1, 1995). During the stay, we will consult with the industry to develop consensus on a solution.

In the interim, until a revised rule is issued, our policy regarding single person crews (i.e., locomotive engineers working alone, such as in hostler or helper service) is as follows:

> While on, under, or between equipment, no blue signal protection will be required for single person crews provided that: (1) the employee performs only those duties listed in Section 218.22(c)(5) on the equipment they are called to operate; and, (2) the railroad has in effect operating rules and procedures that provide for locomotive securement against movement.

(*Original issue date was June 6, 1995, and signed by Edward R. English, Director, Office of Safety Enforcement.)

Part 218, Subpart C – Protection of Trains and Locomotives

Guidance for § 218.35 – Yard limits: Yard limits must be designated by yard limit signs and timetable, train orders, or special instructions.

Inspectors should ensure that timetables, rules, notices, and other publications used by train crews have the proper location of yard limit signs, and that the yard limit signs are posted accordingly.

Yard Limit Designations (formerly OP-04-06)

It is our preference that yard limit boundaries be denoted with specific milepost designations. Title 49 CFR § 218.35(a) states that "yard limits must be designated by—(1) yard limit signs, and (2) timetable, train orders, or special instructions." The rationale behind the yard limit rule is to provide protection for employees engaged in the operation of trains, locomotives, and other rolling equipment within specified limits. Restrictions regarding train movement within those limits are clearly delineated.

We are aware that some railroads have long designated various yard limit locations in broader terms, (e.g., stations). To date, we have not taken formal exception to such practice as long as all provisions of the regulation are observed. There have been few problems reported with this approach since involved railroads require crews to be qualified on the territory. In addition, infrequent changes to limits are clearly designated by signs and are documented in the timetable, train order, or special instruction.

The practice of irregular or "floating" yard limits, modified locally, presents a more perplexing situation. Such practice may easily result in employee confusion and poor rule observance. Each such circumstance should therefore be scrutinized on a case-by-case basis. Our objective is to ensure the practice is in keeping with intent of the rule, and is understood and observed by employees.

Movement Within Yard Limits Signaled Territory (Formerly OP-04-07)

The following letter to the Illinois Central Railroad addresses the issue of how trains and engines are expected to move within yard limits in signaled territory.

This information amplifies the guidance previously issued by FRA in a letter to the General Code of Operating Rules Committee, dated July 23, 1990, which is also included.

July 21, 1993

Mr. Tom F. Utroska
General Manager Transportation
Illinois Central Railroad Company
17641 Ashland Avenue
Homewood, Illinois 60403

Dear Mr. Utroska:

Thank you for your February 8 letter to Jim Schultz, requesting an interpretation of Title 49, Code of Federal Regulations (49 CFR), Part 218.35 (b) (2). Specifically, you asked for interpretive guidance on how trains are expected to move within yard limits upon encountering a block signal conveying an indication less favorable than one containing green as its aspect, or part of its aspect. I apologize for the delay in responding to your inquiry.

Title 49 CFR 218.35(b) (2), states in part:

"Trains and engines… within yard limits must move prepared to stop within one half the range of vision but not exceeding 20 m.p.h. unless the main track is known to be clear by block signal indication."

In the Federal Railroad Administration's (FRA's) letter to the General Code of Operating Rules Committee dated July 23, 1990 (copy attached), we stated that, from the beginning, FRA intended "clear" to mean a block signal indication which permits a train to proceed to the next signal without imposing any specific operational restraints on train movement. FRA's judgment has been that any indication more favorable than "approach" is acceptable in that regard since such indications denote that at least two blocks are clear in advance of movement.

With respect to the action required of a train or engine entering or moving within yard limits that encounters an "approach" indication, FRA's position is that the train or engine should take immediate action to reduce to a speed that will permit stopping within one half the range of vision, not exceeding 20 m.p.h. (under your rule, "Restricted Speed"), consistent with good train handling, upon viewing the "approach" indication. This means that, if advance view will permit, or if a preceding signal gives advance information, such as an "advance approach," "approach medium," etc., and consistent with good train handling, the train or engine should be down to "Restricted Speed" before passing the "approach" indication, or before entering yard limits, as applicable.

In effect, your present rule deters "previewing" a signal. The intent of your rule is consistent with the signal and train control rules in 49 CFR Part 236 in regard to "previewing" of signals. The rationale behind not allowing the previewing of signals is to preclude railroads from establishing braking distances based upon signal preview.

In yard limits, however, even though signals are properly spaced for braking distances, the ability to operate an opposing train or switch engine without dispatcher authority erodes the intended safety of the system, i.e., to be able to stop where a stop is required.

In yard limits it is necessary that all trains, especially opposing movements, are under the same restriction – able to stop in one-half the range of vision. Therefore, when a train, having passed a "clear" signal, encounters an "approach" indication, it is imperative that the engineer act on the preview to reduce to "Restricted Speed" as soon as practical in the remaining portion of the block known to be unoccupied. If the block governed by the "approach" indication provides only marginally acceptable braking distance, and if the inbound train passes the "approach"

indication at maximum authorized speed while the opposing movement simultaneously passes the signal governing opposing movements into that block, the opposing movement will move into the braking distance required for the inbound train and a collision might result.

There are a myriad of signal layouts in yard limit territory and strong debates can be made where this logic (i.e., the "preview" of signals) should not be applied. However, much of the rationale for the opposite argument is rooted in the defense of existing signal systems to avoid costly modifications.

In the interest of a uniform and consistent application of the yard limit regulation premised on safety, FRA's current position is more conservative than your present rule. Yard limits, however, require a more constricted strategy due to the real potential for intrusions onto the main track. Our position does allow for railroads to adopt more stringent procedures in yard limits and several railroads have elected to observe such procedures.

(Originally signed by Edward R. English, Director, Office of Safety Enforcement.)

July 23, 1990

Mr. K. L. Miller, Jr.
Chairman
General Code of Operating Rules Committee
Southern Pacific Transportation Company
One Market Plaza, Room 665
San Francisco, California 94105

Dear Mr. Miller:

This will respond to your recent letter requesting clarification of 49 CFR 218.35 (Yard Limits). I appreciate your interest in Federal Railroad Administration's (FRA) application of the regulation.

To put the rule in perspective, let me start by saying that like you, I, too, have concern over growing ambivalence in proper yard limit rule employment. Modifications to basic precepts by some railroads have undermined the rule's original intent. The yard limit rule had its genesis decades ago when rail carriers recognized a need to safely coordinate train movements on high speed main tracks in territories where potential conflicts existed with yard movements. After a distressingly large increase in human factor accidents in the 1960's - many on main tracks within yard areas, FRA was compelled to initiate rulemaking action to confront the problem.

In your letter you presented three issues for discussion. The first regarded what specific signal indication constitutes a "clear" for purposes of part 218.35(b) (2). You mentioned that "clear" as expressed in General Code Rule 93 may be more restrictive than intended because it correlates "clear" with a green signal aspect. From the beginning, FRA intended "clear" to mean a block signal indication which permits a train to proceed to the next signal without imposing any specific operational constraints on train movement. FRA's judgment has been that any

indication more favorable than “approach” is acceptable in that regard since such indications denote that at least two blocks should be clear in advance of movement.

The second topic you addressed deals with movement against the current of traffic in yard limits and whether compliance with 218.35(b) (3) eliminates the need to comply with 218.35(b) (2). The short answer to your question is that compliance with 218.35(b) (2) is required at all times within yard limits. A train moving against the current of traffic in yard limits is required to have authorization and protection by train order, yardmaster or other designated official and only under the operating restrictions prescribed in 218.35(b) (2). That authorization to proceed against the current of traffic doesn’t preclude a conflicting movement from entering the main track at an intervening switch. It is to protect against this eventuality that compliance with 218.35(b) (2) is required.

The third point you mentioned appertains to 218.35(b) (2) compliance requirements in CTC territory. It is FRA’s judgment that the yard limit rule has no practical application where interlocking and traffic control system rules are in effect, and minimal application where rule D251 or its derivatives are in effect. More specifically, in response to your point that CTC rules eliminate the potential for opposing movements in yard limits, we have found that is not always the case. For example, we are aware of situations in CTC yard limit territory where switch engines have been authorized onto a main track. Once there, movement in either direction has been noted independent of control operator knowledge. In addition, not all remote control systems in yard limits are designated as CTC - some are called “remote control ABS,” “interlocking limits,” “APB,” etc. For example, there are several locations where railroads have designated miles of remotely controlled yard limit main track as “interlocking limits” to circumvent restrictive labor agreements requiring dispatcher management of CTC territories. By designating such tracks “interlocking limits,” a railroad may employ operators to control movements.

As eluded to above, FRA questions why a railroad would chose to execute yard limits in traffic control or interlocking territories. We suspect the motivation may be two-fold:
(1) To circumvent requirements under 49 CFR Part 221 (Rear-End Marking Device); or
(2) To take advantage of less restrictive labor agreements regarding “switching limits.”
It is important that any collective bargaining constraints associated with “switching limits” be kept separate and distinct from “yard limits.” Unfortunately, some rail carriers have elected not to make this distinction, retaining yard limits in interlocking or TCS territory. Such equivocal application of the rule results in confusion and undermines the safety intent of the provision. In view of today’s technological advancements in radio and data communication, individual railroads may decide that the very concept of “yard limits” is an anachronism. Some have drastically reduced main line yard limit territories in all but a few locations.

In looking over the historical development of the yard limit proviso, it is apparent the language was born not of impetuosity. During the rulemaking proceedings in the mid-1970's, FRA was the recipient of a great deal of public comment from rail labor and management on appropriate rule phraseology and operational rationale. At that time FRA considered arguments similar to the one which you now advance. It was a purifying process which we believe facilitated the

structuring of a rule with suitable safeguards, yet accessible enough to efficiently move trains through congested yard environments.
The projected revision to General Code Rule 93 enumerated in your letter recommends a basic response modification to signal display "approach." We do not agree with the change proposed for the following reasons:

- Modeled after Federal Aviation Administration's "Federal Aviation Regulations," some elected officials envision a need for FRA to follow course by establishing a national code of railroad operating rules. We have steadfastly resisted such suggestions. Instead, we believe the industry is capable of resolving contentious rules dissimilarities internally without governmental intervention. We strongly encourage railroads to take the initiative and simplify operating methodologies. We know you and the Committee have attempted to simplify the phraseology in the General Code. However, we believe your present proposal to change Rule 93 is a step backward. Introducing additional compliance qualifications for signal indication "approach" unnecessarily compounds the variables subject to human miscalculation.

- Even if approved as proposed, we question whether the new General Code Rule 93 would be any less restrictive than the one currently published. In fact, adding the "approach" signal factor might make the rule more cumbersome and restrictive. For example, would you consider all possible variations to an "approach" indication subject to constraints in the new rule? (i.e., approach diverging; advance approach; approach restricting; diverging advance approach; diverging approach; approach medium; approach limited; diverging approach limited; diverging approach medium; diverging approach slow; approach restricting; distant signal approach; etc.).

In taking a close look at General Code Rule 93, we note a potential problem in the present wording. Specifically, the narrative includes the proscription "Movements within yard limits must be made at restricted speed, unless the main track is known to be clear by a block signal displaying green as its aspect or part of its aspect."

However, if so applied with Rule 236 <semaphore signal> as cited in the Southern Pacific Timetable (green over yellow conveys an approach indication), Rule 93 would authorize a train to proceed in yard limits on an "approach" indication as if the block was clear. If not already accomplished, we suggest you take necessary action to address this apparent fault in the rule.

I hope this information helps you and the Committee understands FRA's rationale for administering part 218.35 as we do. Your understanding and support are important to us in FRA, and we appreciate your continued interaction in rail safety dialogue.

(Originally signed by J. W. Walsh, Associate Administrator for Safety.)

Guidance for § 218.37 – Flag protection: As of July 30, 2010, flag protection inspections will be recorded as 217O inspections on inspection reports. Noncompliance with this section should not be recorded for a railroad merely failing to have fusees, a red flag, or any flagmen's signals

on a locomotive, as the regulation does not actually establish such a requirement. However, a requirement to equip locomotives with these items may be established by the railroad's own operating rules, and should be recorded on the inspection report correctly. The lack of flagging rules required by the section may be a regulatory concern that should be discussed with the regional OP specialist prior taking exception to the railroad. Nonetheless, actual failures of railroad employees to perform flag protection in accordance to the requirements of regulations while in the performance of railroad operations will be the primary focus of recorded Federal defects or violations by the OP inspector regarding this regulation.

Circumstances Permitting Relief of Rear-End Flag Protection, One Train Following Another at Restricted Speed, Use of Radio Communication between Trains to Afford Relief of Rear-End Flag Protection in Non-Signaled Territory – (Formerly OP-04-20)

The following letter to C. E. Dettmann of the Association of American Railroads (AAR) explains and clarifies FRA's position on several issues relating to Section 218.37, Flag Protection. It is intended to provide specific interpretive guidance to the field concerning these issues. As always, inspectors should continue to consider the specific circumstances of each situation in applying this guidance.

July 20, 1999

Mr. C. E. Dettmann
Executive Vice President Safety and Operations
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001-1564

Dear Mr. Dettmann:

It has recently come to the Federal Railroad Administration's (FRA) attention that several railroads are conducting operations that may be in violation of Title 49, Code of Federal Regulations (49 CFR), Part 218.37, Flag protection. In essence, there are operating rules and procedures currently in effect that would allow one train to follow another train into the same limits at restricted speed without the preceding train having to provide rear-end flag protection. Although there are slight variations in these operating rules and procedures from road to road, FRA feels that there are common safety issues regarding flagging that should be clarified to the industry as a whole.

As stated in the regulation, flag protection against following trains on the same track is not required if at least one of the five conditions, as specified in Part 218.37 (a)(2), pertains:

(I) The rear of the train is protected by at least two block signals;
(ii) The rear of the train is protected by an absolute block;
(iii) The rear of the train is within interlocking limits;

(iv) A train order specifies that flag protection is not required[4];
(v) A railroad operates only one train at any given time[5].

Also, flag protection is not required in yard limits except in case of failure to clear the time of a designated class train in non-signaled territory, as prescribed in Part 218.35(b)(1). Further, flag protection to the front against opposing movements, as prescribed in Part 218.37(a)(1)(iv), would be necessary only if a railroad's operating rules required it.

Consequently, a railroad whose operating rules and methodologies are such that they fall wholly within parameters provided in Parts 218.35(b)(1) and 218.37(a)(2), and who do not otherwise have an operating rule requiring flag protection to the front against opposing movements, would be relieved of the flagging requirements of Part 218.37.

Adjacent track protection and flag protection imposed by railroad operating rules for conditions other than those specifically prescribed in Parts 218.35 and 218.37, are additional requirements and are therefore outside the scope of this regulation. In addition, FRA takes no exception in situations where joint work and time limits, joint track and time limits, or yard limits exist, as these are circumstances that are also outside the scope of the Federal rear-end flagging regulation. In joint work and time and joint track and time limits, the limits are relatively short, all crews know the limits are jointly occupied, and all movements are made at restricted speed. In yard limits, the limits are well-defined, crews are aware that they very likely will encounter other trains on a consistent basis, and except in signaled territory when governed by block signal indications more favorable than "approach", all movements must be at restricted speed. These conditions are not necessarily so for trains following other trains into occupied limits many miles in length, whose crews may not even be aware that the following trains share their limits.

In signaled territory, Part 218.37(a)(2)(i) provides that a train may enter, at restricted speed, a block that may be occupied by a preceding train, predicated on the requirement of at least two block signals to the rear. This is based on the rationale that the presence of both signals will provide reliable train separation and ensure that a following train movement will be operating under restrictive conditions prepared to stop short of a train ahead (see 42 FR 5063, January 27, 1977).

However, in non-signaled territory, the current practice of allowing one train to follow another train in the same direction into the same limits at restricted speed, is in literal noncompliance with 49 CFR, Part 218.37, and contravenes the purpose of the regulation. Although the preceding train may not reverse direction, and the following train is operating at restricted speed, there is no provision in the regulation for relief of rear-end flag protection by the preceding train under these circumstances.

[4] As stated in the original preamble to Part 218.37, the use of train orders for relief of flag protection does not eliminate the need for the rear end protection, it merely shifts the responsibility for providing the protection from the train crew to the train dispatcher. Once a "no flagging" order has been issued, the dispatcher must ensure that no other following movement is permitted to operate in a manner which may result in a rear end collision (see 42 FR 5062, January 27, 1977).

[5] This accommodation is intended for short line railroads that operate only one train at any given time over their entire railroad (see 42 FR 38362, July 28, 1977).

In addition to the regulatory noncompliance, FRA has several safety concerns involving this practice:

- The preceding train may not necessarily be aware that it is being followed by another train. This may create the illusion by the preceding crew that they have exclusive occupancy of the limits. While they may not reverse direction, FRA has investigated accidents caused by unauthorized reverse movements.

- While the following train is required to move at restricted speed, it may not have any knowledge of the preceding train's specific location, and due to the extended limits, a tendency may exist to exceed restricted speed if, for instance, the following train is relying on a radio transmission that is overheard indicating that the preceding train is several miles ahead, or visibility on tangent track is good, etc. FRA's train accident files contain many instances of accidents caused by failure to operate at restricted speed.

While FRA appreciates the industry's belief in the theoretical certainty that restricted speed operation, if observed, will prevent a collision, as mentioned above, our files contain many reports documenting serious accidents resulting from failure to comply with restricted speed. The concerns FRA has in this type of operation are based on a long history of rail accident investigations. We do not desire to restrict the ability of your member railroads from operating in the most efficient manner possible, consistent with Federal and railroad operating and safety rules. In this instance, our concern is based upon regulatory requirements and the need for compliance, as well as a desire for consistency among all railroads with similar operations:

FRA is aware that a practice currently exists on some railroads which essentially allows the use of radio communications to provide relief from rear-end flag protection against following trains on the same track in non-signaled territory. As we understand it, two or more trains may be authorized to proceed in the same direction, within the same limits, providing certain requirements are met. FRA takes no exception to this practice provided that a railroad has operating rules placed permanently in effect which meet the following conditions:

> (1) a preceding train must have entirely passed an exact point as provided for in the railroad's operating rules pertaining to train movement authority, i.e., a physical location clearly identifiable to a locomotive engineer or other person operating a train;
> (2) when a preceding train notifies a following train by radio that it has entirely passed such an exact, clearly identifiable point, which information must be recorded in writing by the following train before being acted upon in accordance with the applicable provisions of Part 220.61, the following train is then authorized to that point; this information may only be relayed by the train dispatcher;
> (3) a following train must be restricted on its movement authority that it may not pass or run ahead of a preceding train, which must be identified by engine number[6];

[6] Current practice on some railroads is to include language in the movement authorities that requires the following train to "protect" against the preceding train, or for both trains to "protect" against each other. The term "protect" as used in traditional railroad parlance has always had a rather precise meaning, i.e., flag protection. Because the term intimates providing flag protection in accordance with Section 218.37, and since it is the proper establishment and

(4) if radio communication fails, the following train shall make no movement beyond the exact, clearly identifiable point which was last confirmed.

As previously stated, flag protection against following trains on the same track is not required if the rear of the train is protected by an absolute block. Since the regulation does not prescribe how an absolute block may be established, FRA would not take exception to an absolute block established in the manner prescribed above provided the railroad has in effect operating rules which meet the conditions stated.

FRA respects the partnership that it has forged with the regulated community. In keeping with this partnership, FRA expect there will be full compliance with the present flagging rule's requirement of specific actions regarding protection of trains as delineated in Part 218.37, excluding, of course, situations that are specifically excepted or permitted as discussed herein.

Please share this information with member roads in your organization. If there is need for further clarification, please feel free to contact Dennis Yachechak of my staff, 202-493-6260.

(Originally signed by Edward R. English, Director, Office of Safety Assurance and Compliance.)

Guidance for § 218.39 – Hump operations: This section affects only TY&E. At many locations, employees will attempt to combine protection of TY&E crews with Roadway Worker Protection (RWP) under 49 CFR Part 214 and/or Blue Signal Protection under 49 CFR Part 218, Subpart B. Inspectors should review records and observe compliance with § 218.39 with these facts in mind:

- Section 218.39 is only for TY&E and does not affect or supersede the requirements for Blue Signal Protection or RWP. This section affects only the operations at remote control hump yards and the train and engine crews that work there. In the preamble, a commenter noted that when a hump is not in service, the danger addressed by **§ 218.39** is not present. Thus, FRA agreed that compliance with the regulation should not be necessary for switching moves when a hump is not in service.

- Computer software can be used to block a track.

- In the preamble to the final rule establishing this section, FRA stated that the practice of the crewmembers contacting the yardmaster or hump supervisor, and that person relaying the notification/blocking procedures to the individual at the control machine, is not prohibited.

- There is no requirement for a written record.

observance of an absolute block that actually keeps the trains separated, FRA discourages the use of the term "protect" in order to avoid misunderstanding.

Part 218, Subpart D – Prohibition Against Tampering With Safety Devices

Guidance for § 218.53 –Scope and definitions. Appendix C to Part 218:

> 'Disable a safety device' means not only to render the safety device incapable of proper and effective action, but also to materially impair the functioning of that device.

This subpart was promulgated to carry out a provision of the Rail Safety Improvement Act of 1988 that is now codified at 49 U.S.C. 20138, which reads in part as follows:

> The Secretary of Transportation shall prescribe regulations and issue orders to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

Guidance for §§ 218.55, 218.57, and 218.59: The appropriate citation when writing a violation or defect against a railroad is § 218.59, not §§ 218.55 or 218.57, which apply to an "individual." While a railroad is a "person" under the law, a railroad is not an "individual" for purposes of this regulation. Sections 218.55 and 218.57 are provisions to be cited in individual liability matters. Each of these sections requires proof of a different level of culpability. Section 218.55 prohibits an individual from disabling a safety device *willfully*. See Appendix A to 49 CFR Part 209 for a discussion of the term "willfully." Section 218.57 prohibits an individual from *knowingly* operating a train, or knowingly permitting the operation of a train, when the train is equipped with a disabled safety device. To prove a violation of § 218.59, which applies only to railroads, it is not necessary to show that the railroad had any knowledge that it operated a train when the controlling locomotive was equipped with a safety device was tampered with or disabled; this level of culpability is called "strict liability" and typical of most FRA safety regulations, such as the Safety Appliance Standards.

Guidance for Inspecting Safety Devices for Tampering: An inspector should take defects or violations only if he or she can clearly document that the equipment was operated with the safety device disabled. Safety devices found disabled should be immediately reported. Safety devices found to be tampered with on equipment not being operated should NOT be recorded under Activity Code 218T, but should be recorded under Comments to the Railroad, and the railroad's managers should be notified immediately.

The inspector should ensure that the railroad is in place to take responsibility for the safety device that was tampered with before leaving the area. A reinspection on a later date should be conducted when warranted.

It is unlawful for:

- Any individual to willfully tamper with or disable a safety device.
- Any individual to knowingly operate, or permit to be operated, a train with a safety device that has been tampered with or disabled. If a locomotive is equipped with a "dead

man feature," it must function as intended (49 CFR § 229.7), but locomotives are not currently required to be so equipped.

- A railroad to use, or permit to be used on its line, any locomotive unless the entire locomotive and its appurtenances are in proper condition and safe to operate in the service to which they are put, without unnecessary peril to life or limb; and have been inspected and tested as required by 49 CFR Part 229 and 49 U.S.C. 20701. Nullification of safety devices can result in FRA enforcement action taken against either the railroad or individual railroad employees.

Safety Devices

FRA employs a "functional description" to describe what constitutes a safety device. This should cover devices appearing in the future.

Items that are **NOT** considered to be safety devices:

- Radios (and napkins forced into the speakers of radios).
- Monitors for EOT devices.
- Bells or whistles that are not connected to alerters, deadman pedals, or signal system devices.
- Fans for controlling the interior temperature of locomotive cabs.
- Locomotive performance monitoring devices (unless they record data such as train speed and air brake operations).
- Onboard cameras, including other recording devices mounted in or on the locomotive.

Guidance: A May 18, 2010, letter from FRA's Assistant Chief Counsel for Safety explains FRA's policy on locomotive-mounted inward-facing video cameras and recorders. In summary, the letter states that the devices are not subject to the prohibition against tampering regulations at Subpart D of 49 CFR Part 218, but they are subject to the preservation of accident data requirements of 49 CFR § 229.135(e).

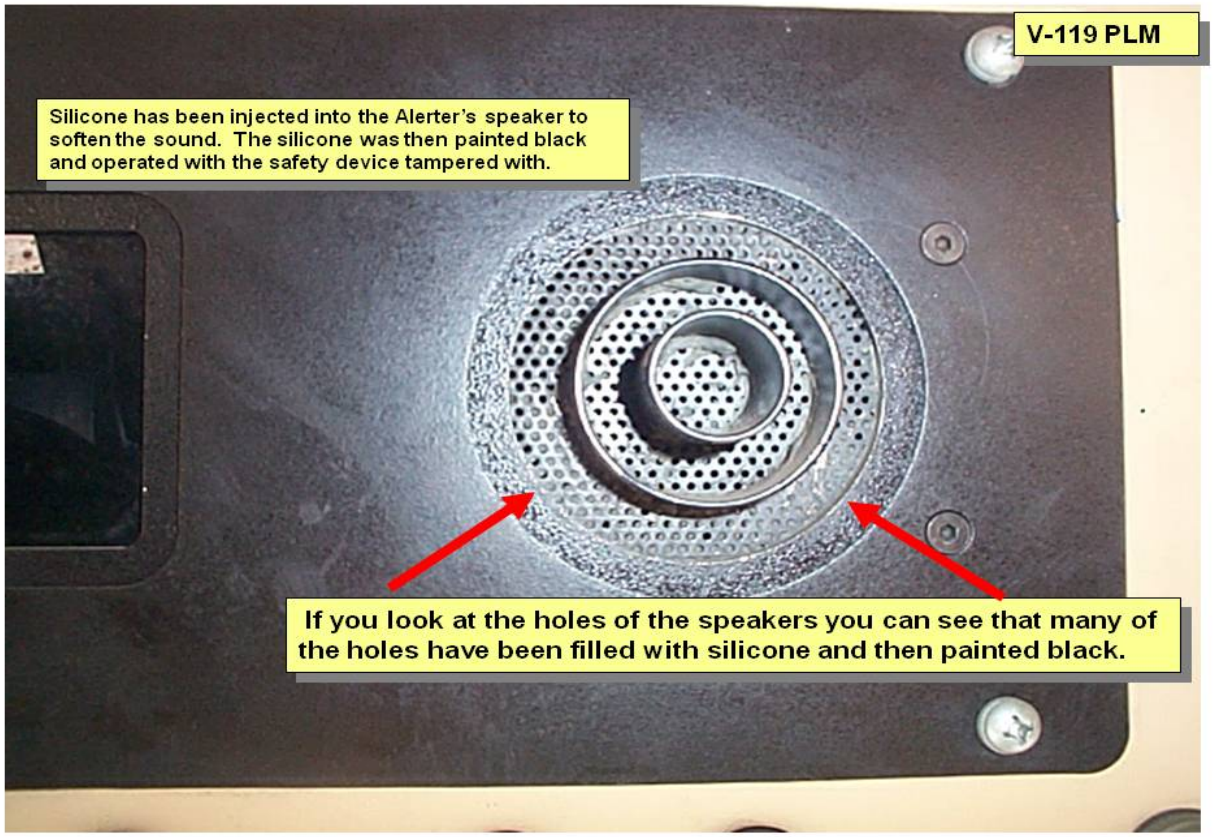
Note: If a railroad does not provide access to a recording from an inward- or outward-facing video camera while investigating an FRA-reportable accident, consider using Section 229.135(e) as a compliance tool. Coordinate your actions with regional managers.

Items that **ARE** considered to be safety devices:

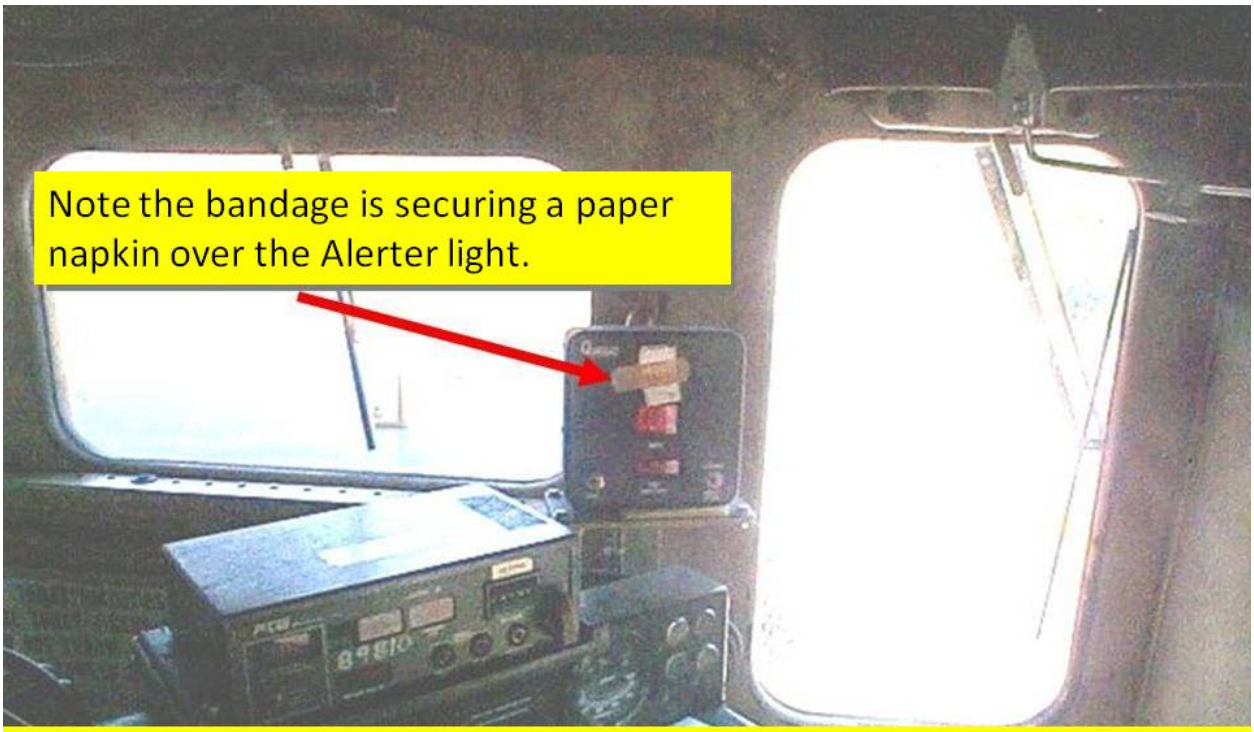
- Event recorders.
- Alerters.
- Deadman controls.
- Automatic cab signals.
- Automatic train control equipment.

Examples

FRA does not consider the act of putting napkins in a radio speaker to dampen the sound to be tampering with a safety device.



FRA does consider placing material in a speaker of a locomotive's alerter to dampen the sound to be tampering with a safety device.



The bandage and napkin is covering the light of the Alerter therefore impairing the functioning of the safety device.

Guidance for § 218.57 – Responsibilities of individuals: Any individual who knowingly operates a train, or knowingly permits it to be operated, when the controlling locomotive of that train is equipped with a disabled safety device, is subject to a civil penalty as provided for in Appendix A to this part and to disqualification from performing safety-sensitive functions on a railroad if found to be unfit for such duties. Subsequent operators of locomotives with a disabled safety device could be held to a simple negligence standard of conduct. Responsible members of the crew could be "knowingly culpable" if, due to failure to exercise reasonable care, they failed to determine that the safety device was not functioning; or if having ascertained that the device was not functioning, they still elected to operate the train. This also applies to railroad supervisors who permit or give direction that a train with a disabled device be operated after having learned that the safety device was not functioning or after having failed to use reasonable care in the performance of their duties. See also Appendix C to Part 218 for a statement of agency enforcement policy concerning violations of this section.

Guidance for § 218.59 – Responsibilities of railroads: Any railroad that operates a train when the controlling locomotive of a train is equipped with a disabled safety device is subject to a civil penalty as provided for in Appendix A to this part.

Guidance for § 218.61 – Authority to deactivate safety devices: Under specific circumstances stated in this section, employees are permitted to temporarily render a safety device incapable of proper or effective action or to materially impair its function.

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CHAPTER 6
PART 218, SUBPART F (OP INSPECTIONS)

Introduction

Subpart F – Handling Equipment, Switches, and Fixed Derails

- 218.95 Instruction, training, and examination
- 218.97 Good faith challenge procedures
- 218.99 Shoving or pushing movements
- 218.101 Leaving rolling and on-track maintenance-of-way equipment in the clear
- 218.103 Hand-operated switches, including crossover switches
- 218.105 Additional operational requirements for hand-operated main track switches
- 218.107 Additional operational requirements for hand-operated crossover switches
- 210.109 Hand-operated fixed derails

This subpart prescribes minimum operating requirements for the handling of equipment, switches, and fixed derails. Each railroad may prescribe additional or more stringent requirements in its operating rules, timetables, timetable special instructions, and other instructions. When inspecting for rules that pertain to this subpart, inspectors must record defects as Federal noncompliance with Part 218, Subpart F.

On February 13, 2008, FRA published Subpart F to Part 218, along with revisions to Part 217. Subpart F is commonly referred to as FRA's "human factor" rule because the impetus for writing the rule was largely based on FRA's analysis of train accident data that revealed that a small number of particular kinds of human errors accounted for an inordinate number of accidents attributable to human factor causes.

Prior to Subpart F, FRA did not have a clear path to enforce violations of these basic operating rules and practices that were the leading causes of accidents. FRA was concerned that employees violated these types of operating rules and practices for convenience to expedite a movement, due to forgetfulness, or due to learned bad practices that were not corrected by adequate railroad enforcement of its own rules. Consequently, in the preamble to the final rule, FRA explained what would be accomplished by codifying these railroad operating rules and practices:

> The final human factors rule establishes greater accountability on the part of railroad management for administration of railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors.
>
> …

> The theme of this final rule is accountability. It embodies both a broad strategy intended to promote better administration of railroad programs and a highly targeted strategy designed to improve compliance with railroad operating rules addressing three critical areas. Within this framework, FRA has taken responsibility to set out certain requirements that had in the past been left to private action. FRA will be monitoring compliance with those requirements through appropriate inspections and audits, and when necessary will be assessing appropriate civil penalties to assure compliance.
>
> - Railroad management will be held accountable for putting in place appropriate rules, instructions, and programs of operational tests.
> - Railroad supervisors will be held accountable for doing their part to administer operational tests and establish appropriate expectations with respect to rules compliance.
> - Railroad employees will be held accountable for complying with specified operating rules, and will have a right of challenge should they be instructed to take actions that, in good faith, they believe would violate those rules. It is intended that this framework of accountability promote good discipline, prevent train accidents, and reduce serious injuries to railroad employees. (73 FR 8442-43).

Inspectors in the field are often drawn into discussions with supervisors or employees about Subpart F regarding questions of individual liability. Based on these types of discussions, we know that many people have the misperception that Subpart F, unlike FRA's other regulations, is uniquely designed to be enforced against individual railroad employees or supervisors. However, this is incorrect. In fact, FRA explained in the preamble to the final rule (73 FR 8452–8453) that:

- Each of FRA's rail safety regulations permit enforcement against any person who violates a regulatory requirement or causes the violation of any requirement. See e.g., Title 49 Code of Federal Regulations (CFR) Sections 217.5 and 218.9.
- "Person" is broadly defined and includes any employee, regardless of whether the employer is a railroad, or whether the employee is a manager, supervisor, or other official.
- FRA's well-established policy with regard to the assessment of civil penalties against individuals will apply here. See 49 CFR Part 209, Appendix A. That policy permits FRA to take enforcement action against individual persons for a failure to comply including the assessment of civil penalties if the violation is willful or the issuance of a warning letter for a willful or non-willful violation or a notice of proposed disqualification for a willful or non-willful violation that demonstrates the person's unfitness for safety-sensitive service.

During the rulemaking process, FRA similarly displaced the notion that a significant civil or individual liability penalty could have an unintended impact on what individuals might do after

realizing that the individual did not comply with a Subpart F requirement. FRA mentioned the concern that there may be instances where an employee realizes that he or she violated an operating rule but is afraid of the consequences of reporting the error—even when such reporting would have the potential to prevent an accident or injury to other workers or innocent bystanders. FRA explained in the preamble to the final rule that FRA's individual liability policy is designed to reduce or eliminate an individual's liability when there is evidence of remedial action taken. To the contrary, a failure to take immediate remedial action, once the violation is discovered, could suggest that enforcement action is warranted. Thus, FRA explained that in the preamble to the final rule that FRA enforcement provides an incentive to self-report noncompliance.

> Given FRA's published enforcement policy, an employee who recognizes noncompliance and seeks to correct it has likely not acted willfully nor been grossly negligent. Instead, an individual civil penalty is warranted where an employee recognizes noncompliance and does not act to correct it. Thus, FRA's enforcement policy offers employees an incentive to self-report noncompliance as doing so would likely be considered a reason for FRA to exercise its enforcement discretion not to take enforcement action against the individual. (Self-reporting is not, however, a defense to a potential individual liability action, and self-reporting does not absolutely preclude FRA from taking enforcement action against an individual although FRA would consider self-reporting a strong reason for mitigation of the civil penalty, disqualification order, or other enforcement remedy.)

(73 FR 8452–8453)

Sections 218.99 through 218.109 of Subpart F are structured so that paragraph (a) of each section contains an identical requirement for each railroad to adopt and comply with an operating rule that complies with that specific section. Presumably, a railroad could have more than one operating rule that satisfies all the requirements of a particular section. The thrust of the "adopt and comply" language is twofold: (1) the adopt language requires that each railroad publish a complying operating rule; and, (2) the comply language makes it essential that a railroad cannot ignore the operating rule it was required to adopt.

For example:

> § 218.99 – Shoving or pushing movements.
> (a) (1) Each railroad shall adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

We expect that, by now, nearly every railroad, except maybe some shortlines, would have adopted some kind of operating rule that satisfies the Subpart F requirements, or comes close. However, it is extremely important that each OP inspector be persistent in ensuring that each

railroad in the inspector's territory has operating rules in place that correlate with all the requirements of each section of Subpart F. The reason close scrutiny is necessary is that we hope to find noncompliance prior to conducting an accident investigation. Surprisingly, early enforcement of Subpart F rules following a fatal accident revealed one major railroad who adopted a rule that did not comply with all of the requirements of Section 218.105, specifically the important additional job briefing requirements for hand-operated main track switches. Any concerns regarding noncompliance with this operating rule requirement should be documented and pursued through the normal FRA chain of command. Inspectors pursuing this compliance should be cognizant of how their enforcement efforts will affect territories of the same railroad that are part of another FRA inspector's authority. These situations will require an FRA team approach, which can include multiple disciplines and the Office of Chief Counsel.

Guidance – Part 218, Subpart F

OP inspectors should be cognizant that Subpart F also applies to other railroad crafts, and not just to the operating crafts. Subpart F also includes "on-track equipment" that is not under the FRA OP discipline's charge. This will require that FRA OP inspectors work with other FRA disciplines to ensure consistent enforcement in all railroad crafts.

Violation reports should include relevant compliance history data whenever possible. For example, if a violation involves a failure to lock a switch, the report should include the number of defects found in the past year, and the number of times the railroad has been cited for that type of violation. It is also helpful when the report includes a statement of whether the type of alleged violation was cited by the railroad as a primary or secondary cause of one or more reportable accidents/incidents.

§ 218.93 – Definitions

Employee means an individual who is engaged or compensated by a railroad or <u>by a contractor to a railroad</u> to perform any of the duties defined in this subpart. (Emphasis added)

Qualified means that a person has <u>successfully completed all instruction, training, and examination programs required by the railroad</u> of this subpart and that the person, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is expected to be competent. (Emphasis added)

§ 218.95 – Instruction, training, and examination

Reviewing the qualification program

Anyone performing duties under this regulation must be qualified (regardless of railroad craft) in accordance with a written qualification program maintained by the employing railroad. This written program shall include three components:

1. Instruction
2. Training

3. Examination

NOTE: Inspectors will likely find these three requirements embedded into other railroad training provided to the employee or manager. Thus, in the section-by-section analysis, FRA clarified that:

> The written program may be a stand-alone program or consolidated with the program of instruction required under § 217.11 of this chapter. FRA anticipates that most railroads would choose to consolidate this program with the part 217 requirement. Although FRA encourages the efficiencies consolidation is sure to bring, FRA's expectation is that the consolidated written program will sufficiently emphasize the requirements of this subpart. (73 FR at 8468).

Only the Associate Administrator for Railroad Safety/Chief Safety Officer may disapprove a training program regarding Part 218, Subpart F. Inspectors who have concerns about the written training program's contents should notify their region's managers and be guided by the manager's instructions prior to discussing it with the railroad.

§ 218.97 – Good faith challenge procedures

These good faith challenges are only in regards to Subpart F. Inspectors should focus their inspection efforts on ensuring that the railroad follows the written procedures they have in place to guarantee each employee has the right to challenge a directive in good faith.

In the field, inspectors will monitor each railroad's good faith challenge procedure within their territory to verify that each railroad's good faith challenge procedures comply with Federal regulations. The key elements of the good faith challenge regulation are:

- **Employee responsibility** – An employee shall inform the railroad or employer whenever the employee makes a good faith determination that the employee has been directed to take actions that would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required by this subpart; or to take actions that would violate the railroad's operating rules implementing the requirements of Subpart F.

- **General procedures** – Each railroad or employer is responsible for the training of and compliance by its employees with the requirements of Subpart F.

- **Written procedures** – A copy of the current written procedures shall be provided to each affected employee and made available for inspection and copying by representatives of FRA during normal business hours, in accordance with § 218.97(b)(4).

- **Recordkeeping and record retention** – A copy of any written good faith challenge verification decision shall be retained and made available to representatives of FRA for inspection and copying during normal business hours for at least ***1 calendar year*** after

expiration of the year during which the decision was issued, in accordance with § 218.97(e)(2).

§ 218.99 – Shoving or pushing movements

Operating Rules Guidance.
Inspectors should review the railroad's operating rules to ensure compliance with § 218.99(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of an operating rule that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 218.99 and Operational Testing
When making inspections, inspectors should be aware of the operational testing conducted in the area inspected regarding § 218.99, and, if possible, should observe railroad officials administering such operational tests in the field. Inspectors will review human factor-caused accidents and incidents related to § 218.99. Please note that this section does not apply to free-rolling equipment. Inspectors should pay close attention to the protection of road crossings by train and yard crews making shoving movements.

Each inspection should include the inspector's assessment of employees' compliance with:

1. The required job briefing that includes the means of communication between the locomotive engineer and the person who is protecting the shove, and how point protection is being provided.
2. The requirement that no unrelated tasks are being performed during the protection of the shove.
3. The requirement that someone visually determines that the track is clear. (Inspectors should note that the definition for "track is clear" is not the same as "restricted speed.")

§ 218.93, "track is clear" means:

(1) The portion of the track to be used for the intended movement is unoccupied by rolling equipment, on-track maintenance-of-way equipment, and conflicting on-track movements;

(2) Intervening public highway-rail grade crossings, private highway-rail grade crossings outside the physical confines of a railroad yard,

pedestrian crossings outside of the physical confines of a railroad yard, and yard access crossings[1] are protected as follows:

(i) Crossing gates are in the fully lowered position, and are not known to be malfunctioning; or

(ii) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or

(iii) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour;

(3) Intervening switches and fixed derails are properly lined for the intended movement; and

(4) The portion of the track to be used for the intended movement has sufficient room to contain the rolling equipment being shoved or pushed.

As established by § 218.99(b)(3), when rolling equipment or a lite locomotive consist is shoved or pushed, point protection shall be provided by a crewmember or other qualified employee. It should be noted that it does not have to be a crewmember providing point protection. ***It can be any qualified employee.***

Every OP inspector should be cognizant that a determination that a "track is clear" does not require continuous observation of shoving or pushing movements (73 FR 8476):

> A rule that requires a controlling employee to continuously observe the leading end of the movement might be more effective in preventing accidents; however, as FRA stated earlier, a "continuous observation" requirement would force more employees to either walk or ride the point—creating an even greater vulnerability that someone could get hurt. … In addition, this final rule's required determination that the track is clear prior to initiating the shoving or pushing movement should substantially reduce the likelihood of any collisions.

Questions and answers for § 218.99

Background: FRA has received several inquiries regarding when it is permissible for an employee directing the movement to operate a motor vehicle in the context of a pushing or shoving movement.

[1] "Yard access crossing" does not mean every access crossing in a yard. The definition only includes crossings that are located in the physical confines of a railroad yard and are either (1) open to unrestricted public access, or (2) open to persons other than railroad employees going about their normal duties, e.g., business guests or family members. § 218.93.

The central concern in each situation is whether the practice violates the prohibition established by 49 CFR § 218.99(b)(2), which states: "*No unrelated tasks*. During the shoving or pushing movement, the employee directing the movement shall not engage in any task unrelated to the oversight of the shoving or pushing movement."

FRA believes that, in each instance, factual circumstances will dictate whether an operation is safe and in compliance with the regulations. In an effort to provide guidance, the following questions and answers should address most circumstances.

Question 1: Do the regulations allow an employee to make an initial determination that the track is clear from a motor vehicle the employee is operating prior to the initiation of the shoving or pushing movement?

> **Answer 1:** While there may be some risk involved when an employee is both determining that the track is clear and operating a motor vehicle, the regulation does not strictly prohibit the same person from doing these tasks simultaneously when the movement has not been initiated and oversight of the movement is not required. However, if the terrain is uneven or the view is obstructed, the person may have to occasionally operate the vehicle at a slower speed or even stop the vehicle in order to accurately determine that the track is clear.

Question 2: Do the regulations allow an employee to determine that the track is clear from a motor vehicle in which the employee is operating while simultaneously directing a shoving or pushing movement that is in motion?

> **Answer 2:** Although there is no strict prohibition in the regulatory text, FRA is concerned that an employee who operates a motor vehicle while the shoving or pushing movement is in motion may not be adequately overseeing the train movement. One of the stated purposes of the prohibition against engaging in any task unrelated to the oversight of the shoving or pushing movement was that it "increases the probability that the controlling employee will be in a position to reduce the severity of any accident that might occur." (73 FR 8442, 8476).
>
> The cited language in the preamble to the rule immediately follows a recap of the fatal accident in Manlius, New York, that led to the issuance of Safety Advisory 2007-01. That fatal accident involved a Carmen whose vehicle was dragged a considerable distance before the employee directing the movement was contacted to stop the movement. The preamble language clarified that the "no unrelated task" provision was added as a compromise in exchange for FRA giving up the proposed requirement that the leading end of the movement be continuously kept in sight by the employee directing the movement. FRA recognized that "a 'continuous observation' requirement would force more employees to either walk or ride the point – creating an even greater vulnerability that someone could get hurt." (73 FR at 8476). The same type of argument could be made regarding an employee directing the movement who is instructed or elects to drive a vehicle while the shoving or pushing movement is in motion.

With these concerns in mind, FRA has determined that an employee must not simultaneously direct a shoving or pushing movement while operating a motor vehicle of any type, except as follows:

- An employee may operate a motor vehicle to a point where he or she can visually determine that the track is clear, pursuant to 49 CFR § 218.99(b)(3)(i). After stopping the motor vehicle and determining that the track is clear for a specified distance, the employee directing a shoving or pushing movement may give an initial instruction to the engineer to start a shoving or pushing movement for the specified distance.
- After giving the initial instruction, the employee may operate the motor vehicle while the shoving or pushing movement is in motion.
- After visually determining that the track is clear for an additional specified distance, the employee directing a shoving or pushing movement must stop the motor vehicle in order to provide any additional instructions to the engineer. This process may be repeated until the shoving or pushing movement is completed.
- FRA recognizes "that employees can safely make shoving or pushing movements without continuously observing the leading car [i.e., the leading end of the movement] for the entire distance of the movement." (73 FR at 8477). However, to the extent possible, FRA would expect an employee to observe a shoving or pushing movement in progress and be able to take appropriate action to minimize the severity of any unexpected derailment or accident that might occur.
- Under all circumstances, the engineer must stop the movement in one-half the specified distance given by the employee providing point protection unless additional instructions are received. See 49 CFR § 220.49.

Question 3: Do the regulations allow an employee directing the shoving or pushing movement that is in motion to determine that the track is clear while riding in a motor vehicle as a passenger?

Answer 3: There is no strict prohibition in the regulatory text on an employee determining that the track is clear while riding in a motor vehicle as a passenger. Of course, if the terrain is uneven or the view is obstructed, it may not be possible to make the determination that the track is clear. As always, FRA will consider enforcement action when the circumstances show that the person could not make an accurate determination.

Question 4: Is point protection, per § 218.99(b)(3), required when shoving a locomotive consist within the confines of a properly blue signaled locomotive repair facility?

Answer 4: Yes, § 218.99(b)(3) applies. There are no exceptions for locomotive servicing areas.

§ 218.99(c) – Remote control operations

All remote control movements are considered shoving or pushing movements except when the remote control operator controlling the movement is riding the leading end of the leading locomotive and is in a position to visually determine conditions of the movement**.**

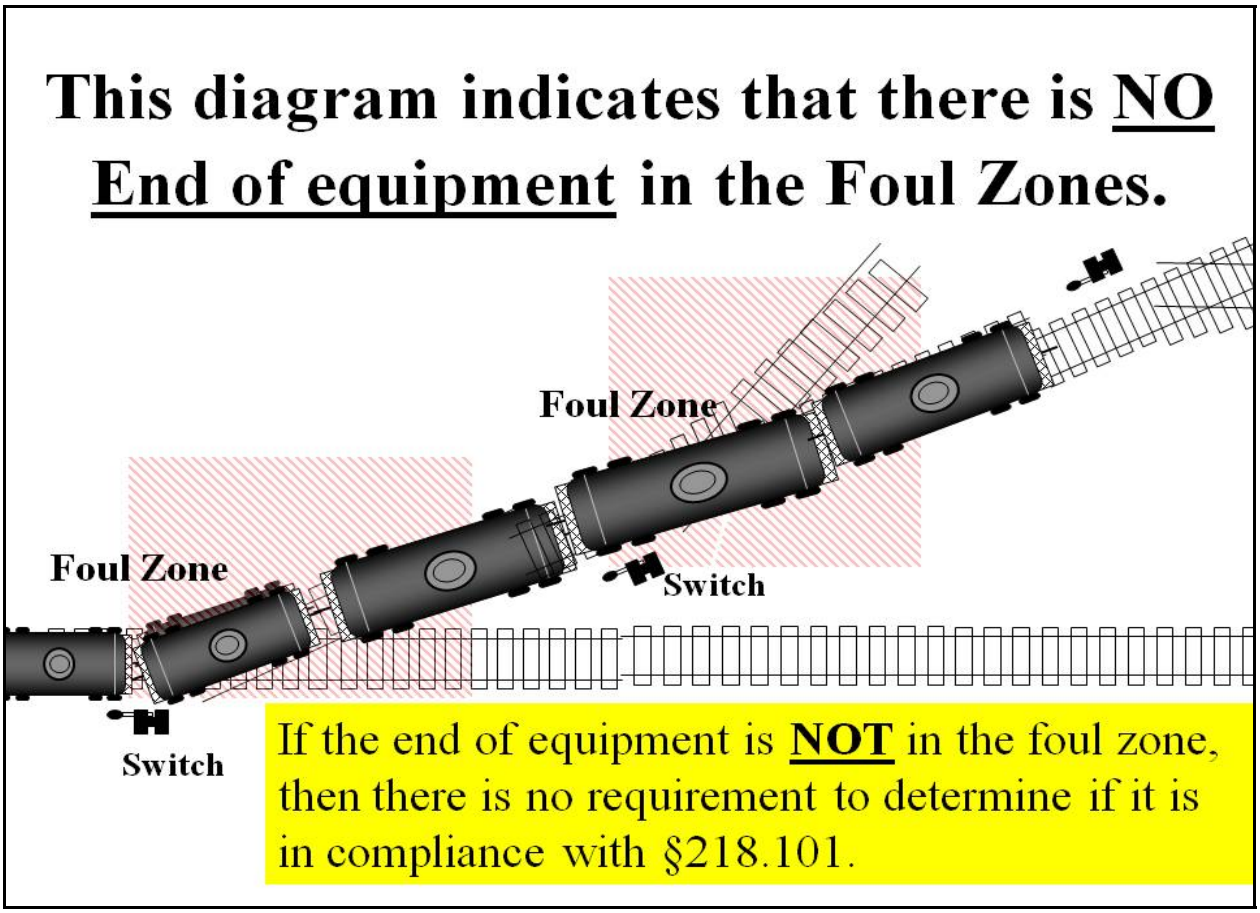
It is important that inspectors observe that a member of the crew visually determines the direction of movement when employees initiate a remote control shoving or pushing movement. It must be a member of the crew and not merely a qualified person. If a member of the crew other than the remote control operator is visually determining the direction of movement, that crewmember must confirm the direction of the movement with the remote control operator. If the remote control operator is not provided information regarding the direction of the movement, the movement must be immediately stopped.

Remote control zones (RCZ) can only be used when: the zone is active; **when the controlling locomotive consist is on the leading end in the direction of movement (i.e., the movement is on the pull-out end);** when the RCZ is not jointly occupied; and, when a crewmember has made the initial "track is clear" determination. Movements that are not on the pull-out end must have point protection even when inside an active RCZ. Please refer to § 218.99 for complete RCZ requirements.

§ 218.101 – Leaving rolling and on-track maintenance-of-way equipment in the clear

Operating Rules Guidance:
Inspectors should review the railroad's operating rules to ensure compliance with § 218.101(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

> **§ 218.93 Definitions –** *Foul or fouling a track means* rolling equipment or on-track maintenance-of-way equipment is located such that the **end of the equipment** is between the clearance point and the switch points leading to the track on which the equipment is standing.



Information needed for violation reports submitted under this section

The OP Division and the Office of Chief Counsel have noticed that some violation reports submitted under this section do not contain all of the information needed to confirm that a violation occurred. The narrative statement in a violation report should contain all of the relevant facts so that anyone reading the report can determine that the incident was a violation. The following information is needed:

- The type of track that the equipment was located on (e.g., main track, siding track, yard switching lead track, industry track, etc).
- How the inspector verified that the equipment was left standing. For example, the inspector watched the switching crew shove the equipment there and left it to make another switching movement. Another common example is that the inspector entered the location and observed that nobody was working near the equipment that was fouling; then, the inspector contacted the yardmaster or other railroad official to determine why the equipment appears to be left fouling.
- How the inspector verified that the equipment was fouling. Increasingly, this determination is being made by taking photos of the equipment past a fouling mark painted on the rails; however, try to take a sufficient number of photos to establish not

just the marker, but to give a greater perspective of how the fouling created a trap for other train crews.

- A schematic or map of the location where the violation was found. For example, some reports contained an annotated yard map showing exactly where the equipment was located. The map might also point to the location of a relevant switch and state which way the switch was found lined. A yard map that contains and identifies the types of tracks works best; however, a map pulled from the internet is often still helpful.
- The railroad rules required under this regulation to identify the clearance point at that specific location and a confirmation that that rule is the most current applicable rule at that location.
- Address in the narrative the location of the car regarding the clearance points as noted in the Railroad Operating Rules Identifying Clearance Points guidance herein.

In addition, when submitting a violation report for equipment in the foul situation, the report must contain sufficient information to establish that none of the four exceptions found in § 218.101(b) applies. Clearly explain which of the four applies and which of the four do not apply. The best way to do this is to reprint the four exceptions verbatim in the report and immediately explain after each exception why it does not apply.

Each violation submitted must clearly address in the narrative if the equipment was:

1. Standing on a **main track** and a siding track switch that the equipment is fouling is lined for the main track on which the equipment is standing.
2. Standing on a **siding track** and a main track switch that the equipment is fouling is lined for the siding on which the equipment is standing
3. Standing on a **yard switching lead track**, and the yard track switch that the equipment is fouling is lined for the yard switching lead track on which the equipment is standing
4. Standing on an industry track beyond the clearance point of the switch leading to the industry

Clearance points

Each railroad shall implement procedures that enable employees to identify clearance points and a means to identify locations where clearance points will not permit a person to safely ride on the side of a car, in accordance with § 218.101(c).

Question: Can FRA force a railroad to paint clearance marks on the tie or rail?

> **Answer:** No. The requirement is that "each railroad, whether at the system, division, or terminal level, shall implement **procedures** for instructing employees who handle equipment so that the employees can identify clearance points and avoid leaving equipment out to foul." Painting marks on rails or ties is only one approved method of implementing procedures.

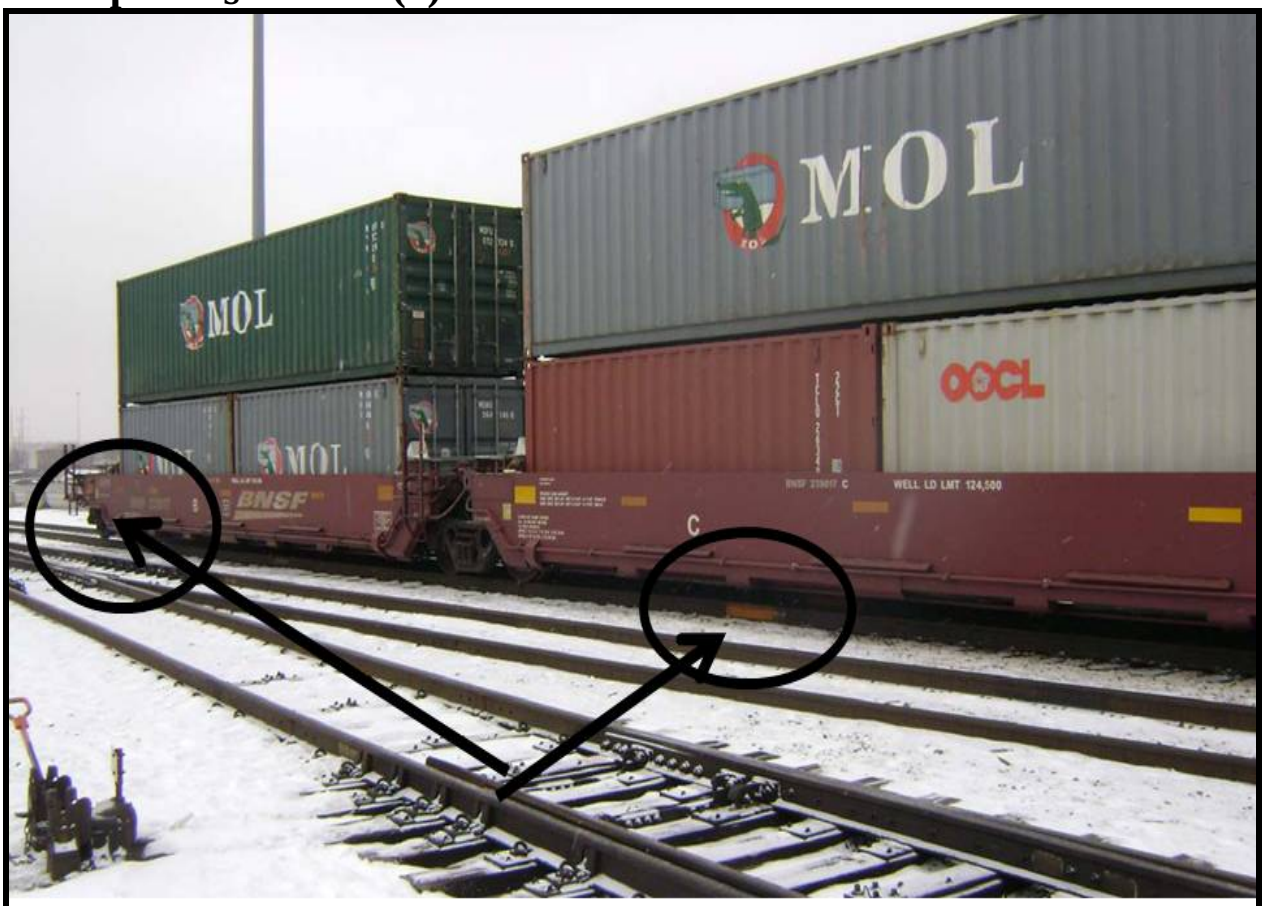
When clearance points are not identified on or near the track, railroads must institute procedures for instructing employees on how to calculate clearance points; e.g., a railroad may choose to implement a procedure requiring employees to stand next to the rail and extend an arm to simulate the width of equipment. Great care should be used in instituting procedures for determining clearance points so that the margin of error is appropriate where employees are permitted to ride the side of a car and as the clearance point would be further back on the track for employees with bigger or longer bodies than the average person.

This section is not intended to apply to close clearance as it relates to buildings, loading docks, or doorways, although a railroad may choose to provide procedures for implementing safe operations under such circumstances. (73 FR 8482).

Equipment past the clearance points, but not physically fouling adjacent tracks

When inspectors encounter instances of equipment that is noncompliant with the railroad operating rules, such as when the equipment is left standing beyond the painted marks on the rail designated by the railroad as a "clearance point", but the equipment is **NOT** physically fouling the adjacent track, inspectors should record the noncompliance as **a § 218.101(a) defect/violation.**

Example of § 218.101(a)



These cars are **NOT** fouling the adjacent track, but they are past the clearance point noted in the railroad operating rules. This non-compliance should be recorded under **§218.101 (a).**

Equipment physically fouling adjacent tracks

When inspectors encounter instances of equipment left standing that is physically fouling adjacent tracks and the exceptions noted in § 218.101(b)(1) through (b)(4) are not applicable, inspectors **should record the noncompliance as a § 218.101(b) defect/violation.**

Example § 218.101(b)

These cars are fouling the adjacent track, and are past the clearance point noted in the railroad operating rules. This noncompliance should be recorded under **§218.101 (b).**

Distinguishing between physically fouling the adjacent track and when merely only past the clearance point.

The reason an inspector's inspection report should distinguish deficiencies recorded as equipment that has been left standing in the foul and physically fouling an adjacent track, and when the equipment has been left standing past the clearance points but is NOT physically fouling the adjacent track, is that there is specific language in § 218.101(a) makes any noncompliance with a railroad operating rule/procedure subject to enforcement by FRA.

However, equipment left standing past the clearance points but NOT physically fouling the adjacent track poses a lesser risk to safety than equipment that is physically fouling the adjacent track. Therefore, it is recommended that inspectors consider the circumstances before deciding on enforcement procedures when the equipment is NOT physically fouling the adjacent track. For example, a violation under § 218.101(a) may be warranted if the inspector observes one or more crews routinely in noncompliance with the painted clearance marks. This pattern of noncompliance can lead to a deterioration of the underlying railroad rule/procedure and its importance.

As noted above regarding all defects/violations recorded on an inspection report, ensure the narrative descriptions are clear, accurate, and detailed. It should clearly explain the specific noncompliance, and if it is a noncompliance for § 218.101(b), specifically state if each item (1)–(4) **apply** to the particular scenario.

Each violation submitted must address in the narrative if the equipment was:

1. Standing on a **main track** and a siding track switch that the equipment is fouling is lined for the main track on which the equipment is standing.
2. Standing on a **siding track** and a main track switch that the equipment is fouling is lined for the siding on which the equipment is standing
3. Standing on a **yard switching lead track**, and the yard track switch that the equipment is fouling is lined for the yard switching lead track on which the equipment is standing
4. On an **industry track** beyond the clearance point of the switch leading to the industry.

Examples of compliance and noncompliance with this section

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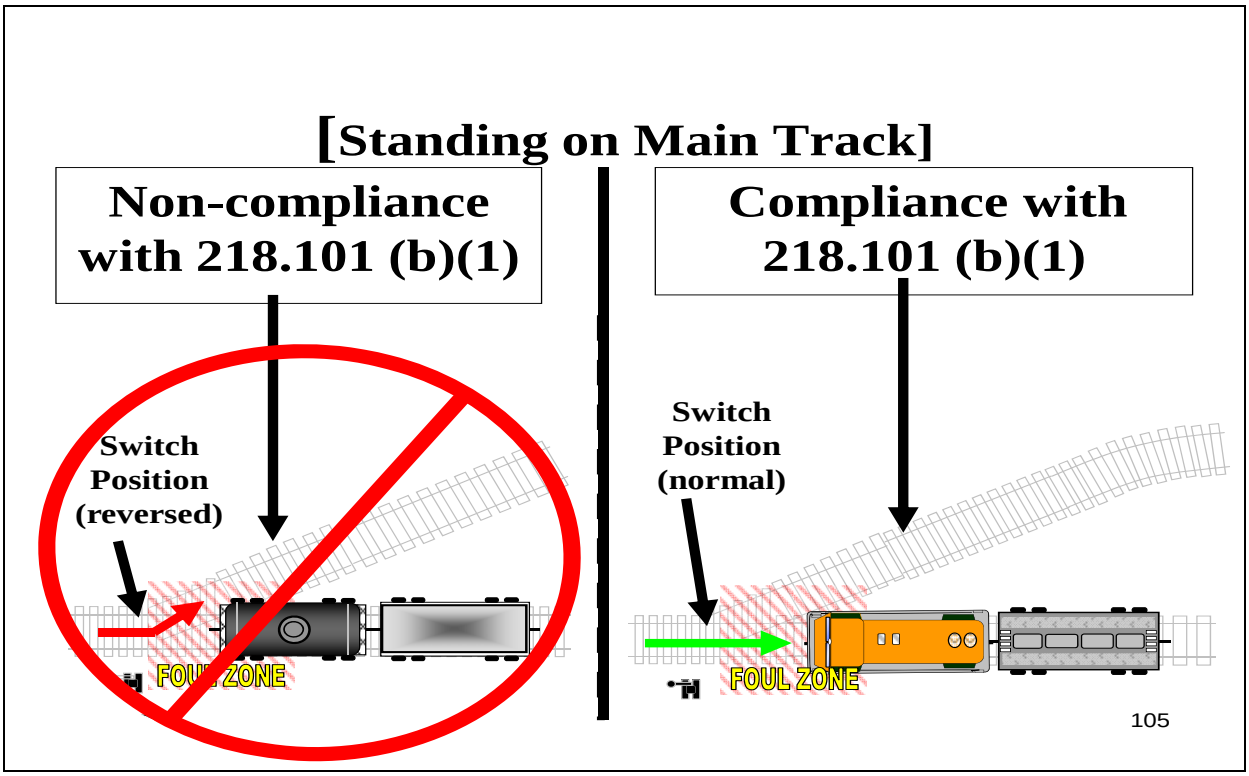
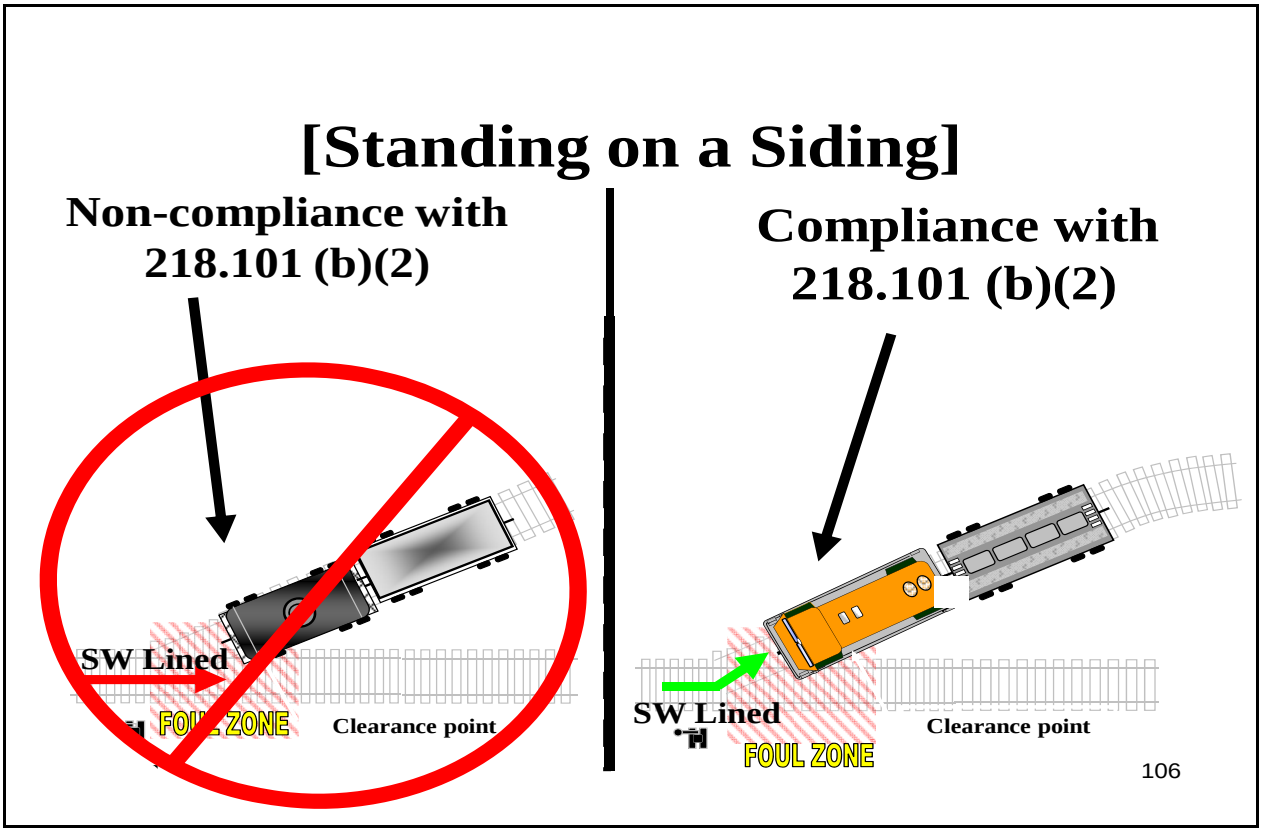
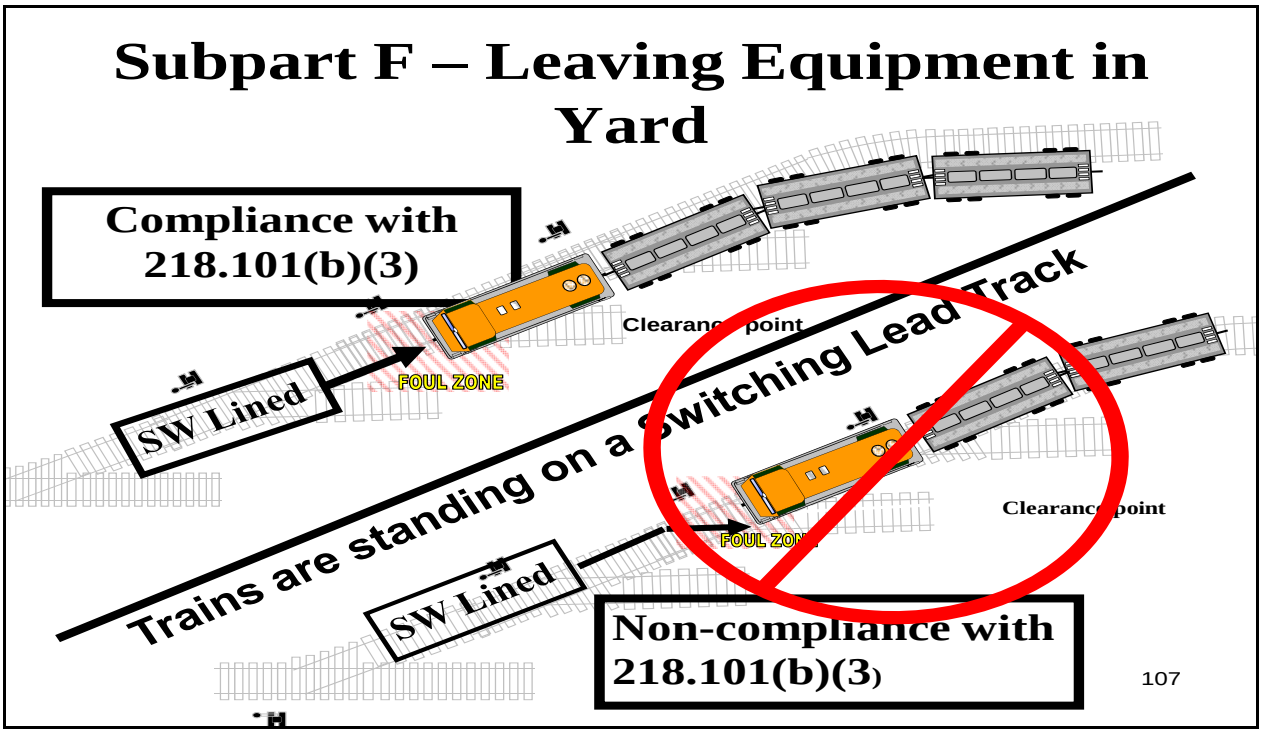
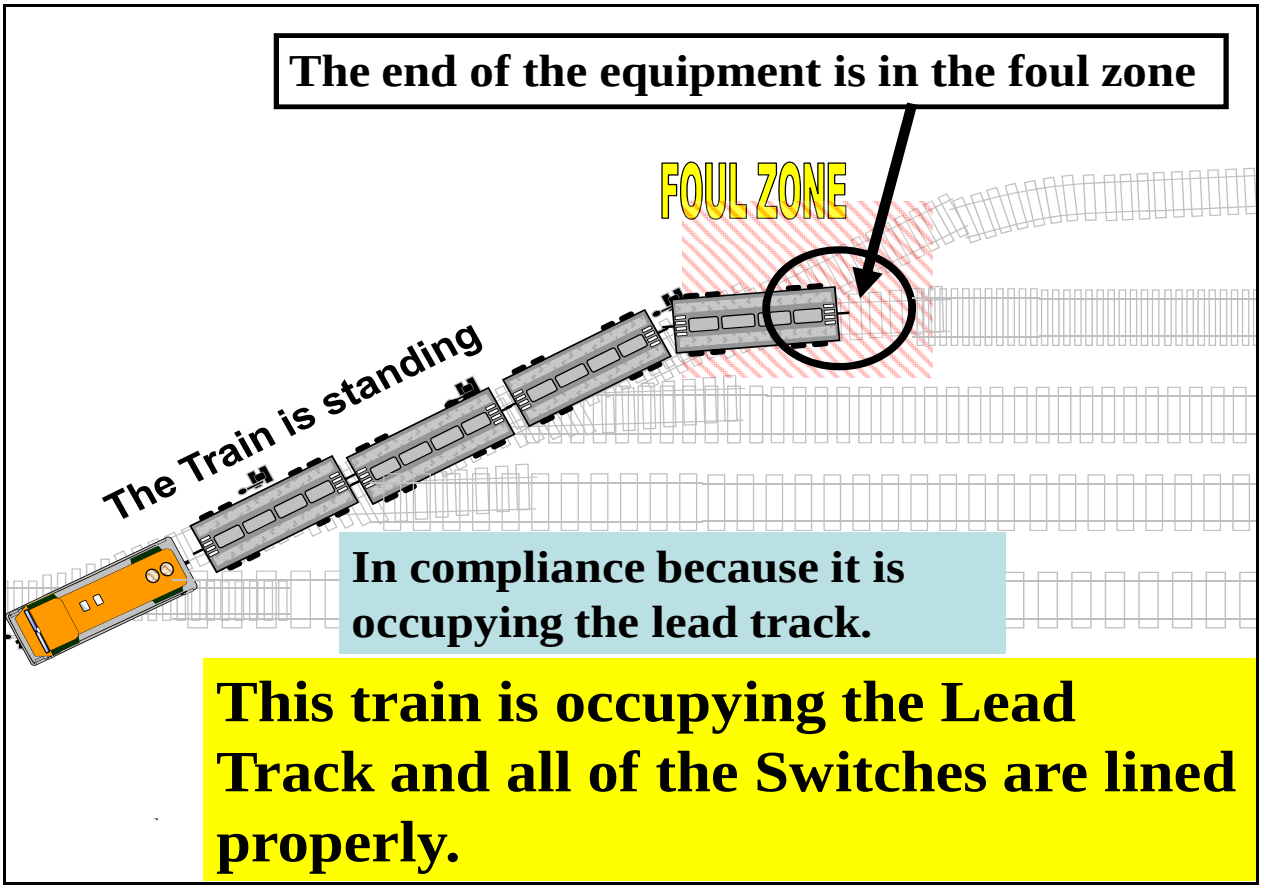
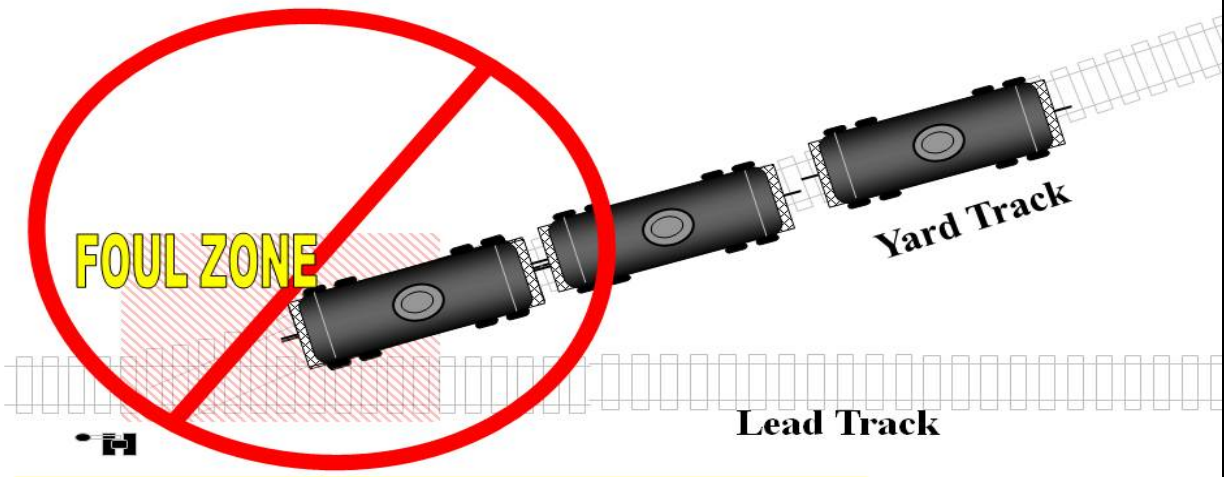

[Standing on Main Track]
Non-compliance with 218.101 (b)(1)
Compliance with 218.101 (b)(1)
Switch Position (reversed)
FOUL ZONE
Switch Position (normal)
FOUL ZONE
105


[Standing on a Siding]
Non-compliance with 218.101 (b)(2)
Compliance with 218.101 (b)(2)
SW Lined
FOUL ZONE
Clearance point
SW Lined
FOUL ZONE
Clearance point
106


Subpart F – Leaving Equipment in Yard
Compliance with 218.101(b)(3)
SW Lined
FOUL ZONE
Clearance point
Trains are standing on a switching Lead Track
SW Lined
FOUL ZONE
Clearance point
Non-compliance with 218.101(b)(3)
107


The end of the equipment is in the foul zone
FOUL ZONE
The Train is standing
In compliance because it is occupying the lead track.
This train is occupying the Lead Track and all of the Switches are lined properly.

The standing equipment on a Yard Track should not foul a lead track.



Switch can be lined either way

West end of a car repair shop.
Question - Is it permissible for the car dept to leave cars in the foul between these two tracks? Employee states that if they can leave cars in foul they could work on more cars at the same time.
Answer – The regulation includes car repair facilities and cars left standing should comply with §218.101

Equipment in the foul guidance

Maintenance Facilities.
This regulation does include maintenance facilities. Inspectors will not find a "*yard switching lead*" in a maintenance facility. This is because the intent of the exception for a "*yard switching lead*" [§ 218.101(b)(3)] is for a bona fide yard switching lead in a freight classification yard. Maintenance facilities will not meet those criteria.

Noncompliance in maintenance facilities and classification yards.
OP inspectors should be cognizant that there may be some situations where there is noncompliance with the fouling requirements, but the situation poses no safety hazard. FRA recognized this possibility when it promulgated the final rule implementing Subpart F, and FRA intends to exercise appropriate discretion in regard to enforcement of § 218.101.

As FRA explained in the preamble to the final rule (73 FR 8482):

> Because of the many different types of track arrangements that are atypical, it would be difficult to craft a rule that fully encompasses every such arrangement and excepts those that pose no danger. Where there is truly an atypical arrangement that appears to violate this section but poses no true safety hazard, FRA intends to consider the safety implications when deciding whether to exercise its enforcement authority.

Kicked cars observed in the foul
During switching operations that involve kicking cars, inspectors should ensure that the switches are not lined until the equipment is completely in the clear. In the field, inspectors will make sure that equipment CANNOT be left on a yard track fouling the lead, EVEN during continuous switching operations. Good judgment and a good understanding of the regulation are important when an inspector is in the field walking a yard or observing train or yard crews performing switching operations. For example:

- If equipment that is kicked into a track did not make it into the clear and that equipment is observed by an OP inspector, the inspector should find the situation acceptable if the equipment is moved into the clear soon thereafter.
- If the train crew is switching a cut of cars and the car kicked is the equipment in the foul, and that car is not an immediate safety concern, the crew should be considered in compliance if they continue switching the cut of cars. If the crew leaves the area or goes farther down in another track, those facts should be described in a violation report if the inspector chooses to take exception to the event.

Inspectors should use good judgment when enforcing this regulation. As with any enforcement action, an inspector is expected to make the specific factual circumstances and a railroad's compliance history the main considerations for whether a violation is warranted. When enforcing the cars out to foul rules, please also consider the following background information found in the preamble to the final rule (73 FR 8482):

> Leaving equipment in the foul accounted for 5% of all human factor accidents during the four-year period 2003 through 2006. The RSAC acknowledged that there are other elements in the NPRM [Notice of Proposed Rulemaking] that require the track to be clear prior to a pushing or shoving movement, and for all hand-operated switches to be properly lined before fouling a track, and that these requirements might appear, perfunctorily, to obviate the need for a fouling rule. However, the RSAC also recognized that leaving equipment in the foul sets the stage for a potential accident in the event one or more of the ancillary requirements in the regulation are overlooked.

§ 218.103 – Hand-operated switches, including crossover switches

Operating Rules Guidance:
Inspectors should review the railroad's operating rules to ensure compliance with § 218.103(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

General Guidance
The definition of a hand-operated switch is:

> ***§ 218.93 Definitions***.
> *Hand-operated switch means any type of switch when operated by manual manipulation. For purposes of this subpart, a hand-operated switch does not include switches operated by push button or radio control when such switch is protected by distant switch indicators, switch point indicators, or other visual or audio verification that the switch points are lined for the intended route and* ***fit properly.***

When determining if a switch is a hand-operated switch inspectors should be cognizant that the definition above specifically requires a verification that the switch points fit properly. This would include power switches that have been placed on hand and therefore meet the definition of hand-operated switch.

Employees operating or verifying the position of a hand-operated switch shall:

- Conduct job briefings before work begins, each time a work plan is changed, and at the completion of the work assigned. Each railroad shall specify minimum requirements necessary for an adequate job briefing.
- Be qualified on the railroad's operating rules relating to the operation of the switch.
- Visually determine that switches are properly lined for the intended route and that no equipment is fouling the switches.
- Visually determine that the points fit properly and the target, if so equipped, corresponds with the switch's position.

- After operating a switch and before making movements in either direction over the switch, ensure that the switch is secured from unintentional movement of the switch points.
- Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is fouling the switch, or standing or moving over the switch.
- After operating a switch, ensure that when not in use, each switch is locked, hooked, or latched, if so equipped.
- Ensure that when rolling and on-track maintenance-of-way equipment has entered a track, the hand-operated switch to that track is not lined away from the track until the equipment has passed the clearance point of the track.

NOTE: This regulation does not require employess to look at switch points prior to lining the hand-operated switch. Many railroads require this as an operating rule, but it **is not required** under § 218.103. Looking at switch points to determin if the switch points fit properly after lining a switch **is required** under § 218.103.

Questions and answers for § 218.103

Question 1: Regarding switches that are equipped with a hasp, but have no lock, hook, or latch: if there is a hasp and the switch is capable of being hooked or locked, does the railroad have the obligation, per the regulation, to replace the lock or repair the hook?

> **Answer 1:** For the moment, let's just talk about other-than-main track switches. The mere fact that a switch is equipped with a hasp (the ring-shaped or U-shaped metal object that you place a lock or a hook through or into) does not, in itself, establish a requirement for the switch to be locked or hooked. The only sure way to determine whether there is a violation of § 218.103(b)(8) is: (1) the physical presence of a lock or hook that can be directly associated with that particular switch (other than for blue signal, camp car, or RWP purposes); and/or (2) an operating rule, special instruction, or other publication designating that a particular switch, or switches, must be locked or hooked.

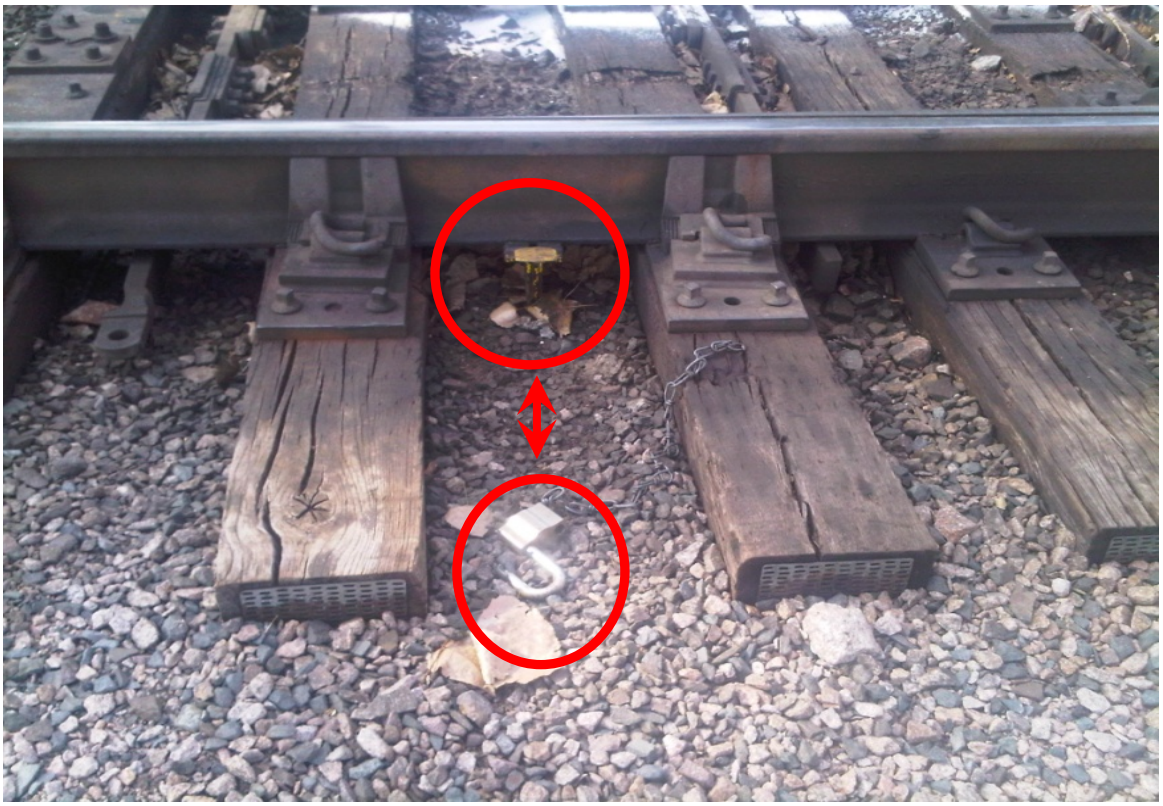
Question 2: What if the only lock available is a mechanical craft lock (which has a hasp)? Would it be correct to interpret the regulation to require that the switch would have to be locked with the craft lock if that was the only one on that unattended switch?

> **Answer 2:** The regulation does not apply to mechanical department locks. When inspecting around mechanical shops, inspectors must be careful to distinguish between those locks used under the operating rules from those used solely under mechanical department rules. For example, if an inspector finds a switch lock not placed in the hasp correctly just outside a mechanical shop, FRA should determine whether the lock is controlled by the mechanical department and, therefore, not required to be in the hasp. In any situation where an inspector finds a switch that is near a mechanical shop that is not locked, hooked, or latched, the inspector should explain in the inspection report (Form F6180.96) how it was determined that the lock was an operating craft lock and not another department's lock.

Craft-specific locks associated with a particular switch, such as for blue signal protection, camp car protection, or Roadway Worker Protection (RWP), are only to be used for the purpose(s) for which they are intended. Therefore, if an inspector finds a mechanical (blue signal) lock, for example, dangling from a switch or on the ground near the switch, and there is no rolling equipment being protected on that track by that switch AND there are no workers on, under, or between that equipment, then there is no violation of Subpart F.

Question 3: Would FRA consider a switch being lined and locked but the "foot latch" associated with the same switch being lined and latched, but not locked, in violation of 218.103(b)(6 or 8)? For example, a track inspector that found this stated that the switch could not be lined due to the lock attached to the switch stand even though the lock was not attached to the foot latch.

Answer 3: Assuming it is a main track switch. If a switch is locked (secured) with a conventional switch lock (padlock) on the switch stand that is sufficient and complies with the regulation. The purpose of the switch point foot locks, or latches, are for switch installations where there is only one operating rod and no lock rod, and serves as a backup in the event the only operating rod were to fail, causing the switch point to gap while the switch was in the normal position. There is really no need for the padlock other than as an added safeguard.



§ 218.105 – Additional operational requirements for hand-operated main track switches

Operating Rules Guidance:
Inspectors should review the railroad's operating rules to ensure compliance with § 218.105(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

Designating switch position

§ 218.105(b),
The normal position of a hand-operated main track switch shall be designated by the railroad in writing, and the switch shall be lined and locked in that position when not in use except when:

1. The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided.
2. The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

Question: According to § 218.105(b), is a railroad required to have a lock on a hand-operated main track switch when not in use, regardless of whether it is in yard limits?

> **Answer:** Yes. With the exception of the two situations described above, § 218.105(b) is clear with respect to the requirements that main track switches have to be lined in the normal position and locked when not in use. The regulation makes no distinction or differentiation regarding whether the main track switch is located within yard limits, restricted limits, or cautionary limits.
>
> **Background:** In both the preamble and the final rule, FRA stated that "FRA is unaware of any railroads that do not require locking of main track switches as a safeguard against unauthorized use." 71 FR 60372, 60397 (Oct. 12, 2006), and 73 FR 8442, 8485 (Feb. 13, 2008). No railroad or commenter challenged FRA's statement during the Railroad Safety Advisory Committee or rulemaking processes. Thus, FRA did not address the lock requirement in the economic analysis, nor consider it a cost of promulgating the rule, as it was expected that each railroad was already voluntarily supplying locks for its main track switches. However, now that the final rule has been promulgated, each railroad must comply per the stated requirement.

Please keep the following rules in mind when completing inspections regarding § 218.105.

- Before a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers shall have verbal communication to confirm the position of the switch.
- When releasing authority limits in non-signaled territory, it is essential that:
  - The employee releasing the limits, after conducting a job briefing in accordance with this subpart, shall report to the train dispatcher that the hand-operated main track switch has been restored to its normal position and locked, unless the train dispatcher

directs that the hand-operated main track switch be left lined and locked in the reverse position and the necessary protection is provided.
- If the report of the switch position is correct, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether that is correct.
- The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

§ 218.107 – Additional operational requirements for hand-operated crossover switches

Operating Rules Guidance:
Inspectors should review the railroad's operating rules to ensure compliance with § 218.107(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

Correspondence of hand-operated crossover switches

Hand-operated crossover switches shall be left in corresponding position except when:

1. Used to provide blue signal protection under § 218.27.
2. Used for inaccessible track protection under § 214.327.
3. Performing maintenance, testing, or inspection of crossover switches in traffic control system (TCS) territory.
4. One crew is using both tracks connected by the crossover during continuous switching operations.

For reference, in the preamble to the final rule, FRA explained what it meant by the term "crossover" and that the agency would exercise enforcement discretion when addressing alleged violations in atypical situations or complicated configurations.

In the application of this subpart, the term crossover applies to a track connection between two adjacent, but not necessarily parallel, tracks, consisting of two switches, which is intended to be used primarily for the purpose of crossing over from one track to another. Categorically excluded from this application are track connections between adjacent tracks that, while they may physically permit equipment to pass from one track to another, are of sufficient length so as to be able to store or hold rolling equipment on them, or to set out bad order cars, or to store track equipment, or for any other purpose than solely for crossover movements. Of course, it is possible to have a crossover that holds just a few pieces of rolling equipment and that is not typically used for allowing other movements to pass or used for storage, but yet is used for such purpose. In response to these atypical situations, FRA intends to use its enforcement discretion on a case-by-case basis. FRA further explained (73 FR 8487):

> FRA is aware that some configurations of crossover switches are quite complicated, typically due to the location of adjacent or adjoining tracks and other attendant switches. Railroads should address these complicated

> configurations of crossover switches when employees are instructed on the physical characteristics of the territory. Without proper instruction on how to apply a railroad's operating rule for correspondence of crossover switches, it will be difficult to hold employees accountable. However, railroads can be held accountable if employees do not properly apply such an operating rule and lack of instruction is one of the causes. Of course, if a railroad provided instruction but a violation was committed due to the complexities of the crossover configuration, FRA will exercise discretion regarding whether any enforcement action is necessary. (73 FR 8464)

§ 218.109 – Hand-operated fixed derails

Operating Rules Guidance:
Inspectors should review the railroad's operating rules to ensure compliance with § 218.109(a), which requires the railroad to adopt and comply with an operating rule which complies with the requirements of this section.

General Guidance
The normal position of hand-operated fixed derails is in the derailing position, except as provided in Part 218, Subpart B, or the railroad's operating rules or special instructions.

Hand-operated fixed derails shall be kept in the derailing position, regardless of whether any rolling and on-track maintenance-of-way equipment is on the tracks they protect, **<u>except</u>** as provided in paragraph § 218.109(b):

- As provided in Part 218, subpart B of this chapter regarding Blue Signal Protection.
- When the railroad's own operating rules or special instructions indicate precisely when it can be left off.
- When the derail is removed to permit movement.

NOTE: Movement must not be made over a hand-operated fixed derail in the derailing position, per § 218.109(b).

§ 218.109(c), requires that employees operating or verifying the position of a hand-operted fixed derail shall:

- Conduct a job briefing before work is begun, each time a work plan is changed, and at completion of the work.
- Be ***qualified*** on the railroad's operating rules relating to the operation of the derail.
- Be individually responsible for the position of the derail in use.
- Determine that the target, if so equipped, corresponds with the derail's position.
- Determine that the derail is secured by:
  - Placing the throw lever in the latch stand, if so equipped.

  - Placing the lock or hook in the hasp, if so equipped.
  - Testing such latches, locks, or hooks.
- Ensure that, when not in use, derails are locked, hooked, or latched in the normal position if so equipped.

Designating the hand-operated derail's position

The normal position of a hand-operated derail shall be designated by the railroad in writing, and the switch shall be lined and locked in that position when not in use except when:

1. The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided.
2. The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

Questions and answers for § 218.109

Question 1: Would a derail that is remotely controlled by a Train Dispatcher or Control Operator fall under § 218.109?

> **Answer 1:** The railroad is free to designate what the normal position of a derail is by either their operating rules or special instructions. Nonetheless, in the application of § 218.109, if the derail in question was operated by hand, yes, § 218.109 would apply. If the derail was not operated by hand, then no, § 218.109 would not apply.
>
> **NOTE**: The regulation only addresses ***hand-operated*** fixed derails, so we would have to apply the same principal as when a power switch is operated by hand.

Question 2: A train is pulling into a yard and has to line a fixed derail to the non-derailing position. The train will not fit into the track it was instructed to pull into. Is it permissible for the conductor to line the derail to the non-derailing position, get back onto the head end of the train to line switches that will facilitate setting over the remaining cars to another track, and then be driven back to the derail to line it to the derailing position?

> **Answer 2:** Yes, because the derail was placed in the non-derailing position by a member of the crew to permit movement (per § 218.109(b)(2)). Once the movement clears the derail, it may temporarily remain in the non-derailing position since, under the circumstances described, the derail is still considered to be "in use" until the conductor gets back to restore it (see § 218.109(c)(6)), **provided** that the time elapsed from its removal to its restoration back to normal (i.e., derailing) position was not excessive. Inspector discretion is advised.

Question 3: If the derail allows access to a main track, is it permissible for a yardmaster to leave the derail in the non-derailing position after a train pulls into the yard when another train is going to depart or enter the yard? If so, how long may the derail be left in the non-derailing position waiting for the next train to leave or come into the yard?

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Chapter 7: Part 219, Control of Alcohol and Drug Use

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CHAPTER 7
PART 219, CONTROL OF ALCOHOL AND DRUG USE

Overview

Under ordinary circumstances, each FRA region has an assigned Part 219 team leader and at least one assistant Part 219 team leader. Field inspectors are not to perform Part 219 inspections, handle Part 219 complaints, or provide information to any railroad regarding Part 219 without the guidance and knowledge of their regional managers via the region's Part 219 team members. All Part 219 audits will be coordinated with the Part 219 team leader.

Toxicology Boxes

Part 219 post-accident toxicological tests require the use of toxicological boxes (also called "tox boxes") to collect the blood and urine. There are two types of tox boxes, as described below:

1. A **standard post-accident tox box** is used to collect blood and urine samples from surviving employees.
2. A **fatality (post-mortem) tox box** is used for any qualifying event's fatality. These fatality tox boxes will only be distributed to the larger railroads. If a smaller railroad attempts to order a fatality tox box, their check will be returned. If a small railroad has a qualifying event that requires a fatality tox box, the railroad must notify the Federal Government's National Response Center and FRA will overnight the fatality tox box to the medical examiner or the small railroad can borrow one from a Class I railroad nearby, if practical.

Part 219 Guidance

OP field inspectors must not be present during a Part 219 test or a drug and alcohol test being conducted by a railroad under its own authority. Inspectors who find themselves in the area of a test that is being conducted must leave the immediate area and have no contact with the railroad employees or with the collectors during the collection process. Likewise, if post-accident collections are in process at an independent medical facility, inspectors must not become involved in the collection process. FRA uses mock collections to evaluate compliance with alcohol and drug collection procedures.

OP inspectors **must** reference Part 219 manuals regarding Part 219 guidance. FRA interpretations of Part 219 and the U.S. Department of Transportation's (DOT) Office of Drug and Alcohol Policy and Compliance interpretations of Part 40 are found on FRA's Web site at www.fra.dot.gov.[1] These interpretations include, but are not limited, to the following:

- Part 219 Alcohol/Drug Program Compliance Manual
- Part 219 Inspection Tools Manual for FRA and State Inspectors

[1] Click on the "Railroad Safety" tab and then click on the link for "Drug and Alcohol" (next to the link for Operating Practices).

- Alcohol and Drug Testing Regulations (Parts 219 and 40) Interpretive Guidance Manual

Regulations for drug and alcohol testing under FRA authority are found at Part 219 and can be referenced online at:

www.fra.dot.gov/downloads/safety/part219_complete.pdf

DOT regulations that govern the testing procedures for all types of Part 219 testing except post-accident toxicological testing are found at Part 40 and can be referenced online at:

www.dot.gov/ost/dapc/NEW_DOCS/part40.html?proc

FRA inspectors enforce both FRA regulations Part 219 and DOT regulations found in Part 40. General information regarding FRA's Drug and Alcohol program can be referenced online at:

www.fra.dot.gov/Pages/504.shtml

FRA Part 219 Teams

Each region's designated alcohol and drug team leader (chief inspector) and designated assistant team leader (OP inspector) have received advanced training on the alcohol and drug regulations and are tasked with overseeing the performance of commuter railroad and Class II and III railroad alcohol and drug compliance reviews within their region. The regional Part 219 team leader should be consulted on all Part 219/Part 40 complaints, including the findings and recommendations. All Part 219 audits will be coordinated with the Part 219 team leader.

The designated team leaders spend up to 50 percent of their time on alcohol/drug issues, including:

- Scheduling, leading, and issuing final inspection reports covering the Class II (regional), Class III, and commuter railroad alcohol and drug compliance reviews (initial and followup); and assisting in educating and suggesting remedies for findings of noncompliance.
- Reviewing the use of contractors and volunteers performing covered service duties for a railroad to ensure compliance with alcohol and drug regulations.
- Issuing and reviewing regional alcohol and drug violation reports, as assigned by the region.
- Investigating and reviewing regional complaint investigation reports, as assigned by the region.
- Reviewing and handling FRA post-accident toxicological testing "trouble reports" received from headquarters, as assigned by the region.
- Preparing field reports based on investigations of alcohol and drug waiver requests and monitoring compliance with waiver conditions.

- Providing required reports to FRA's drug and alcohol program manager for use in determining the compliance of each railroad covered under the scope of Part 219 within the region.

OP inspectors who have specific questions about the Part 219 program or questions about a Part 219-related complaint should contact their team leader or the designated assistant team leader. OP inspectors may be assigned to assist the Part 219 team, as needed, on audits or alcohol and drug-related complaints, as needed, depending on regional preferences.

OP inspectors may be requested by their regional managers to conduct Part 219 audits on small railroads with fewer than 16 covered employees. OP inspectors should ask their regional Part 219 team leader for a copy of the most recent audit checklist, which will assist in conducting this audit.

Drug and Alcohol Tests Involving Public Highway-Rail Grade Crossing Accidents

When conducting Part 219 inspections of drug and alcohol tests that involve public highway-rail grade crossing accidents, inspectors should be governed by the guidance below:

- As part of its safety mission, FRA requires the responsible railroad, through regulation, to conduct alcohol and drug tests on train crews that have been involved in qualifying major accidents.
- FRA's alcohol and drug testing regulations (Part 219) generally **exempt a train crew that has been involved in a highway-rail grade crossing accident from Federal testing**.
    - Trains have much longer stopping distances than cars, trucks, and other motor vehicles. At 55 mph, it can take a train more than a mile to stop. For this reason, the crew has little or no chance of avoiding an impact by the time they have spotted a person or vehicle stopped on the tracks.
- FRA regulations **preempt** State and local regulations requiring testing of railroad employees after train accidents, but there is an exception for enforcement of State and local criminal laws.
- Local police may test a train crew **under their own authority** if they have **probable cause** to believe that the crew contributed to the cause or severity of a highway-rail grade crossing accident. As explained above, the train crew's involvement in a fatal crash should not be the only factor in determining whether probable cause for testing exists.

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CHAPTER 8
PART 220, RAILROAD COMMUNICATIONS

§ 220.5 – Key definitions

Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad, and who is authorized by the railroad to use its wireless communications in connection with railroad operations.

Immediate access to a radio means a radio on the employee's person, or sufficiently close to the employee to allow the employee to make and receive radio transmissions.

Railroad operation means any activity that affects the movement of a train, locomotive, on-track equipment, or track motor car, singly or in combination with other equipment, on the track of a railroad.

The Rail Safety Improvement Act of 2008 (RSIA)

Section 306 of the RSIA, Railroad Radio Monitoring Authority(codified at 49 U.S.C. 20107(c)) allows the Secretary of Transportation (Secretary) to authorize FRA inspectors to monitor railroad radio transmissions.

In particular, this provision of the RSIA permits the Secretary to authorize his or her officers, employees, or agents to conduct, with or without making their presence known, various activities in circumstances the Secretary finds to be reasonable, including--

> (A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—
>
> > (i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and
> >
> > (ii) primarily used by such railroad carriers for communications in connection with railroad operations.

The Secretary's authority under this statutory provision has been delegated to the Administrator of FRA. 49 CFR 1.49(m), (oo). The Administrator has delegated this authority to the Associate Administrator for Railroad Safety/Chief Safety Officer. Further delegations and guidance on the exercise of radio monitoring authority are being prepared.

FRA Radio Monitoring Policy: Although the RSIA changed railroad radio monitoring methods, FRA inspectors will still be governed by FRA's current radio monitoring policy until a new radio monitoring policy is published and distributed.

FRA inspectors may listen to railroad radio communications:

- For the purposes of enforcement of 49 CFR Part 220 (Part 220 or the railroad communications regulations).
- While in the physical presence of a railroad-authorized sender or receiver (for practical purposes, a railroad-authorized sender or receiver is a railroad employee or contractor who is transmitting messages or listening to messages on the railroad radio station using a railroad-issued radio). This authorized individual must provide verbal confirmation that FRA is monitoring communications for purposes of compliance.
- When not in the physical presence of a railroad employee, if the inspector has first obtained permission from the proper railroad employees.
- When reviewing radio tapes in connection with an accident/incident investigation.

Part 220 – Railroad Communications

An inspector will monitor railroad radio communications in accordance with FRA's current railroad radio monitoring policy and conduct periodic inspections and observations to determine the degree of the railroad's compliance with the railroad's radio standards and procedures. Monitoring of radio procedures may be conducted at any location where railroad employees use a radio to transmit or receive railroad radio communications during railroad operations.

Guidance for Part 220 Inspections

- While listening to railroad radio communications, inspectors must follow FRA's current policy on monitoring railroad radios
- If an inspector finds noncompliance with any provision of Part 220 on a railroad property, the inspector should immediately determine whether the railroad company's rules adequately require employees to comply with Part 220.
- Inspectors should use the railroad's requirements for operational testing as a compliance tool.
- Inspectors should determine whether the railroad's own operating rules meet Part 220 requirements, including requirements to have operational testing and railroad radio rules as found in § 220.25, Instruction and operational testing of employees.
- Inspectors should be mindful that exceptions for distance and direction during shoving movements should strongly be considered for a violation of § 220.51.
- Reports of violations of Part 220 should include as much relevant information as possible, including times, crews, location, etc.

- An inspector should inspect and observe where radio communications are used in railroad operations. An inspection and observation site can be any base station, wayside station, installation, facility, unit of equipment, mobile station, or belt pack set that transmits and/or receives voice communication in connection with railroad operations.

- Radio transmissions should be monitored to determine whether identification standards are used and whether the person receiving the transmission uses the proper responses.

- Special attention should be given to the radio transmission of track warrants, mandatory directives, train orders, etc., since serious consequences may result from noncompliance.

Consideration for Violations: Noncompliance with the following directives should strongly be considered for recommendation as civil penalties, because they have been proven to result in railroad fatalities, serious injuries, and major rail-equipment accidents:

- § 220.27 – Identification
- § 220.49 – Radio communication used in shoving, backing, or pushing movements
- § 220.51 – Radio communications and signal indications
- § 220.61 – Radio transmission of mandatory directives

§ 220.1 – Scope

This section says that Part 220 prescribes minimum requirements governing the use of wireless communications in connection with railroad operations. As long as these minimum requirements are met, railroads may adopt additional or more stringent requirements.

Not Applicable: Per the preamble to the final rule published at 63 FR 47195, Sept. 4, 1998 (Final Rule), Part 220 applies only to voice communications between railroad employees by way of radio, and are not applicable to communications by modes such as telephone, telegraph, automatic audio signaling device, or the transmission of recorded messages by radio. Under § 220.5, '[e]mployee' means an individual who is engaged or compensated by a railroad or by a contractor to a railroad and who is authorized by a railroad to use its wireless communications in connection with railroad operations."

Use of a Railroad's Radio by a Person Other than an Employee of the Railroad (Non-Railroad Person): If a railroad permits people other than its railroad employees to use their radios, and if such use has the potential to interfere with railroad operations, then the railroad should instruct those people to use proper radio procedure.

Question: Does the use of radio by non-railroad persons include railroad contract van drivers?

> **Answer:** Yes, but inspectors should be sure that the radio use referenced in their inspection report meets the current definition of a "[r]ailroad operation" as noted in § 220.5, Definitions. Also inspectors should be sure to include that information in their inspection reports. The key determining factor is the channel on which the non-operational communication occurs. If a taxi driver, car inspector, or other employee uses

a railroad channel to engage in non-operational communication, the potential exists for overriding operational communication. Therefore, FRA considers all communication on a channel used for railroad operations to be covered, regardless of the nature of the radio communication.

§ 220.9 – Requirements for trains

For purposes of this section, "communications redundancy" means either a working radio on another locomotive in the consist or another means of working wireless communications.

General: FRA published Emergency Order 26 (EO 26) on October 7, 2008, in the Federal Register following the September 12, 2008, head-on collision between a Southern California Regional Rail Authority (Metrolink) commuter train and a Union Pacific Railroad Company (UP) freight train at Chatsworth, California. This collision resulted in the deaths of 25 people, the injury of numerous others, and more than $7,100,500 in damages.

EO 26 has been rescinded effective March 28, 2011. Inspectors should reference Part 220 Subpart C.

§ 220.21 – Railroad operating rules; radio communications; recordkeeping

The operating rules of each railroad pertaining to radio communications must conform to the requirements of Part 220.

§ 220.23 – Publication of radio information

Base and Wayside Stations defined: Per the preamble to the Final Rule, on those railroads using radios, a "base station" is generally understood to be the main receiving and transmitting terminal where the train dispatcher's office is located. The term "wayside station" is commonly understood as indicating an intermediate station between terminals.

§ 220.25 – Instruction and operational testing of employees

Each employee whom a railroad authorizes to use a radio in connection with a railroad operation, shall be:

1. Provided with a copy of the railroad's operating rules governing the use of radio communication in a railroad operation.
2. Instructed in the proper use of radio communication as part of the program of instruction prescribed in § 217.11.
3. Periodically tested under the operational testing requirements in § 217.9.

§ 220.27 – Identification

Paragraph (a) of this section requires that the identification of each wayside, base, or yard station include the name of the railroad and the name and location of the office or other unique designation in that order, except as provided in paragraph (c) of the section.

Paragraph (b) of the section requires that the identification of each mobile station include the name of the railroad, the "train name (number)" if assigned or other appropriate unit designation, and the word "locomotive" or "motorcar" or another "unique identifier that indicates to the listener the precise mobile transmitting station[,]" in that order, except as provided in paragraph (c) of the section.

Paragraph (c) of the section is intended to provide an alternative method of identification in yards, where radio traffic is high, to help ease radio congestion.

Short Identification

In July 1994, the Federal Railroad Administration (FRA) published the *Report to Congress on Railroad Communications and Train Control.* In the report, FRA found that radio related problems concerning the human interface element included significant problems with failure to identify stations properly. In reference to 49 CFR Section 220.27, *Identification*, specifically Section 220.27(c), *short identification* (short ID), occasionally the question arises regarding what FRA considers to be acceptable in this regard. The regulation allows that the short ID may be used solely in connection with switching, classification, and similar operations wholly within a yard, but only after positive identification is first achieved (i.e, the "full" ID must be transmitted and acknowledged initially). Further, the short identification must be consistent with applicable Federal Communications Commission (FCC) regulations governing "Station Identification." Concerning whether an engine number alone may be used as a short ID, such as "3263" vs. "UP 3263," the following is issued as the official agency policy on short identification.

It has consistently been FRA's position that there always be a **unique** designation or identifier during radio transmissions. In certain situations, using only the engine number would be acceptable, such as in a small yard where, for example, only BNSF engines were working. However, in larger yards, such as Argentine, Barstow, North Platte, etc. with run-through power, the large number of locomotive leasing companies around today, and the possibility of other similar mobile unit designations, the engine number alone may not always be **unique**, because there could be duplicate mobile unit (engine) numbers, e.g., UP 3263, LMX 3263, BNSF 3263, CR 3263, UTLX 3263, Ballast Regulator 3263, etc. In the identification of mobile units in these situations, we have maintained that the alpha characters should be used along with the engine number to make it **unique**.

Referring to the FCC regulation on station identification, which is found at 47 CFR Section 90.425(a)(4), it states: "In the Industrial/Business Pool, railroad licensees . . . may identify stations by the name of the railroad and the train number, caboose number, engine number, or the name of the fixed wayside station. If none of these forms are practicable, any similar name or number may be designated by the railroad concerned for use by its employees in the identification of fixed points or mobile units…." The regulation further states: "In the

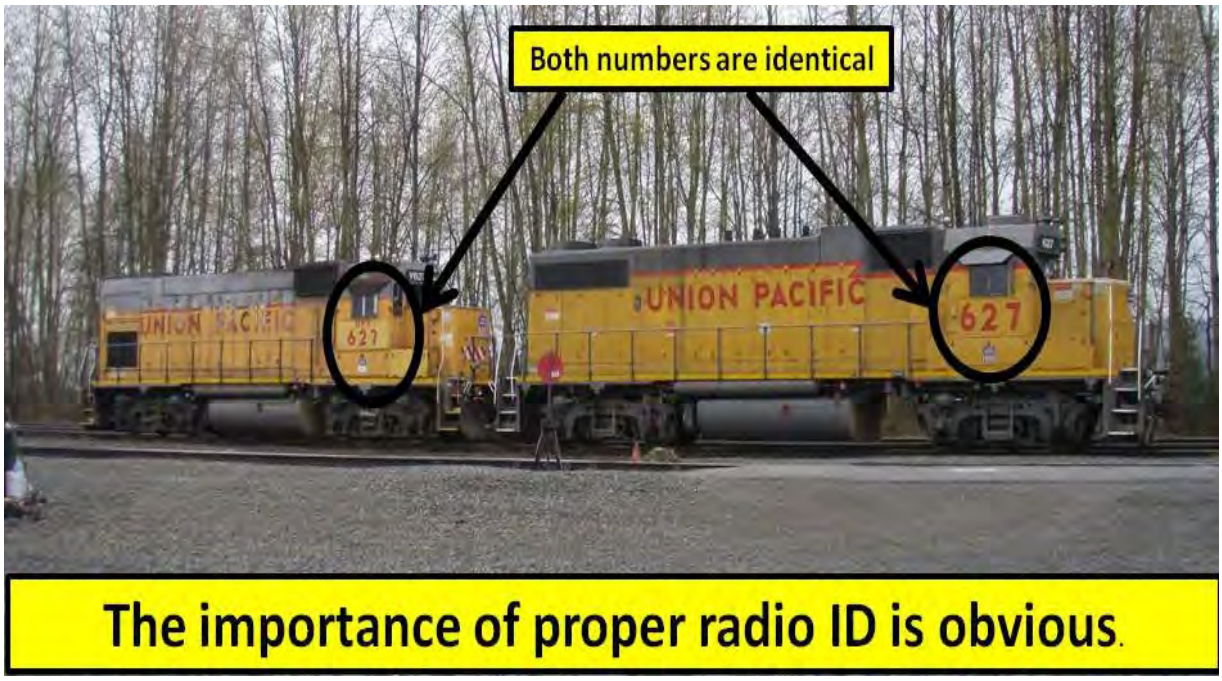
Industrial/Business Pool, licensees may request . . . the use of special mobile unit identifiers in lieu of the assigned call sign. Such requests, however, will not be granted . . . where it appears that the proposed method of identification will not adequately distinguish the mobile units of the applicant from the mobile units of other licensees in the area."

While FRA prefers that alpha characters always be used along with the engine number, it cannot legally hold railroads to that standard in all situations. Notwithstanding, it must be borne in mind that in accordance with the aforementioned FCC regulation and 49 CFR Section 220.27, the unit identifier must still be **unique**. We continue to strongly recommend, in the interests of safety, that it is better in all cases to use the alpha characters preceding the engine number because in many situations there is a likelihood of duplicity of numbers.

Based on the foregoing, it is permissible to use the engine number alone only if it is a **unique** identifier which indicates to the listener the precise mobile transmitting station.

The responsibility for the **uniqueness** of the identifier of mobile units rests solely with the railroads, i.e., they must ensure that no duplicate mobile unit (engine) numbers exist prior to using the engine number alone during radio transmissions in connection with yard switching operations. Naturally, the above applies only during yard switching operations, and FRA expects the full identification to be used in all other situations.

If inspectors encounter situations where duplicate mobile unit (engine) numbers exist in a particular yard switching operation, and the railroad is not using the alpha characters to distinguish them from each other during radio transmissions, then the railroad will be subject to the assessment of a civil penalty. Further, if systemic problems develop in this area, FRA may consider taking other appropriate enforcement actions.



Use of First Names or Relying on the Sound of a Person's Voice: Relying solely upon the use of first names or the sound of a person's voice seriously reduces the integrity of transmissions and could be disastrous.

In the preamble to the Final Rule, FRA stated that it believes that the provisions of the rule give sufficient latitude to permit the shortening of transmissions without resorting to the casual use of name tags, which do not provide adequate identification. When an inspector officially hears a crew consistently using first names over the radio while conducting railroad operations, that is an indication there is noncompliance with Part 220 at that location.

Question: A crew, wholly within a yard during switching operations (on the lead), began switching with initial positive identification. For the next 5 minutes and about 7 moves, the crew continued switching using the radio to communicate, with NO identification (ID), short or otherwise.

The crew then started with no ID, such as, "Kick 'em"; "Ahead, seven cars"; "That'll do"; or "Bring 'em back four cars...two cars...one car...that'll do."

In the scenario described, did a violation of § 220.27(a) or (b) occur?

> **Answer:** Technically, a violation of § 220.27(a) or (b) did occur if the inspector felt the short ID was "too short."
>
> When using the short ID properly, the requirements of §§ 220.27(a) and (b) do not entirely go away, they are merely modified, or "muted," by § 220.27(c). In the case of § 220.27(b), its three requirements are subjugated by § 220.27(c), which allows the railroad to use a shorter version of these requirements, provided the railroad meets the requisite conditions:
>
> 1. They must first use the full ID.
> 2. Thereafter, they may use the short ID only if it pertains to yard switching operations.
> 3. The short ID must meet the requirements of the Federal Communications Commission regarding station identification (See **Short Identification** section of this chapter, but boil down to the identifier being unique). Nothing in § 220.27(c) presumes to void the fundamental requirements of § 220.27(b) with respect to the uniqueness of the identifier, i.e., train number or other appropriate unit designation (that can mean job or engine number) and, when necessary, any other word or unique identifier that indicates to the listener the precise mobile transmitting station.
>
> The "except as provided in paragraph (c)" language in both §§ 220.27(a) and (b) means that not all of the requirements have to be met, and the railroad is allowed to use a shorter version of these requirements as long as they meet the conditions of § 220.27(c) stated above. Again, this comes down to the uniqueness of the identifier (e.g., the name of the railroad can be omitted or "Settegast North End Switcher, Job STG-43" can be shortened

to simply "Job 43"). As is explained in the **Short Identification** section of this chapter, using just the engine number alone—which FRA tends to discourage—is acceptable, provided it is a unique identifier.

The crews making transmissions such as, "Bring 'em back 3 cars, [Job] 43" and "That'll do, 43," are technically not correct because they don't meet all of the requirements of § 220.31; (i.e., the conductor should have said "Conductor to (engineer) Job 43, bring 'em back 3 cars" or "Conductor to Job 43, that'll do." In short, the crewmember initiating the transmission should still identify himself or herself first, and then name the person or station with whom he or she intends to communicate. In the above example, "Conductor to Job 43" implies that the conductor is intending the transmission for the engineer, so that would be acceptable. Inspectors should consider that using longer "handles" when making multiple, incessant transmissions during yard switching operations, hour after hour, can get monotonous. Furthermore, FRA recognizes the strong human tendency to use shorter forms of communication. Therefore, the inspector must use his or her discretion.

Question: May train crews use first names as a short ID?

Answer: The use of first names is not permitted at any time, anywhere, under any circumstances, because they are not unique.

Suggested inspection report examples for monitoring railroad employees' compliance with Part 220:

Description - 220.0027.B3
[220 Activity Code] EXCEPTION NOTED: IDENTIFICATION OF EACH MOBILE STATION, WHEN NECESSARY DID NOT CONSIST OF "LOCOMOTIVE" OR "MOTORCAR" OR OTHER UNIQUE IDENTIFIER. I notified the NEBR trainmaster of my intent to monitor radio procedures while observing NEBR railroad operations at Centerville. After attaching himself to the crew of NEBR locomotive NEBR 1234, the NEBR utility employee used the improper identifiers: "coal," "coal train," "empty coal train," on 10 separate transmissions relating to the movement of the train as required by 49 CFR Part 220 and GCOR Rule 2.2. "Coal," "coal train," and "empty coal train" are not unique since multiple coal trains can be working at any given time. I discussed the condition with the NEBR Trainmaster Johnny Rogers.

Description - 220.0027.B3
[220 Activity Code] VIOLATION NOTED: IDENTIFICATION OF EACH MOBILE STATION, WHEN NECESSARY, DID NOT CONSIST OF "LOCOMOTIVE" OR "MOTORCAR" OR OTHER UNIQUE IDENTIFIER. I notified the NEBR trainmaster of my intent to monitor radio procedures while observing NEBR railroad operations at Centerville. After attaching himself to the crew of NEBR locomotive NEBR 1234, the NEBR utility employee used the first name of the engineer of the train while directing the train's movement. At approximately 18:23 hours, while directing the movement, the utility employee transmitted

the following instruction to the engineer on NEBR 1234: "I need five more, Joe." Since "Joe" is not a unique identifier, the NEBR utility employee failed to give the proper identification as required by 49 CFR § 220.27(b)(3) as well as GCOR Rules 2.1 and 2.2. Due to the serious nature of this failure, as well as the repeated pattern of noncompliance, I recommend citing this failure as a violation of Federal regulations. I discussed the condition with NEBR trainmaster Bob Devany.

§ 220.29 – Statement of letters and numbers in radio communications

Phonetic Alphabet: Per the preamble to the Final Rule, the phonetic alphabet in Appendix A to Part 220 is only a recommendation; therefore, any railroad presently using a different phonetic alphabet may continue to do so.

§ 220.31 – Initiating a radio transmission

Regulations require an employee to listen to ensure that the radio channel on which the employee intends to transmit is not being used already. Inspectors should be aware that communications on the railroad radio to which the inspector is listening may contain communication not heard on other employees' radios.

Inspectors should determine whether employees are verifying that the person they are addressing on the radio is the person with whom the employee intended to communicate. An employee makes such a verification by listening for an acknowledgment prior to continuing the communication. An employee shall require a proper identification from the receiving party before proceeding with the transmission.

§ 220.33 – Receiving a radio transmission

Transmissions Involving Security Forces: Per the preamble to the Final Rule, transmissions involving security forces and other personnel not involved in railroad operations are not subject to the rule.

Radio Headphones: Some railroads require train crewmembers to wear radio headphones. These headsets are designed to eliminate crewmembers' complaints regarding excessive background noise from both inside and outside the locomotive, and prevent hearing damage. FRA has no regulations on the use of headsets versus radio speakers in the cab of the locomotive.

Equipment Detector Transmissions: In the application of § 220.35, whenever a message is transmitted via radio from an automatic device, such as a radio alarm defective equipment detector, it is not necessary for the device to transmit the word "over" or "out" at the close of each transmission.

§ 220.35 – Ending a radio transmission

"Over." Except for transmissions relating to yard switching operations, at the close of each transmission to which a response is expected, the transmitting employee shall say "over" to indicate to the receiving employee that the transmission is ended.

"Out." Except for transmissions relating to yard switching operations, at the close of each transmission to which no response is expected, the transmitting employee shall state the employee's identification followed by the word "out" to indicate to the receiving employee that the exchange of transmissions is complete.

As of September 2, 2010, there were 16 violations written for this regulation in 2010. Inspectors should document the circumstances of noncompliance in great detail when recommending a violation of § 220.35 for enforcement action.

§ 220.39 – Continuous radio monitoring

Each radio used in a railroad operation shall be turned on to the appropriate channel as designated in § 220.23, and adjusted to receive communications.

§ 220.43 – Radio communications consistent with Federal regulations and railroad operating rules

Radio communication shall not be used in connection with a railroad operation in a manner that conflicts with the requirements of Part 220, Federal Communication Commission regulations, or the railroad's operating rules. The use of citizen band radios for railroad operating purposes is prohibited.

For instances of noncompliance with railroad radio rules, such as profanity over the radio, a deficiency or violation can be written under § 220.43, which references compliance with a railroad's operating rules.

§ 220.45 – Radio communication shall be complete

Any radio communication that is not fully understood or completed in accordance with the requirements of Part 220 and the operating rules of the railroad, shall not be acted upon and shall be treated as though it had not been sent.

§ 220.47 – Emergency radio transmissions

An initial emergency radio transmission shall be preceded by the word "emergency," repeated three times. An emergency transmission shall have priority over all other transmissions, and the frequency or channel shall be kept clear of non-emergency traffic for the duration of the emergency communication.

Derailments, collisions, storms, washouts, fires, and track obstructions are examples where emergency railroad radio transmissions are required. Inspectors must use good judgment while reviewing these types of situations. If a train running in a territory with two or more main tracks experiences an emergency brake application, but the train crew says nothing over the radio, this incident might be an example of noncompliance with § 220.47. Inspectors should also realize that in true emergencies, such as a runaway train, a failure to say "emergency" the required three times while reporting it might be understandable.

§ 220.49 – Radio communication used in shoving, backing or pushing movements

An inspection for compliance with this section will usually include an observation regarding the requirements found in 49 CFR § 218.99 (Shoving or pushing movements).

Section § 220.49 requires that when radio communication is used in connection with the shoving, backing, or pushing of a train, locomotive, car, or on-track equipment, the employee directing the movement shall specify the distance of the movement; and the movement shall stop in one-half the remaining distance unless additional instructions are received. If the instructions are not understood, the movement shall be stopped immediately and may not be resumed until the misunderstanding has been resolved, radio contact has been restored, or communication has been achieved by hand signals or other procedures in accordance with the operating rules of the railroad.

When observing a crew performing a shoving movement, inspectors must also consider the requirements found in § 218.99 (Shoving or pushing movements). Consequently, inspectors should determine whether or not there is compliance with both regulations when observing shoving movements as defined in § 218.99, including those regarding remote controlled locomotives.

The effects of § 218.99 and § 218.93 on § 220.49

When observing a shoving movement, inspectors should determine whether the employees are obeying the proper distance requirements when communicating as required in § 220.49 and that the person protecting the movement is qualified to perform the tasks as required in § 218.99. Inspectors should also consider whether the employees involved in the shoving movement--

1. Had the required job briefing that includes the means of communication with the locomotive engineer and who is protecting the shove, and how point protection is being provided.
2. Did not engage in any unrelated tasks during the protection of the shove.
3. Had a visual determination that the track is clear. (Inspectors should note that the definition of "track is clear" is not the same as "restricted speed" and reference § 218.93 for the definition of the "track is clear," which is replicated below.)

§ 218.93 - Track is clear means:

(1) The portion of the track to be used for the intended movement is unoccupied by rolling equipment, on-track maintenance-of-way equipment, and conflicting on-track movements;
(2) Intervening public highway-rail grade crossings, private highway-rail grade crossings outside the physical confines of a railroad yard, pedestrian crossings outside of the physical confines of a railroad yard, and yard access crossings are protected as follows:
(i) Crossing gates are in the fully lowered position, and are not known to be malfunctioning; or
(ii) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or
(iii) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour;
(3) Intervening switches and fixed derails are properly lined for the intended movement; and
(4) The portion of the track to be used for the intended movement has sufficient room to contain the rolling equipment being shoved or pushed.

Shoving equipment to the clear: When a train crew is observed shoving a clear track and no one is riding the point and is in compliance with § 218.99 (for example, "Brakeman Jones to Job 1888, shove 'em in the clear. I am standing at the clearance point on the engineer's side, and I can see the track is clear") the FRA inspector should ensure that the employee providing information to the engineer during this shoving movement includes a car count as required in § 220.49, and meets all of the requirements in § 218.99.

§ 220.51 – Radio communications and signal indications

No information may be given by radio to a train or engine crew about the position or aspect displayed by a fixed signal. However, a radio may be used by a train crewmember to communicate information about the position or aspect displayed by a fixed signal to other members of the same crew.

Except as provided in the railroad's operating rules, radio communication shall not be used to convey instructions that would have the effect of overriding the indication of a fixed signal.

Examples of <u>noncompliance</u> with § 220.51:

1. A dispatcher must not state on the radio, "Train XXX, you have a clear signal."
2. A train crew or trainmaster sitting in a transport van along the right-of-way wanting to expedite operations must not state on the radio, "Train XXX approaching signal MP 21, you have a clear signal."
3. A roadway worker (such as a signal maintainer) must not advise a train crew of the aspect or indication of a particular fixed signal.

4. Another crew sitting in a siding must not advise a train scheduled to overtake and pass them of the aspect or indication of a particular fixed signal.
5. A train dispatcher must not advise a crew that his board indicates they have a proceed signal at a particular location.
6. Noncompliance would exist if a train dispatcher advised a crew to proceed past a signal displaying stop without stopping first.
7. Noncompliance would include a roadway worker (such as a signal maintainer) advising a train crew of the aspect or indication of a particular fixed signal.
8. Noncompliance would include a train crew sitting in a siding, advising a train scheduled to overtake and pass them of the aspect or indication of a particular fixed signal.

Examples of <u>compliance</u> with § 220.51:

1. A crewmember of Train XXX <u>is permitted to</u> state to another crewmember of the same train the position or aspect of a signal. An example would be if, during a shoving movement, the conductor is talking to the engineer on the radio and states, "Train XXX, you can back up 20 cars. We have a clear signal at MP 21." Or, "Train XXX, stop in five cars. You have a stop signal in 15 cars."
2. Compliance would include an engineer informing the conductor (a fellow crewmember) in the rear of the train that their train, XXX, is operating on a clear signal.

Announcing Signal Aspects/Indications by Radio: Various railroads across the country have an operating rule that requires engineers to announce over the radio the name and/or location of certain block and interlocking signal indications that affect the movement of their train. This practice is intended to enhance safety, primarily by alerting other members of the crew located in the caboose or on trailing units of conditions that might restrict the movement of the train. The crewmembers are then required to acknowledge these transmissions and ensure that the train is being operated in accordance with the signal indication. An ancillary benefit is to constantly identify the location of moving trains. This type of radio information, when used strictly in accordance with the pertinent operating rule, will not be considered as violating § 220.51.

Overriding Indication of Automatic Block Signal: Per the preamble to the Final Rule, railroads are permitted to use the radio to authorize trains to either proceed from an automatic block signal displaying a "stop" indication, or to stop at a signal displaying a "proceed" indication, <u>if such action is taken in accordance with the procedures contained in the operating rules of the railroad</u>. Radio merely serves as an alternate method of communication.

Signal Systems Taken Out of Service: If an inspector happens upon a situation where a railroad has taken a signal system out of service and converts to some sort of manual block operation such as track warrant control (TWC) or Direct Traffic Control (DTC), they should monitor the operation, asking appropriate questions to determine if the railroad provided for sufficient safety of the operation.

Inspectors might also come across a situation where a segment of signaled territory is temporarily taken out of service and the railroad provides a temporary block operator to expedite train operations. This situation would typically exist in double-track Automatic Block Signal (ABS) territory, where one of the tracks is closed for maintenance. Such operations are uncommon, but may still exist nonetheless.

§ 220.61 – Radio transmission of mandatory directives

Giving Verbal Authority to Pass a Stop Signal by Radio: Several questions have arisen regarding mandatory directives and dispatcher/operator verbal instructions given to trains as authority to pass stop signals. FRA's memorandum (dated July 10, 1981) states FRA's position on this matter. There has been no change in the agency's position, which is that for purposes of compliance with Part 220, when a train dispatcher issues verbal instructions authorizing a train to pass an Automatic Block Signal (ABS) displaying a "stop" aspect, these instructions should not be considered to be train
orders or mandatory directives, and need not comply with § 220.61. However, such radio transmissions must comply with all other requirements of the regulation.

Authorizing Movements Against the Current of Traffic: Movement against the current of traffic, authorized by a train dispatcher over the radio, is considered a mandatory directive and must be transmitted and written down in compliance with § 220.61. This is also true for a railroad that is authorizing movements against the current of traffic for a terminal railroad whose entire railroad is designated as yard limits.

Authorizing Train to Proceed in Accordance with Automatic Train Control (ATC) Rules: ATC rules repeatedly emphasize that in the event of a failure of the ATC, the train dispatcher must direct the conductor and engineer on the basis to proceed in accordance with ATC rules. There can be no doubt that the authority to proceed is being issued by the train dispatcher, and that without it, the train is not permitted to proceed. This being the case, such instructions, for the purposes of the regulation, would have to be considered "mandatory directives."

Repeated in its Entirety: The preamble to the Final Rule states that the requirement that train orders be immediately repeated in their entirety is intended to prevent the use of abbreviated responses. When an employee is called upon to repeat the contents of a mandatory directive, abbreviated terms should not be used.

Question 1: Does FRA have a policy on what inspectors should do if they find a track warrant filled out in advance?

> **Answer:** Part 220 is silent on filling out mandatory directives in advance; however, some individual railroads' rules and procedures prohibit the practice. For example, one Class I railroad has an operating rule that prohibits filling out track authority forms in advance of receiving information from the dispatcher. Other Class I railroads do allow the date and location to be filled in prior to the dispatcher issuing anyone in the field a mandatory directive.

Question 2: Does FRA have a policy regarding a railroad employee's act of altering a mandatory directive after it is copied?

Answer: An incident where the mandatory directive was found to be altered after it was copied should be evaluated closely. FRA issued an unnumbered safety bulletin on December 3, 1996, after the CSX head-on collision at Smithfield, WV, considering this concern.

Question 3: Should an inspector take a Federal exception to a mandatory directive written on a nonprescribed form, such as a napkin, under § 220.61 or § 220.43?

Answer: An inspector may take a violation or deficiency anytime a mandatory directive is not transmitted and copied in accordance with Part 220 and/or the railroad's operating rules. With respect to the actual form (i.e., the piece of paper) that the mandatory directive is copied on by employees receiving them in the field via radio communication, it depends on exactly how the railroad's relevant operating rules and procedures are worded. Some railroads give specific instructions, e.g., that employees are supposed to copy the en route instructions on a particular, prescribed form; but other railroad operating rules are not specific.

Technically speaking, § 220.61(b)(3) states that "a mandatory directive shall be copied in writing by the receiving employee in the format prescribed in the railroad's operating rules." "Format" means the general makeup of something, the manner in which something is accomplished, or a general plan of organization or arrangement. "Format" does not refer to "form" (i.e., the actual piece of paper that is used to copy the information on).

Inspectors should not get overly involved when the crew uses a paper towel or blank piece of paper because that is all that is immediately at hand. Inspectors should consider a stronger approach if they see a pattern of this behavior, but what is most important is that all of the pertinent information is copied, that it is repeated correctly, and that the requirements are complied with.

Question 4: Is a mandatory directive that is issued with a cell phone handled any differently under § 220.61 or any other section of Part 220? In short, may an inspector cite violations of § 220.61 when mandatory directives are issued to the crew via cell phones or landlines?

Answer: Section § 220.61 deals only with radio transmission of mandatory directives. However, if an inspector sees abuses, such as engineers copying mandatory directives over their cell phone while at the controls of a moving train, the inspector should take exception to that practice.

Question 5: Is it permissible for an engineer pilot to copy a track warrant on a moving train?

Answer: Yes. With respect to engineer pilots on the DOTX cars, there is no problem with such an engineer pilot (railroad employee) copying a mandatory directive on the

move, as long as he or she is not operating the controls. For that matter, the same would apply in normal, everyday train operations as well. Inspectors should keep in mind, however, that the following excerpt from § 220.61(b)(2) still applies: "A mandatory directive shall not be transmitted to employees on moving equipment, if such directive cannot be received and copied without impairing safe operation of the equipment." As a reminder, when FRA made the 1998 amendments to Part 220, the agency expanded this requirement beyond trains to all moving equipment, which now includes on-track equipment of all types.

Question 6: The XXX Railroad is having a "rules blitz." One focus during this blitz is rolling up track warrant authority. The current operating rules require only the conductor's copy of the track warrant to be updated in writing regarding the rolled-up limits. The engineer and conductor then need to conduct a job safety briefing on the rolled-up limits of authority.

Answer: FRA's expectation is that both the conductor and engineer have identical copies of all mandatory directives affecting the movement of their train. Therefore, the conductor's copy of a track warrant must not have anything on it that the engineer's does not have (or anything missing, for that matter). One railroad requires that if the train is stopped, the engineer may copy the information, and if the train is on the move, the conductor may fill in the information on the engineer's copy. FRA does not take issue with this practice.

Question 7: "Voiding a mandatory directive" means making an annotation on the face of the mandatory directive that merely signifies that the document has been fulfilled. Is the act of voiding a track warrant by the engineer on a moving train considered to be in violation of § 220.61(b)(2)? The rule states as follows: "Before the mandatory directive is transmitted, the employee to receive and copy shall state the employee's name, identification, location, and readiness to receive and copy. An employee operating the controls of moving equipment shall not receive and copy mandatory directives. A mandatory directive shall not be transmitted to employees on moving equipment, if such directive cannot be received and copied without impairing safe operation of the equipment" (emphasis added).

Answer: FRA has always considered the simple voiding of a mandatory directive, such as a track warrant, as a de minimis (inconsequential) activity. "The reason for voiding is purely administrative, and voiding the track warrant assists the train crews from being confused about which track warrants are still in effect and which ones are not. Whether the crewmember writes "void" across the document, draws a line diagonally across it, or marks a big "X" across it; even if the crewmember has to put on it the time that it was voided, it is all immaterial and does not rise to the level of copying a mandatory directive. The regulation does not address voiding mandatory directives once they've been fulfilled. Naturally, if the process of voiding starts to get too complicated, and goes beyond a simple "X" or "void," with the time, then the inspector should step in and take appropriate action. However, the simple voiding tasks described are de minimis in nature, and are not viewed as falling within the scope of a mandatory directive as per § 220.61.

Part 220 - Railroad Communications - Letter of Interpretation Covering:

- Accessibility of Radios for Roadway Workers
- Definition of Control Center
- Definition of Working Radio
- Radio and Wireless Communication Coverage
- Explanation of the term Switching Operations
- Clarification of Communications Redundancy

Original Signed By:
From: Edward W. Pritchard
Director, Office of Safety Assurance and Compliance
To: Regional Administrators

The attached letter to C. E. Dettmann of the AAR further explains and clarifies FRA's position on several issues relating to the newly-revised Part 220, Railroad Communications. It is intended to provide specific interpretive guidance to the field concerning these issues. As always, inspectors should continue to consider the specific circumstances of each situation in applying this guidance.

Mr. C. E. Dettmann May 18, 1999
Executive Vice President
Safety and Operations
Association of American Railroads
50 F Street, N.W.
Washington, D.C. 20001-1564

Dear Mr. Dettmann:

Thank you for your letters of January 12 and March 17, 1999, requesting clarification of certain provisions of Title 49, *Code of Federal Regulations* (CFR), Part 220 (Radio Communications) which was revised and published in the *Federal Register* on September 4, 1998 (Vol. 63, No. 172) beginning on page 47182. This rulemaking is a product of the Railroad Safety Advisory Committee (RSAC) process. Representatives from the Federal Railroad Administration (FRA), the Association of American Railroads (AAR), the American Public Transit Association, railroad suppliers, and affected rail labor organizations participated in the RSAC working group deliberations to update the regulation through the consensus process. I am please to provide further clarification for your members.

The first concern noted in your January 12 letter centered on ". . . the mandate that roadway workers have at least a radio for monitoring transmissions concerning train movements." Part 220.11(b), page 47196, is quite explicit in its requirement that ". . . each employee designated by the employer to provide on-track safety for a roadway worker group or groups, and each lone worker, shall be provided, and where practicable, shall maintain immediate access to a working radio." *Immediate access*, as defined in Section 220.5, page 47195, means". . . a radio on the employee's person, or sufficiently close to the employee to allow the employee to make and receive radio transmissions." Therefore, the radio does not need to be physically attached to an

employee's person but must be in close proximity so that the employee can access it to initiate and receive voice communications for safety purposes in the event of an emergency.

The definition of *"control centers"* in Section 220.5 (Definitions, page 47195) is "the location on a railroad from which the railroad issues instructions governing railroad operations." This language is intended to include the more traditional train dispatcher's offices typically located on each division, as well as the large centralized dispatching centers often referred to as network operations centers, system operation centers, rail traffic control centers, etc., to include the so-called joint dispatching centers, such as the Union Pacific/Burlington Northern Santa Fe office located at Spring, Texas.

The word *"locations"* contained in the definition of "control center" is intended to provide recognition to the differing control center types. In the definition of *"working radio,"* the word "location" is singular to capture the concept that the radio needs only to be capable of reaching the appropriate center having jurisdiction over the territory in which the transmitting party is operating. Further, the language recognizes the numerous locations where instructions are issued governing railroad operations, such as yardmaster offices, communications centers (often referred to as control centers common to passenger railroads at major terminals), and interlocking stations. Although not falling under the traditional concept of a train dispatcher's office, these locations are *control centers* under the rule as revised, provided they are continuously manned with trained and qualified employees during the time railroad operations are being conducted and have the capability of notifying appropriate emergency responders should the need arise. In the absence of either of these requirements, the default would need to be the capability of reaching the train dispatcher's office, a joint center, or a centralized train dispatcher's center.

The term "repeater stations," as used in the definition of *"working radio,"* (Section 220.5, Definitions, page 47195) means a device that extends the transmission range of radio signals originating from low-powered radios or those originating from a considerable distance. Repeater stations serve to boost the vitality of transmissions in clarity and distance. This procedure is in use throughout the rail industry.

The term "dead spots" refers to temporary lapses of radio coverage. As FRA explained in the preamble to the regulation, the final rule requires that radio coverage in all territories be provided with two exceptions: (1) tunnels or localized places of extreme topography; and (2) temporary lapses of coverage due to atmospheric conditions. These are the only exceptions to complete coverage required by the regulation. Although distance coverage was a consideration in the deliberations of the working group, broad exceptions were neither provided nor was relief implied. In the two exceptions herein referenced, neither should be considered to be implicit. Again, the purpose of using repeater stations is to extend coverage, in this case, to appropriate railroad operation segments and to close the gaps in the exceptions where practicable. A compromise to system coverage completeness is viewed as contrary to the intent of the rule.

Regarding the meaning of "switching operations" as used in the definition of a *"train,"* FRA sees no ambiguity. "Switching operations" are those traditional activities such as coupling or uncoupling cars, the blocking of cars, and moving cars from one place or track to another

within a terminal, yard, or industry. These activities generally would not require a working radio or the redundancy of communications under Section 220.9 (Requirements for trains). Contrary to the belief expressed in your letter, “switching operations” is not referenced in Part 232.13(e), “Road train and intermediate terminal train air brake tests.” Instead, Part 232.13(e) requires that transfer trains or yard train movements, not exceeding 20 miles, receive what is termed in the industry as a “transfer air brake test.” Accordingly, the movement becomes a “train” under Part 220 and would require a working radio and communications redundancy.

The final request for clarification in your letter of March 17 concerns the “communication redundancy” requirement contained in Section 220.9 (Requirements for trains) at page 47195. The rule states “. . . each occupied controlling locomotive in a train shall have a working radio, and each train shall also have communication redundancy.” For the purpose of this section, “communication redundancy” is defined as a working radio on another locomotive in the consist or other means of working wireless communications.

If the redundancy is another working radio, that radio would, of course, be required to be capable of directly communicating with the control center; however, it is not required to reach emergency responders. On the other hand, if the redundancy is another means of wireless communication, such as a cellular phone, that device is required to be capable of directly communicating with the control center, as well as an off-rail system emergency responder, should the need arise. Inherent in cellular phone technology are the added capabilities that enable many small railroads which typically are not equipped with radio systems and control centers to satisfy the communications needs for business, as well as the emergency response requirements of Part 220 (Railroad Communications).

Regarding the option of communicating with an off-rail system emergency responder, the intent was to facilitate the direct emergency responder contact by all railroads as may be necessary; however, the benefit and need accrues largely to short line railroads where radio systems and control centers do not exist.

The rule was published in the *Federal Register* on September 4, 1998, with an effective date of July 1, 1999, for both Sections 220.9 (Requirements for Trains) and 220.11 (Requirements for Roadway Workers). The elapsed time between these two dates is considerable. Neither the elements nor the requirements of the rule were modified. Therefore, the effective date of July 1, 1999, will remain unaltered.

I appreciate the opportunity to respond to your concerns. I hope this information is helpful.

Signed by George Gavalla, Associate Administrator for Safety

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Chapter 9: Part 221, Rear End Marking Device – Passenger, Commuter, and Freight Trains

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CHAPTER 9
PART 221, REAR END MARKING DEVICE – PASSENGER, COMMUTER, AND FREIGHT TRAINS

OP inspectors should reference the Motive Power and Equipment (MP&E) Compliance Manual for general guidance regarding Part 221.

General

MP&E inspectors have the primary responsibility for enforcement of Part 221. However, this does not prevent OP inspectors from reporting deficiencies and filing violations for noncompliance with Part 221 observed while conducting work in the OP discipline.

The inspection, observation, or monitoring of rear-end marking devices should be performed during hours when rear-end marking devices are required to be displayed, per the requirements of Part 221. Railroad operating rules may specify additional periods of time when rear-end markers are required. Any exception to railroad operating rules where there has been no violation of the requirements of Part 221 will be recorded as railroad operating rule (ROR) non-FRA defect.

OP inspectors should be aware of the major differences between a rear-end marking device and a two-way end-of-train (EOT) device. Many EOTs also fulfill the rear-end marking device requirements, but rear-end markers do not usually function as EOTs. The following excerpt from Chapter 6 of the MP&E compliance manual, explains the differences:

> Although most EOTs incorporate a rear-end marking device which is built into the device, the regulatory requirements for the two devices can be misinterpreted. Each device accomplishes a separate function; the rear-end marker increases visibility of trains during low ambient lighting conditions, while the end-of-train device transmits information to the head-end of the train, via radio telemetry. Another distinction is that all trains are required to have an operating rear-end marking device (during specified low ambient lighting conditions), but not all trains are required to be equipped with an end-of-train device.

Guidance

OP inspectors should not normally be involved in inspections of rooms or locations where rear-end marking devices are stored and/or recharged and maintained.

A rear-end marker left on the ground on the switching lead near a switch or in a yard may represent a violation of railroad operating or safety rules. A rear-end marker left on a switching lead is a slip, trip, or fall hazard; and a poor worksite housekeeping practice that could signal more serious compliance issues are present.

Heavy Grade Territory: Two-way EOT device requirements are found in 49 CFR Part 232. When an OP inspector notices a train on a grade without a two-way EOT device, he or she should consider consulting with the local MP&E inspector to review the regulation for two-way EOT devices, and be equipped with a copy of the track chart that will define the length of the grade for the piece of track under review.

§ 221.5 – Definitions

Yard Movement Exclusion: Some inspectors question whether the lighted marker requirements are applicable to a situation where a train on the main track enters into yard limits. Although the definition of a "train" in § 221.5 excludes yard movements, it was the intent of the regulation to include within the definition all movements commonly considered train movements, and to exclude only operations that take place entirely within yard limits. Therefore, lighted markers would be required during periods of restricted visibility on a train operating on main track even after it enters yard limits.

The term "yard movement" means a train that is operated exclusively on track within the designated limits of a yard, and whose movements on the main track within these limits are governed by the yard limit rule (the minimum requirements of the yard limit rule are defined in § 218.35). If, during the course of its operation, a yard movement is required to operate on the main track outside of the designated limits of a yard, that yard movement, for the purpose of Part 220, becomes a train that is involved in a railroad operation conducted on a main track and will require rear-end marking devices.

§ 221.13 – Marking device display

Rear-end markers are required to be displayed on each train that occupies or operates over main track between 1 hour before sunrise and 1 hour after sunset, and "during all other hours when weather conditions so restrict visibility that the end silhouette of a standard box car cannot be seen from 1/2 mile on tangent track by a person having 20/20 corrected vision." A marker must be displayed on the trailing end of the rear car of the train, and must continuously illuminate or flash in accordance with the requirements of Part 221. Per § 221.14, a locomotive operated singly or at the rear of a train with its low beam headlight illuminated complies with the rear-end marker requirement.

§ 221.15 – Marking device inspection

Most, but not all, rear-end marking devices are equipped with a photoelectric cell that will illuminate during reduced ambient lighting conditions. The device should operate as intended and its operation is required by regulation to be examined at each crew change point. The examination can be accomplished either visually or by using radio telemetry (when equipped).

Some railroads will issue roll-by inspection instructions for outbound train inspections at specific locations and terminals. If a visual examination is performed by personnel other than a train crewmember assigned to the train in a roll-by situation or any other inspection, this section requires that the results of the examination must be communicated to the locomotive engineer.

§ 221.16 – Inspection procedure

If the inspection of a rear-end marker is conducted in accordance with § 221.16(b) by a non-train crewmember, the blue signal protection regulations found at Part 218, do not apply. Section 221.16(b) states:

> In order to establish the alternative means of protection under this section, (1) the train to be inspected shall be standing on a main track; (2) the inspection task shall be limited to ascertaining that the marker is in proper operating condition; and (3) prior to performing the inspection procedure, the inspector shall personally contact the locomotive engineer or hostler and be advised by that person that they are occupying the cab of the controlling locomotive and that the train is and will remain secure against movement until the inspection has been completed.

Not Applicable to Air Gauge Readout: This section only applies to inspecting the rear-end marker on main track, not the air gauge readout on an EOT device. However, it is permissible to manually activate the air gauge readout switch with a stick or by other means, provided this can be done without fouling the track/train in question. If the conditions of § 221.16(b) cannot be met, then the provisions of § 218.25 or § 218.27, pertaining to blue signal protection, apply, depending on whether the test is performed on main track or other than main track. MP&E inspectors should be consulted regarding any issues arising with regard to any EOT device issues.

§ 221.17 – Movement of defective equipment

The regulation allows a railroad to continue movement of a train that experiences a rear-end marking device failure while en route. The inoperative device must be repaired or replaced at the next forward location where such replacement or repairs can be made. Again, local MP&E inspectors should be consulted regarding any issues arising with regard to rear-end markers failing en route.

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Chapter 10: Part 222, Use of Locomotive Horns at Public Highway Rail Grade Crossings

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CHAPTER 10
PART 222, USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

General

OP inspectors have been tasked with conducting inspections under 49 CFR Part 222 at public highway-rail grade crossings. Inspections at public crossings have an important impact on public safety and employee safety nationwide. Knowledge of the regulations associated with crossing inspections and who to contact at the railroad within an inspector's territory in case of a problem are two essential elements of a crossing inspection. Inspections on the use of locomotive horns at public highway-rail grade crossings are an important part of FRA's safety mission.

The Train Horn Rule can be reviewed on FRA's Web site at:
http://www.fra.dot.gov/downloads/safety/trainhorn_2005/amended_final_rule_081706.pdf

Guidance

OP inspectors conducting inspections to verify compliance with the Train Horn Rule must plan the inspection to observe locomotive engineers on trains, locomotive consists, or individual locomotives sounding the train horn upon approach to public highway-rail grade crossings, including observing whether the whistle is sounded until the lead locomotive occupies the grade crossing. Also, verify that the train has a marker on the rear car or the rear headlight illuminated on locomotive consists, as required by railroad operating rules and Federal regulations.

Inspectors should work with their region's grade crossing managers when handling complaints and non-routine grade crossing whistling issues.

Inspectors should observe that the flashing lights and gates are functioning as intended if a crossing is equipped with flashing lights and gates. Inspectors must report the condition of damaged cross-arm gates or burned-out flashing lights directly to the railroad and their regional Signal and Train Control specialist.

Inspectors should also take notice of the condition of the crossbuck signs at crossings not equipped with flashing lights or gates. Are the crossbuck signs damaged beyond recognition or in the ditch? Inspectors must report the condition of damaged crossbuck signs at crossings directly to the railroad.

If an inspector calls the toll-free telephone number posted at a crossing and no one answers the phone call, that information should be noted on the inspection report.

All crossings are potential worksites for train crews. A train crew may be relieved of duty at a crossing or a crewmember may have to cut the crossing under certain circumstances. If an inspector observes old crossing planks with exposed crossing spikes or other debris near the crossing, then the inspector should consider recording a non-FRA defect regarding a specific railroad safety rule on their inspection report.

Suggested routine inspection report example for monitoring compliance with the train horn rule:

Description: [** Comment to Railroad/Company **]
[222O Activity] I observed NEBR train, with leading locomotive NEBR 1234 South, blowing whistle and ringing bell with headlight and ditch lights illuminated, approaching the Main St. crossing in Centerville, Nebraska. USDOT# 123456A at MP 1918.8. GCOR 5.8.2(7) and 49 CFR § 222.21.

§ 222.1 – What is the purpose of this regulation?

The purpose of this regulation is to provide for safety at public highway-rail grade crossings by requiring locomotive horn use at public highway-rail grade crossings, except in quiet zones established and maintained in accordance with this regulation.

§ 222.21 – When must a locomotive horn be used?

Inspectors should observe if the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car is sounded when the locomotive or lead cab car is approaching a public highway-rail grade crossing.

Sounding the locomotive horn with two long blasts, one short blast, and one long blast shall be initiated at a location so as to be in accordance with this regulation.

This sequence should be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

Except as provided in this regulation, including when the locomotive horn is defective, the locomotive horn shall begin to sound at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.

NOTE: It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for any reason.

Trains, locomotive consists, and individual locomotives traveling at speeds in excess of 60 mph shall not begin sounding the horn more than one-quarter of a mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

As stated in § 222.3(c), this section does not apply to any Chicago region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

Trains, locomotive consists, and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:

1. The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered.
2. There are no conflicting highway movements approaching the public highway-rail grade crossing.

§ 222.23 – How does this regulation affect sounding of a horn during an emergency or other situations?

Prior to taking any exception to a train sounding a horn in a quiet zone, an inspector should interview the locomotive engineer involved, or railroad manager if practicable, and determine if the locomotive engineer sounded the locomotive horn to provide a warning to or regarding animals, vehicle operators, pedestrians, roadway workers, trespassers, or crews on other trains during a perceived emergency situation. If, in the locomotive engineer's sole judgment, the train horn needed to be sounded in order to prevent imminent injury, death, or property damage, then FRA will generally accept such action as appropriate. Inspectors should work with their region's grade crossing managers regarding these issues.

NOTE: This regulation does not impose a legal duty to sound the locomotive horn in the situations noted above.

Nothing in this section restricts the use of the locomotive horn in the following situations:

1. When a wayside horn is malfunctioning.
2. When active grade crossing warning devices have malfunctioned and use of the horn is required by one of the following sections: §§ 234.105, 234.106, or 234.107.
3. When grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing of the system.
4. When supplemental safety measures (SSM), modified SSMs, or engineering SSMs no longer comply with the requirements set forth in Appendix A to Part 222 or in the conditions contained within the Associate Administrator for Railroad Safety/Chief Safety Officer's decision to approve the quiet zone in accordance with § 222.39(b).

§ 222.25 – How does this rule affect private highway-rail grade crossings?

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings such as those found in a farmer's field. However, where State law requires the sounding of a locomotive horn at private highway-rail grade crossings, the locomotive horn shall be sounded in accordance with § 222.21.

§ 222.27 – How does this rule affect pedestrian grade crossings?

This rule does not require the routine sounding of locomotive horns at pedestrian grade crossings. However, where State law requires the sounding of a locomotive horn at pedestrian grade crossings, the locomotive horn shall be sounded in accordance with § 222.21.

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CHAPTER 11
PART 225, RAILROAD ACCIDENTS/INCIDENTS: REPORTS, CLASSIFICATION, AND INVESTIGATIONS

General

On a regular basis, inspectors should conduct periodic inspections of each railroad's accident/incident records to determine compliance with FRA's railroad accident reporting rule. Each inspector should make the thorough and careful examination of records a priority for each railroad in their territory. Inspectors should also review and analyze accident/incident records during an accident investigation as directed by Chapter 4 of the General Manual.

Inspectors should review Part 225 records and other reports, including accountable accidents and incidents records, to ensure that each railroad in their territory is correctly recording accidents/incidents and, when appropriate, correctly reporting accidents and incidents to FRA. When an inspector determines that an accident or incident should have been reported to FRA, the inspector should verify that the railroad reported the accident or incident, and that the railroad reported it *correctly*.

When conducting a system review of a railroad's accident/incident records and reports, an inspector should contact the railroad's reporting officer to answer any questions about FRA's reporting regulations and to arrange access to the records maintained by the reporting officer. Irregularities found during an inspection of accident/incident records must be brought to the attention of the reporting officer for corrective action.

Guidance

Inspectors should cross-reference other available material to ensure that railroads are correctly reporting accidents and incidents and are in compliance with Part 225. This can be accomplished by taking information about accidents and incidents (provided from discussions between the inspector and railroad employees/officials in addition from claims records and outside documents) and comparing that information with what is reported on the correlating FRA forms. Any discrepancies between what was provided verbally to the inspector (by train crews, track records, mechanical employees, railroad managers, or any other knowledgeable person) and the actual facts reported on the FRA forms should be investigated in a timely and professional manner.

FRA Policy for Railroads to Report Grade Crossing Accidents

In mid-2004, the Federal Railroad Administration's (FRA) Acting Associate Administrator for Safety issued a verbal instruction that each clear-cut violation of an accident/incident reporting obligation should, absent special circumstances, be the subject of proposed civil penalties in cases of failure to report highway-rail grade crossing accidents/incidents.

Those verbal instructions noted that the use of civil penalty authority is subject to the general guidance contained in Title 49 Code of Federal Regulations (CFR) Part 209, Appendix A, which

specifies criteria to be applied in making these determinations, and Appendix C, which addresses small entities as required by the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act (SBREFA). So, for example, if an FRA inspector encounters a single mistaken failure of a small railroad to report a grade crossing collision (e.g., out of confusion with the monetary threshold required for a rail equipment accident/incident), and if the railroad immediately files a report as required, FRA might refrain from the use of a civil penalty out of deference to the congressional policy related to small entities and in recognition of the fact that these circumstances are unlikely to be repeated.

Accident/incident reporting is so fundamental to the system of railroad safety oversight and program development that strong emphasis on enforcement is warranted when noncompliance is detected. Inspectors are required to submit violation reports for each detected violation of 49 CFR Part 225 when the violation in question is a clear-cut failure to report a highway-rail grade crossing accident/incident (i.e., not involving any question with regard to interpretation of the regulation or sufficiency of the facts constituting the alleged failure), subject to the application of SBREFA, Pub Law No. 104-121, where relevant.

FRA has the right to cite a railroad for <u>each day a violation continues</u>. This can represent a potentially high liability for each highway-rail grade crossing accident/incident not timely reported. FRA will use this mechanism (citing for multiple days) to assess more substantial penalties where railroad conduct is persistent and without substantial justification.

Accident/incident reporting is so fundamental to the system of railroad safety oversight and program development that strong emphasis on enforcement is warranted when noncompliance is detected. Inspectors should reference Chapter 3 of the General Manual–Regulatory Noncompliance: Required Recommendations for Penalties, for more information.

Reference Materials

In addition to this OP compliance manual, there are several other sources available for additional information and guidance relating to Part 225, including technical bulletins, guidance memos, and response letters. Inspectors should reference these materials to assist with conducting system wide reviews and prior to taking enforcement measures.

The following is a list of some of those key guidance documents currently available (however, this list only addressed those materials publically available):

<u>FRA Guide for Preparing Accident/Incident Reports & Accident/Incident Forms (AR Guide)</u>

<u>FRA Companion Guide: Guidelines for Submitting Accident/Incident Reports by Alternative Methods (Companion Guide)</u>

<u>Guidance Letters</u>

FRA routinely provides railroads with written and verbal guidance on a variety of issues relating to Part 225. FRA envisions that by making that guidance more widely available, it will help

improve the FRA enforcement process and accident/incident data. Therefore, FRA will start posting certain approved written guidance response letters to railroads in response on the FRA's Web site.

Training Materials

Please check with the OP Training Specialist to obtain relevant and up-to-date training materials. These materials will be included in the OP compliance manual as it is routinely updated.

Below is additional guidance with respect to certain parts of Part 225.

Public Law 103-272

FRA regulations issued under 49 CFR Part 225 are based on Public Law 103-272. The former Accident Reports Act is now in Public Law 103-272, Chapter 209, Sections 20901, 20902, and 20903.

Regulations

The following is a discussion of the requirements under Part 225 pursuant to the November 9, 2010, Miscellaneous Amendment to Accident/Incident Final Rule. The final rule became effective June 1, 2011.

§ 225.5 – Definitions

Covered data

Covered data reporting is intended to improve FRA's gathering of more accurate data on the reporting by making the requirements to report those types of injuries more compatible with the Occupational Safety and Health Administration's (OSHA) requirements.

Inspectors must be aware that some types of injuries categorized as covered data have been reported to FRA properly, but the injuries will not become part of FRA's Statistical Publications, (i.e., will not count against railroads). Consequently, inspectors **will not find a record of the covered data injury** on the safety analysis Web page; they will need to contact the Washington, DC, FRA headquarters office directly to obtain this information.

§ 225.6 – Consolidated Reporting

While railroads are now permitted to use consolidated reporting by a parent company for commonly controlled railroad carriers, the railroad must first obtain approval from FRA. Section 225.6 contains instructions for requesting approval and requirements for notifying FRA of any changes. Check the docket for FRA-2006-26173 on Regulations.gov to ensure that the railroad has requested and obtained approval in addition to checking whether the railroad is properly updating FRA with regard to any changes.

§ 225.9 – Telephonic reports of certain accidents/incidents and other events

Immediately upon learning of an accident/incident that results in any of the criteria specified in Section 225.9, railroads are required to report this information to FRA by telephone.

Note: The railroads must also report to the National Transportation Safety Board, but this will happen automatically when the National Response Center notifies both agencies.

§ 225.11 – Reporting of accidents/incidents

Inspectors should ensure that all railroads in their territory understand that it is required that each railroad submit to FRA a monthly report of all railroad accidents/incidents, including for those months in which they have not had any incidents. Inspectors can do this by reviewing the FRA Safety Analysis Web page to ensure the railroads in their territories have submitted monthly reports to FRA. This is important because it also includes freight train miles, passenger train miles, yard switching train miles, and other important statistics.

§ 225.12 – Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.

The railroads' responsibility regarding human factor-caused accidents is cited in § 225.21(f), which states as follows:

> **Form FRA F 6180.81—Employee Human Factor Attachment.** Form FRA F 6180.81 shall be used by railroads, as a supplement to the Rail Equipment Accident/Incident Report (Form FRA F 6180.54), in reporting rail equipment accidents/incidents that they attribute to an employee human factor. This form shall be completed in accordance with instructions printed on the form and in the current "FRA Guide for Preparing Accident/Incident Reports." The form shall be attached to the Rail Equipment Accident/Incident Report and shall be submitted within 30 days after expiration of the month in which the accident/incident occurred.

Railroad employees' <u>option</u> regarding human factor accidents is cited in § 225.21(g). Inspectors should ensure that the railroad provided the employee the option of filing a Form FRA F 6180.78 when required.

§ 225.19 – Primary groups of accidents/incidents

- **Group I:** Highway-rail grade crossing – F6180.57
- **Group II:** Rail equipment – F6180.54, F6180.78, F8180.81, and F6180.97
- **Group III:** Death, injury, or occupational illness – F6180.55a, F6180.98, F6180.107

§ 225.21 – Forms

The following is a list of the general purpose for each of the FRA forms listed in § 225.21:

- **F6180.98 –** Illness/Injury on Property
- **F6180.97** – Initial Rail Equipment Accident/Incident Record, Includes Accountable Incidents
- **F6180.78** – Sent to Employee Regarding Human Factor Accidents
- **F6180.81** – Employee Human Factors Attachment
- **F6180.55** – Monthly Report Summary of Accidents
- **F6180.55a** – Details of each Accident/Injury
- **F6180.54** – Accident Report
- **F6180.56** – Annual Railroad Report of Employee Hours and Casualties
- **F6180.57** – Highway-Rail Grade Crossing
- **F6180.107** – Occupational Illness
- **F6180.150** – Highway User Injury Inquiry Form – Form FRA F 6180.150 shall be sent to every potentially injured highway user, or their representative, involved in a highway-rail grade crossing accident/incident.

§ 225.33 – Internal Control Plans (ICP)

Each ICP must include the 11 required components stated in § 225.33, which are summarized below.

1. A policy statement that:
   a. Declares commitment to complete and accurate reporting.
   b. Declares full compliance with the letter and spirit of the regulations.
   c. Declares the railroad's commitment to the principle that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury, or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation.

2. The distribution of the above-mentioned policy statement to all employees, supervisory personnel, and management, including having in place procedures to process complaints about the policy being violated, and to impose disciplinary actions on violators. "Whistle blower" protection must also be provided, and relevant procedures must be disclosed to all railroad employees, supervisors, managers, and officers.

3. Copies of the internal forms and/or a description of the computer reporting system.

4. A description of the internal procedures for processing forms or computer data.

5. A description of internal review procedures and reports prepared by each department.

6. A description of the internal procedures used for collecting cost data.

7. A description of internal procedures for ensuring communication among the railroad departments.

8. Procedures for updating information prior to reporting to FRA and procedures for amending FRA reports.

9. The name and title of the reporting officer**,** including the frequency of internal audits (minimum of 1 per year) and a listing of the location where the most recent audit report may be found for inspection and photocopying.

10. A description of the railroad organization; including identification of all departments that regularly come into possession of pertinent information, and the title of each railroad reporting officer, the title of each department manager, and all officers to whom department managers are responsible.

11. In the case of the Form FRA F6180.107, or the alternatively railroad-designed form, a statement with the name, title, and address of the custodian of these records, all supporting documentation (such as medical records), and the location of the documents.

Harassment and Intimidation Complaints

As stated above, pursuant to § 225.33(a)(1), each railroad must adopt and comply with an ICP containing a policy statement declaring that it will not tolerate or permit the harassment or intimidation of any person that is calculated to discourage or prevent that person from (1) receiving proper medical treatment or (2) from reporting his or her particular accident, incident, injury, or illness. Therefore, as part of an investigation into potential harassment or intimidation, an inspector should determine whether the railroad took any disciplinary action against the employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation, and/or what steps they took in response to any potential claim.

FRA's anti-harassment and intimidation regulations prohibit only narrowly defined categories of conduct that are intended to undermine or interfere with the reporting of an accident, incident, injury, or illness pursuant to Part 225. Consequently, if a railroad's conduct does not relate to the reporting requirements under Part 225, then FRA cannot impose a civil penalty under Part 225.

In accordance with the narrowly defined parameters, FRA enforces § 225.33(a)(1) with respect to receiving proper medical treatment only to the extent that receiving "proper medical

treatment" affects whether the injury or illness will be reported to FRA. Similarly, §225.33(a)(1) only prohibits behavior intended to prevent or discourage a person from reporting his or her injury contemporaneously with (or before) the injured person has formally reported his or her injury to the railroad. Therefore, if a person receives proper medical treatment and the railroad does not attempt to dissuade him or her from reporting an accident, incident, injury, or illness to FRA, then there is no violation of § 225.33(a)(1).

Note: A violation may exist if the railroad attempts to make the employee return to work early with the intention of avoiding reporting additional days of restricted duty or days away from work.

Consequently any complaint memo must address these two items:

1. Did the action prevent/delay the injured person from receiving proper medical treatment?**
2. Did anyone manipulate the situation to change/prevent the reporting of it?**

It is extremely important that each OP inspector address both of these issues when investigating a complaint or writing a memo regarding harassment and intimidation. The inspector **must clearly state in the memo whether either of these issues exist, or if neither of these issues exist.

Note: An employee's whistleblower rights under Section 20109 are enforced by OSHA in accordance with the procedures set forth in 29 CFR Part 1982.

When investigating harassment complaints, evaluate the situation contemporaneously while (or before) reporting injury to the railroad.

Look for:

- Flagrant or egregious language in a medical card intended to influence or change a physician's judgment.
- Telling or implying no investigation or discipline if injury is not reported (or conversely, that there will be an investigation or discipline if reported).

Investigate the complaint and look for:

- Anyone requesting samples of prescriptions rather than the actual prescription.
- Flagrant cases of conflicting medical opinions.
- Managers interfering with an employee's ability to make a prompt injury report, and then disciplining the employee for failing to report it promptly.
- Requesting an employee to wait until the next day for medical treatment.
- Managers insisting they be allowed in the examination room.

What is <u>not</u> considered intimidation and harassment:

- Acts that occurred before January 1, 1997.
- Anything that has no link to railroad safety.
- Prohibiting employees from talking to FELA lawyers about accidents & injuries.

Notice of Interpretation

On March 30, 2009, FRA issued a notice of interpretation (74 FR 14091–14092) to inform interested parties of its application and enforcement of the harassment or intimidation provisions contained in 49 CFR Part 225, specifically relating to situations in which a supervisor or other railroad official accompanies an injured employee into an examination room. This notice of interpretation gives guidelines that will help inform the regulated community to identify when such behavior constitutes harassment or intimidation calculated to discourage or prevent the reporting of an accident, incident, injury, or illness. As a result, supervisors are only allowed in a treatment room with an employee in limited circumstances. Supervisors are generally prohibited from entering a treatment room as it may potentially interfere with the employee's ability to receive proper treatment.

Health Insurance Portability and Accountability Act (HIPAA)

FRA inspectors should have their region's managers contact FRA Chief Counsel if they are refused access to medical records. Consequently, an inspector may need to contact the railroad and discuss any issues regarding HIPAA ahead of the inspector's arrival on railroad property to ask for sensitive medical records. If an inspector expects a problem, he or she can contact Chief Counsel prior to the Part 225 inspection and perhaps have a subpoena available.

HIPAA Questions and Answers

Question 1: Is FRA authorized by law to carry out public health activities?

> **Answer:** Yes. By delegation from the Secretary of Transportation, FRA is authorized by statute to carry out investigations, including the issuance of subpoenas to require the production of documents and records.

Question 2: Is FRA subject to HIPAA?

> **Answer:** No. HIPAA only applies to "covered entities." FRA is not a covered entity. Consequently, information obtained by FRA is no longer afforded protection under HIPAA. FRA <u>should, however, use discretion when "re-disclosing" any private health information</u>, and do so only for legitimate Government purposes.

Question 3: Is a subpoena necessary?

> **Answer:** No. However, the railroad and covered entities may request a subpoena before they will release private health information to merely protect themselves from liability. It does not necessarily mean they are being uncooperative.

Costs and Reportable Damage

Reportable Damage

This includes labor costs and all other costs to repair or replace in kind damaged on-track equipment, signals, track, track structures, or roadbed. Reportable damage does not include the cost of clearing a wreck; however, additional damage to the above-listed items caused while clearing the wreck is to be included in the damage estimate.

Examples of other costs included in reportable damage are: (1) rental and/or operation of machinery such as cranes, bulldozers, including the services of contractors, to replace or repair the track right-of-way and associated structures; and (2) costs associated with the repair or replacement of roller bearings on units that were derailed or submerged in water. (Replacement costs include the labor costs resulting from a wheelset changeout.)

Equipment Damage

This includes all costs, including labor and material, associated with the repair or replacement in kind of on-track rail equipment. Trailers/containers on flat cars are considered to be lading, and damage to these is not to be included in on-track equipment damage. Damage to a flat car carrying a trailer/container is to be included in reportable damage.

When on-track equipment is damaged beyond repair, the total reproduction cost of the equipment, including betterments and additions, is to be calculated in accordance with Rule 107 of the current edition of the field manual of the Association of American Railroads Interchange Rules. The total reproduction cost may be depreciated to reflect the amount of usage to which the equipment has been subjected. Depreciation percentages will be determined at 3 percent annually for a maximum of 30 years; equipment over 30 years old will be valued at 10 percent of the total reproduction cost. The replacement-in-kind cost for equipment damaged beyond repair is the result of these calculations.

Track Damage

All costs, including labor and material, associated with the repair or replacement in-kind of signals, track, track structures (including bridges or tunnels), or roadbeds that were damaged in a collision, derailment, or other reportable event.

When track, signals, structures, etc., are damaged beyond repair, the current cost of new materials is to be used. However, replacement of secondhand rail with secondhand rail may be charged at the current cost of such rail.

When estimating damage costs, the labor costs to be reported are only the direct labor costs to the railroad, e.g., hourly wages, transportation costs, and hotel expenses. The cost of fringe benefits is excluded when calculating direct labor costs. Overhead is also excluded when calculating damage costs due to the unacceptable non-uniform treatment of overhead under the current process.

For services performed by a contractor, a direct hourly labor cost is calculated by multiplying the contractor's total labor hours charged to the railroad by the applicable direct hourly wage rate for a railroad worker in that particular craft. However, if a railroad cannot match the equivalent craft to the labor hours spent by a contractor, then the railroad must use the loaded rate, i.e., the cost by hour for labor, fringe benefits, and other costs and fees for services charged by the contractor for the tasks associated with the repair of the track, equipment, and structures due to the train accident.

Collision Definitions

- **Head-on collision:** A collision in which the trains or locomotives involved are traveling in opposite directions on the same track.
- **Rear-end collision:** A collision in which the trains or locomotives involved are traveling in the same direction on the same track.
- **Side collision:** A collision at a turnout where one consist strikes the side of another consist.
- **Raking collision:** A collision between parts or lading of a consist on an adjacent track, or with a structure such as a bridge.
- **Broken train collision:** A collision in which a moving train breaks into parts and an impact occurs among these parts, or when a portion of the broken train collides with another consist.
- **Railroad crossing collision:** A collision between on-track railroad equipment at a point where tracks intersect.

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CHAPTER 13
PART 232: BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT; END-OF-TRAIN DEVICES

General

Motive Power and Equipment (MP&E) inspectors have the primary responsibility for enforcement of Part 232; OP inspectors must reference the MP&E Compliance Manual regarding Part 232.

OP inspectors are charged with ensuring railroad operating rules, railroad safety rules, operating technical bulletins, timetables, etc., are current and accurate in regards to Part 232. If the operating rules omit or misstate facts or are not clear, the OP inspector should work with the MP&E inspectors to bring the railroad into compliance with Part 232, but both disciplines must understand that this is the responsibility of the OP inspector.

Part 232 Activity Codes for OP Inspectors

OP inspectors conducting inspections under Part 232 will reference the Operating Practices Activity Code Table for specific instructions on completing their inspection reports, and use only those activity codes intended specifically for OP inspectors.

Subpart B – General Requirements

For specific guidance regarding Part 232, OP inspectors must reference MP&E Technical Bulletin MP&E 10-01, Enforcement Guidance Regarding Securement of Equipment with Title 49 Code of Federal Regulations Section 232.103(n).

"Unattended equipment" means equipment left standing and unmanned in such a manner that the brake system of the equipment cannot be readily controlled by a qualified person. OP inspectors should seek further explanation from the MP&E bulletins and compliance manual. These references explain the current FRA position regarding this part's intention regarding the statement, "*cannot be readily controlled by a qualified person*."

"Off air" means not connected to a continuous source of compressed air of at least 60 pounds per square inch (psi). Less than 60 pounds is considered off air.

§ 232.103 – General requirements for all train brake systems

"Yard limits" is defined as found in the MP&E Compliance Manual. The term "yard limits" as used in the context of this paragraph for the securement of equipment means:

> *A system of tracks, other than main tracks and sidings, used for classifying cars, making up and inspecting trains, and/or storing cars.*

The securement of unattended equipment by means of applying hand brakes includes:

- Venting the brake pipe to zero.
- Leaving the angle cock open on one end of a cut of cars (see OP guidance below).
- The railroad developing and implementing procedures to verify that the equipment is secure (see OP guidance below).

§ 232.103(n) – Securement of unattended equipment

Guidance – FRA OP Inspectors handling hand brakes

(Inspectors should also reference Chapter 1 of this manual regarding the handling of railroad equipment.)

An inspector shall never operate any piece of railroad equipment. There is no exception to this rule under anything less than an extreme emergency situation! However, an inspector may **request** that a railroad representative operate a piece of equipment, or perform a test of the hand brake for investigation purposes.

The policy that prevents FRA OP inspectors from handling railroad equipment includes, but is not limited to;

1. Switches – hand operated or remote control.
2. Hand brakes on railroad cars or track machinery
3. Hand brakes on locomotives
4. Locomotive controls or switches
5. Remote Control Locomotive Transmitters

Guidance – Handbrake Chains

Personal safety
FRA OP inspectors should refrain going in between railroad equipment to inspect railroad equipment for properly applied handbrakes whenever possible. When practical, inspectors should stand in a safe location outside of the rails when checking handbrakes. Inspectors can do this by using an extended object, such as a walking stick, to determine if it the handbrake chain is loose or not.

Manually applied airbrakes vs. mechanically applied airbrakes
Handbrake chains that are on ***manually*** applied airbrakes are rarely as tight as handbrakes that are applied after the airbrakes have been ***mechanically*** applied. Unattended railroad cars inspected that do not have an air source maintaining the brake pipe pressure may have had their airbrakes applied though a mechanical means, such as an emergency airbrake application. This may result in the handbrake chain that was manually applied prior to the mechanical application of the airbrakes to have slack in the chain. This slack in the chain by itself does not indicated noncompliance of this part. Inspectors should follow the guidance herein to ensure accurate reporting of noncompliance.

If the FRA OP inspector is concerned that the handbrake chain is loose enough that it indicates the handbrake on the railroad equipment is **NOT fully applied**, the FRA OP inspector should contact the railroad immediately and ask them to verify that the loose chain indicates noncompliance, or if it is merely a mechanically applied airbrake that caused the chain to be loose. If the railroad employee and the FRA OP inspector cannot agree on whether the handbrake was fully applied, the inspector should note that in the inspection report.

When citing deficiencies or violations, an OP inspector must include in the inspection report narrative the determination of whether the handbrake was partially applied or not applied at all. In addition, the inspector should record in the narrative all information that led to their conclusion.

CAUTION: Handbrakes that are applied after the equipment's airbrakes have already been ***mechanically*** applied will have the potential to cause injury to persons attempting to manually release or apply the handbrake. Therefore, FRA inspectors should be cognizant of the potential risks regarding employees operating handbrakes that were applied after the train has had the airbrakes applied mechanically.

Brake sticks

Brake sticks are used by some railroad employees to apply handbrakes manually. The brake stick allows the employee to apply the handbrake manually without climbing on the equipment.

Locomotive securement

Except for distributed power units, the following requirements apply to unattended locomotives:

- All hand brakes shall be fully applied on **all locomotives** in the lead locomotive consist when attached to cars, whether they are located inside a yard or outside of a yard.
- At a minimum, the hand brake shall be fully applied on the **lead locomotive** in an unattended locomotive consist that is not attached to any railroad cars and it is located on a yard track.
- All hand brakes shall be fully applied on **all locomotives** of an unattended locomotive consist, regardless of if they are attached to cars, **outside of the yard**.

NOTE: A train is defined in its narrowest sense as a locomotive attached to a railroad car, except during switching service. A locomotive attached to a car is a "train" except when it is **actually engaged** in switching. Therefore, any locomotive consist attached to a car, inside the yard limits or outside of yard limits, **cannot** be considered in switching service if it is left unattended because it is not "actively engaged" in switching.

Bottling the air
Except for equipment connected to a source of compressed air (e.g., locomotive or ground air source of more than 60 pounds), prior to leaving equipment unattended, the brake pipe shall be reduced to zero by leaving the angle cock in the open position on the first unit of the equipment left unattended.

The MP&E Compliance Manual has specific guidance regarding a train crew cutting away from a cut of cars, initiating an emergency brake application on the cut of cars, and then closing the angle cock for the sole purpose of taking the locomotives to the opposite end of the cut of cars. OP inspectors should remain current regarding MP&E's development and issuance of guidance regarding this matter.

Bottling the air regarding "SmartStart" locomotives and locomotives shut down for fuel conservation
These locomotives, under normal conditions, are not required to have an angle cock in the open position on either end of the equipment. If an inspector has concerns regarding a railroad's practice or the railroad's operating rules concerning this equipment, the OP inspector should consult with the MP&E discipline prior to discussing it with the railroad.

Securement Operating Rules
Railroads shall develop and implement a process or procedure to verify that the applied hand brakes will sufficiently hold the equipment with the air brakes released. OP inspectors are charged with ensuring the railroad's operating rules and operational testing will ensure railroad employees will comply with this rule. A railroad simply stating in their operating rules or in their operational testing program that there will be a "sufficient" number of hand brakes, is **not** acceptable. If an OP inspector charged with reviewing the operating rules and operational

testing program for this compliance has a concern, it should be discussed with their OP regional specialist prior to discussing it with the railroad, but addressed and corrected as soon as practicable.

A train's air brakes shall not be depended upon to hold equipment standing unattended. Also note the different securement requirements of rail cars standing on tracks in separate blocks in yards and at other locations outside of actively switched yards. For specific guidance regarding the securement of separate blocks of rail cars, reference MP&E Technical Bulletin 10-01.

Section 232.103(n)(5) states that any hand brakes applied to hold unattended equipment shall not be released until it is known that the air brake system is properly charged. Consequently, inspectors should know whether each railroad in their territory has an operating rule that mandates employees comply with § 232.103(n)(4).

OP inspectors should monitor each railroad in their territory to ensure that their railroads have adopted rules that comply with the regulation that address:

- Throttle position.
- Status of the reverse lever.
- Position of the generator field switch.
- Status of the independent brakes.
- Position of the isolation switch.
- Position of the automatic brake valve on all unattended locomotives.
- That the railroad has provided how many hand brakes will be required to hold the equipment, when required by this regulation.

Guidance for Violations

Include these items in your securement violation report if possible:

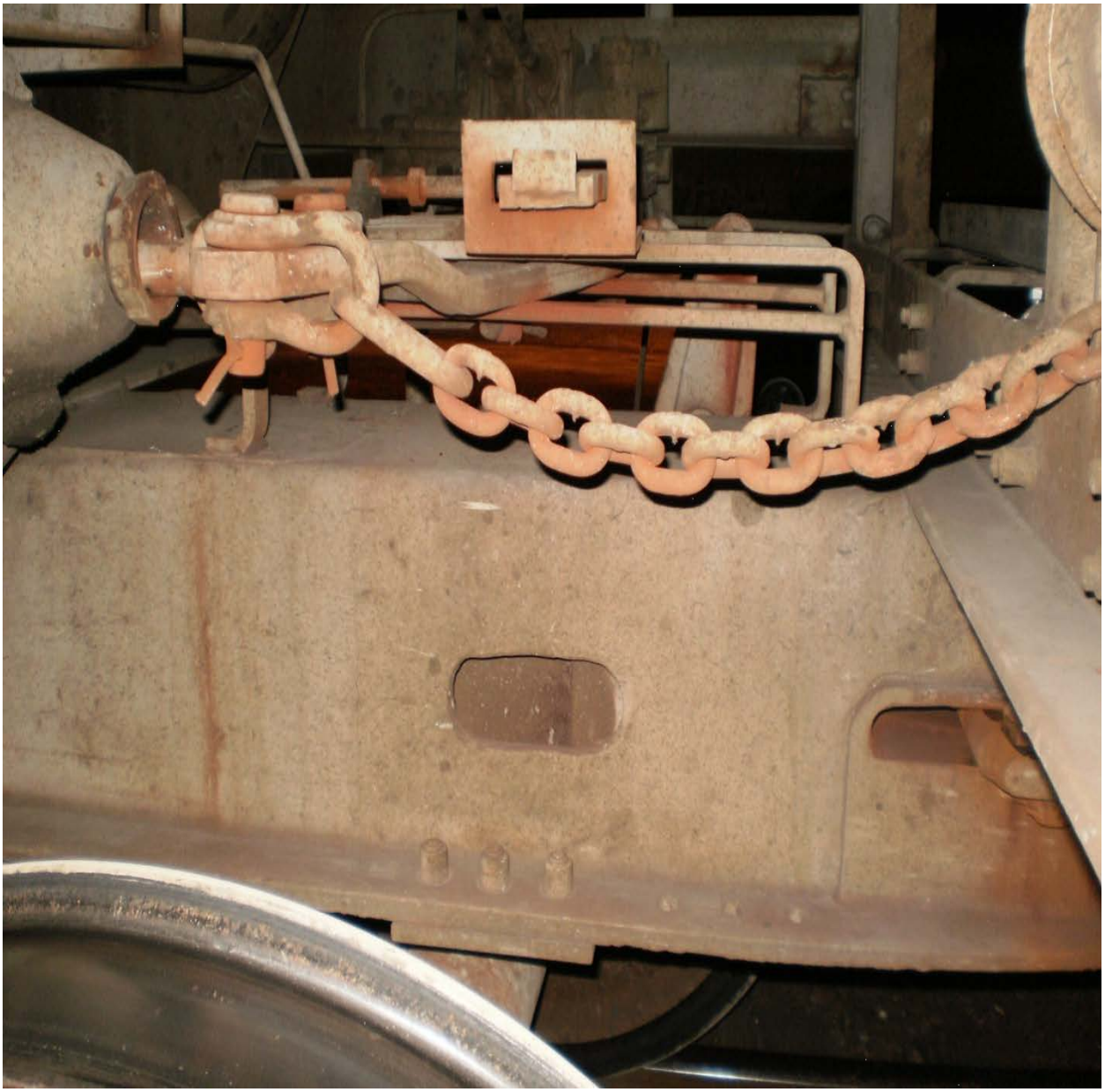
1. Note if the equipment had airbrakes applied, and if the handbrake chains indicated the handbrake was partially applied, or not applied at all.
2. Include a clear explanation of the determination if the handbrakes were not applied at all, or not ***"fully***" applied.
3. Include an interview with the railroad manager and/or the crew's response. As with any violation it should contain the railroad manager's rebuttal regarding the violation written, if any.
4. The precise number of handbrakes found to be fully applied, the precise number of handbrakes not fully applied, and the precise number of handbrakes required at that location.
5. Copies of the railroad's current operating rule regarding the number of handbrakes required on the equipment at that location.

6. The railroad's validation that the current rule noted in the above item is the most current rule. (Example: Include this in the interview of the railroad manager or employee.)
7. Copies of the railroad's operating rule that provide the mandated instructions regarding the locomotive's throttle position, status of the reverse lever, position of the generator field switch, status of the independent brakes, position of the isolation switch, handbrake, and position of the automatic brake valve.
8. Photographs of the area where the unsecured equipment is located, and briefly describe the dangers if the equipment were to have rolled away (see examples below).
9. Photographs of the brakes that indicate the equipment was unsecured or secured (see examples below).
10. Photographs of locomotive and car numbers (see examples below).
11. Reference the locomotive and car numbers in narrative.
12. List of cars on the track.
13. Track profile.

Photos regarding compliance

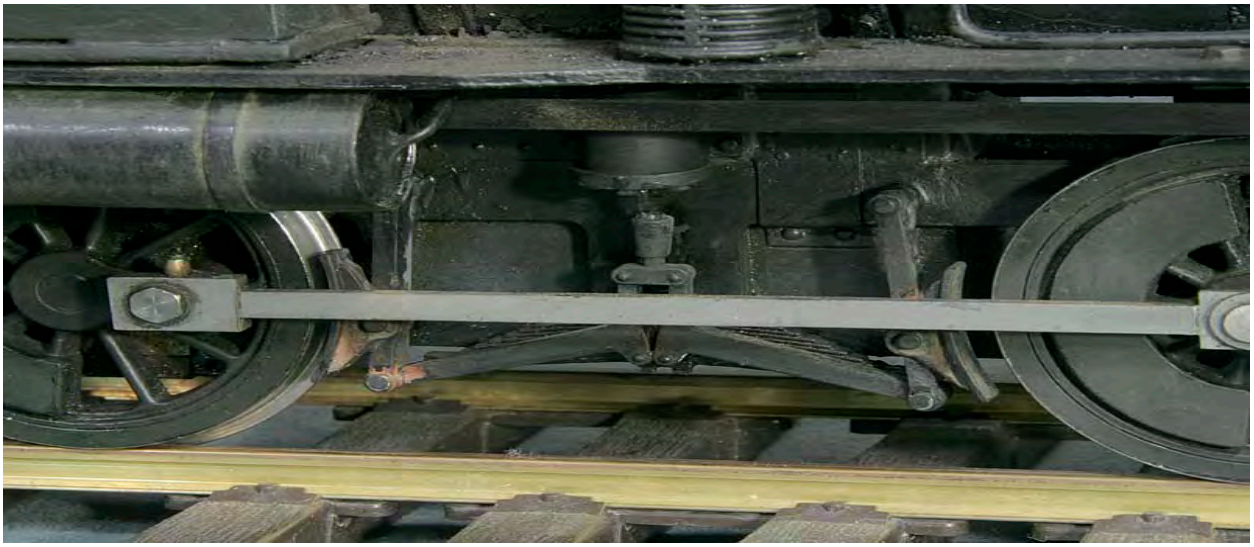
If the airbrake piston is not extended out the inspector should consider taking photos of the chain being loose with the piston not extended.

Example: The piston below is obviously not extended through mechanical means, but the chain is loose. This will indicate that the hand brake is not fully applied. In addition, this photo should accompany a determination that the brake shoe is NOT firmly seated against the wheel.

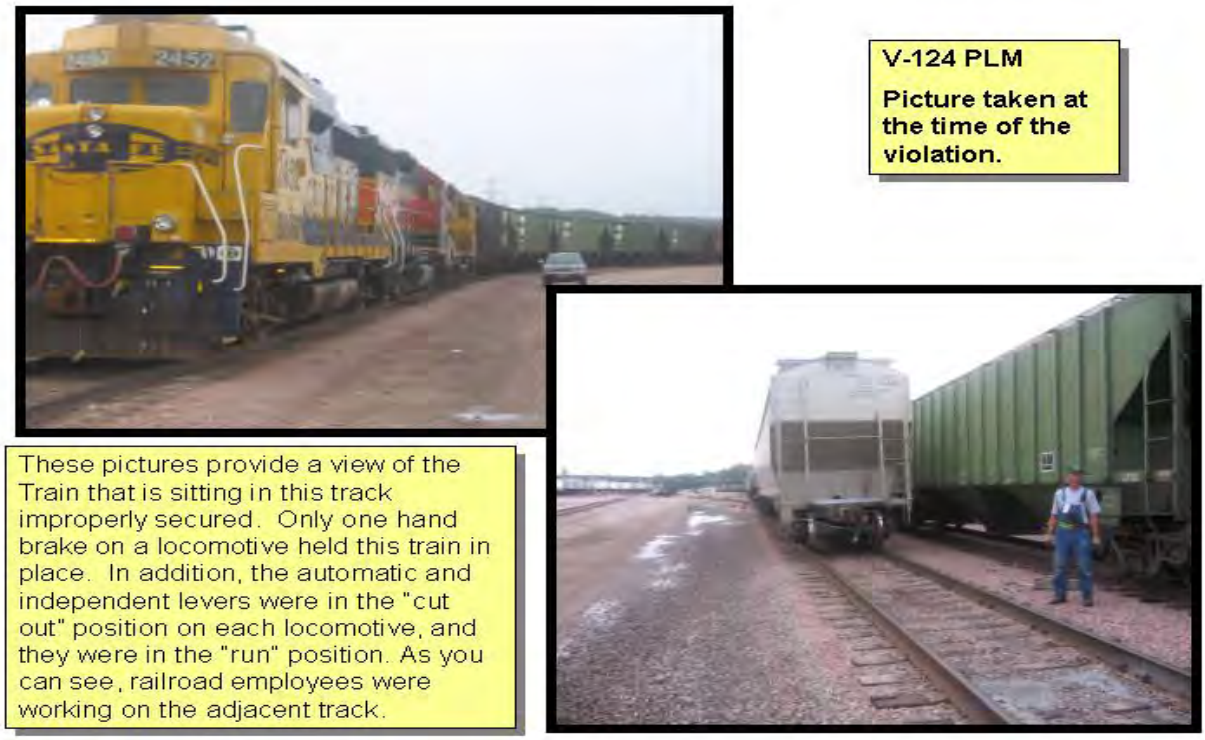


Example: The handbrake chain on this railroad car is obviously loose and not applied. In addition, this photo should accompany a determination by the inspector that the brake shoes are **NOT** firmly seated against the wheel.

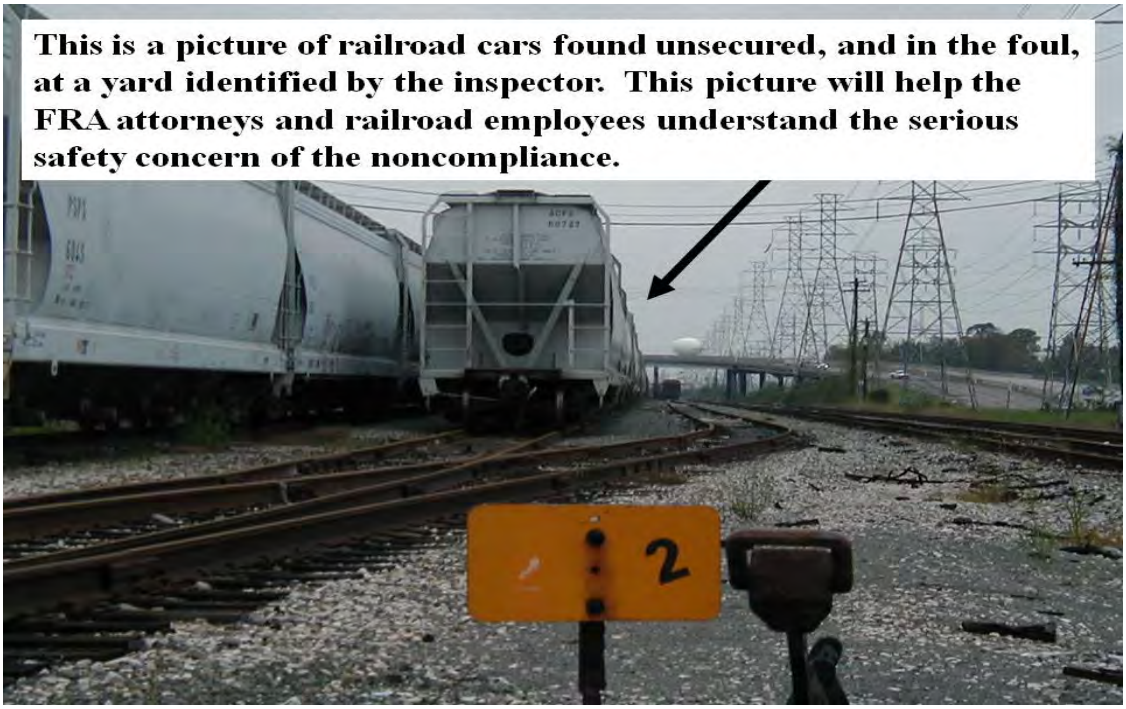
Example: This photo clearly indicates the airbrake shoes are not seated against the wheel.



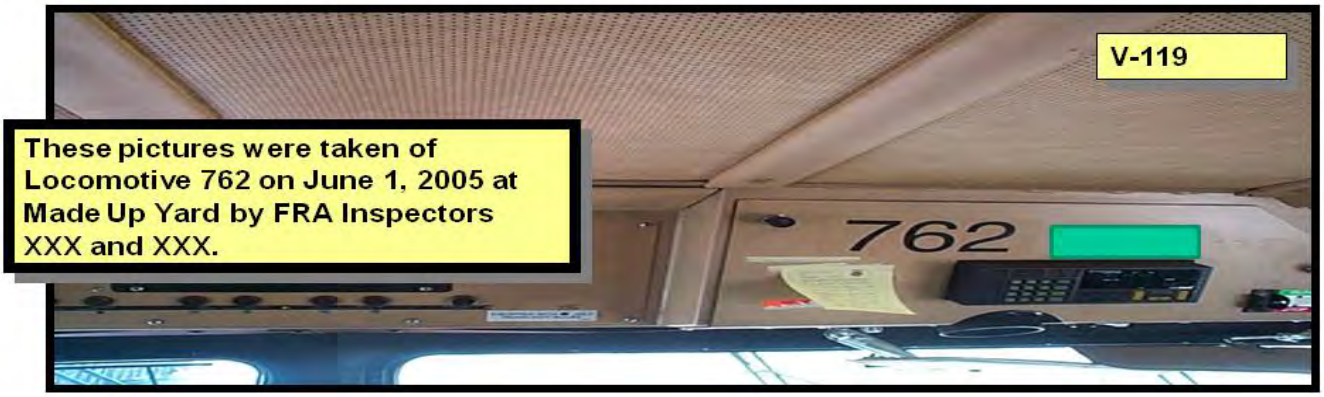
Example: It will also improve a violation if the inspector can determine the risk involved if the unsecured equipment did move while unattended.

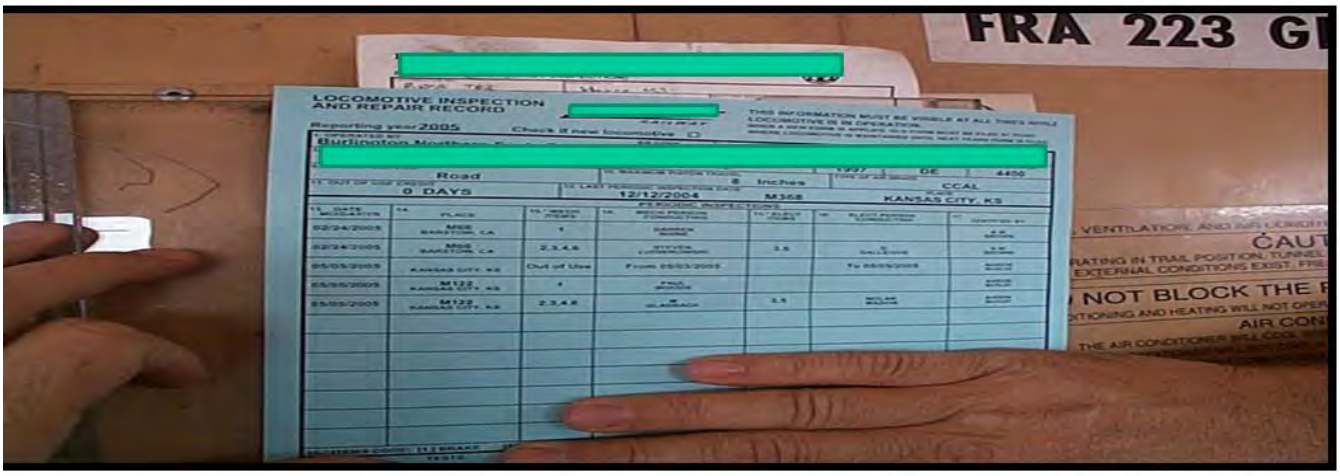


Example: Photos accompanying a securement violation.



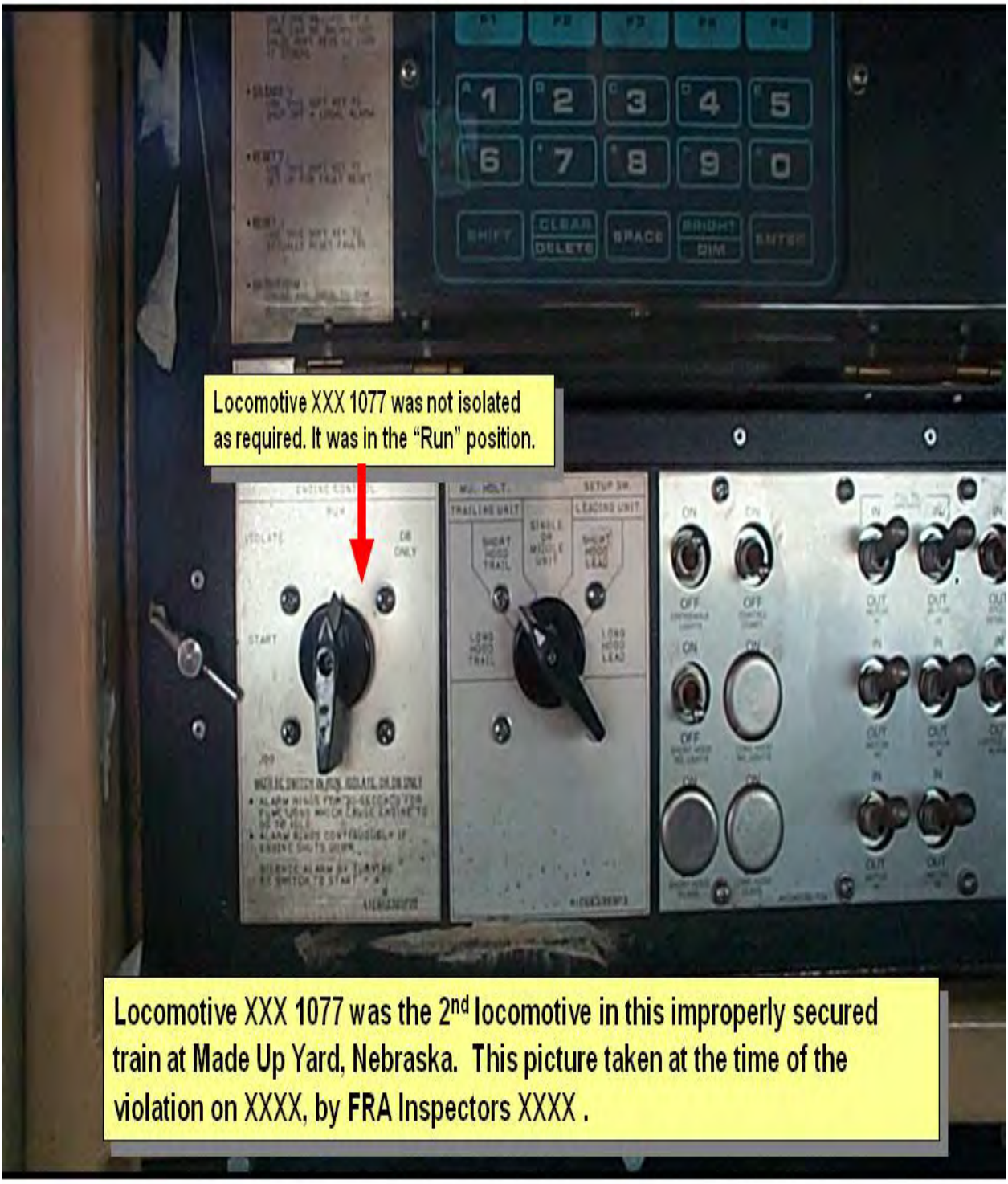
Locomotive 10XX was the 2nd locomotive in this improperly secured train at "Made Up Yard" in Somewhere, Nebraska. The equipment was on a uphill grade and would have rolled south out onto the CTC main track. This picture was taken on XX date, by Inspectors XX and DD.


V-119
These pictures were taken of Locomotive 762 on June 1, 2005 at Made Up Yard by FRA Inspectors XXX and XXX.
762


FRA 223 G
LOCOMOTIVE INSPECTION AND REPAIR RECORD
Reporting year 2005
Road
0 DAYS
12/12/2004
KANSAS CITY, KS
NOT BLOCK THE

BUILDER
NSC
4085/97
OMP SHOES
This train had the air line coupled to the train's air brakes with the air brakes released.

V-118


Locomotive XXX 1077 was not isolated as required. It was in the "Run" position.
Locomotive XXX 1077 was the 2nd locomotive in this improperly secured train at Made Up Yard, Nebraska. This picture taken at the time of the violation on XXXX, by FRA Inspectors XXXX .

§ 232.109 – Dynamic brake requirements

The locomotive engineer shall be informed of the ***operational status of the dynamic brakes on all locomotive units in the locomotive consist*** at the initial terminal for a train and at other locations where a locomotive engineer first begins operation of a train.

The required information may be provided to the locomotive engineer by any means determined to be appropriate by the railroad. However, a written or electronic record of the information shall be maintained in the cab of the controlling locomotive.

A locomotive with inoperative dynamic brakes shall have a tag bearing the words "inoperative dynamic brake" securely attached and displayed in a conspicuous location in the cab of the locomotive.

New locomotives
All locomotives equipped with dynamic brakes and ordered on or after April 1, 2006, or placed in service for the first time on or after October 1, 2007, shall be designed to:

1. Conduct an electrical integrity test of the dynamic brake to determine if an electrical current is being received at the grids on the system.
2. Display in real time in the cab of the controlling locomotive the total train dynamic brake retarding force available in the train.

Training and operating rules regarding dynamic brakes
Railroads that allow the operation of a train with a brake system that includes dynamic brakes *shall adopt and comply with written operating rules governing safe train handling procedures* using these dynamic brakes under all operating conditions, which shall be tailored to the specific equipment and territory of the railroad. And engineers must be trained in these rules under Part 240.

§ 232.111 – Train handling information

Each train crew taking charge of a train shall be informed of:

1. The total weight and length of the train, based on the best information available to the railroad.
2. Any special train handling procedures (hi-wide rail car restrictions, weight, etc.).
3. The number and location of cars with inoperative brakes.
4. If a Class 1 or Class 1A brake test is required prior to the next crew change point.
5. Any train brake system problems encountered by the previous train crew.

Subpart C – Inspection and Testing Requirements

OP Violations for Airbrake Tests

Prior to revisions in 49 CFR Part 232, inspectors that attempted to issue violations for airbrake tests had to wait until the train departed before a violation had occurred. FRA has now adopted a more aggressive approach. A train is considered to be "in use" prior to departure if it has received, or should have received, the inspection required for movement. The OP inspector is required to document evidence of this if a violation or defect is recorded.

With this broad interpretation, inspectors must establish that the railroad completed all necessary inspections. Evidence must be included in the documentation that will establish the inspector's basis for the violation. Remember, this is added enforcement flexibility. The best violations are those citing actual movement of equipment.

Observing Train Crews Performing Airbrake Tests

OP inspectors who are monitoring a train crew and have reason to believe the crew is failing to perform the required airbrake test may face an ethical dilemma. If the train is allowed to leave without the required airbrake test, it can be unsafe, but without that actual departure, the noncompliance will be hard to prove and it will be unethical to accuse the crew of such a serious noncompliance without specific knowledge. These steps may help an inspector in this situation.

- When boarding the train, ask the crew if they are "highballed" and ready to go, including all of their paperwork and airbrake tests.
- Directly ask the crew if they were going to, or if they had, performed an airbrake test prior to departing.
- If you do see a train departing without an airbrake test, you should contact the dispatcher right away. Inform the dispatcher of your concern, which is that you have reason to believe the train has not had a proper airbrake test. Explain to the dispatcher why you are concerned. Inspectors should then allow the railroad managers to handle the situation.
- Look for paperwork in the cab of the locomotive or with the train crew, that indicates an airbrake test was performed (i.e., a completed airbrake test slip, train delay report, work order, etc.).

Trains under surveillance by FRA inspectors regarding the required airbrake test

It is usually not possible for OP inspectors working by themselves to have an entire train, which can be more than a mile long, under surveillance for any length of time. It is also typically not possible to place the entire crew under complete surveillance. Fortunately, the regulations provide OP inspectors multiple options when recording under Class 1, 2, or 3 air brake tests failures or deficiencies. The OP inspector can record the violation or deficiency as a:

1. <u>Complete failure</u> to perform an [airbrake] inspection.
2. <u>Partial failure</u> to perform an [airbrake] inspection.

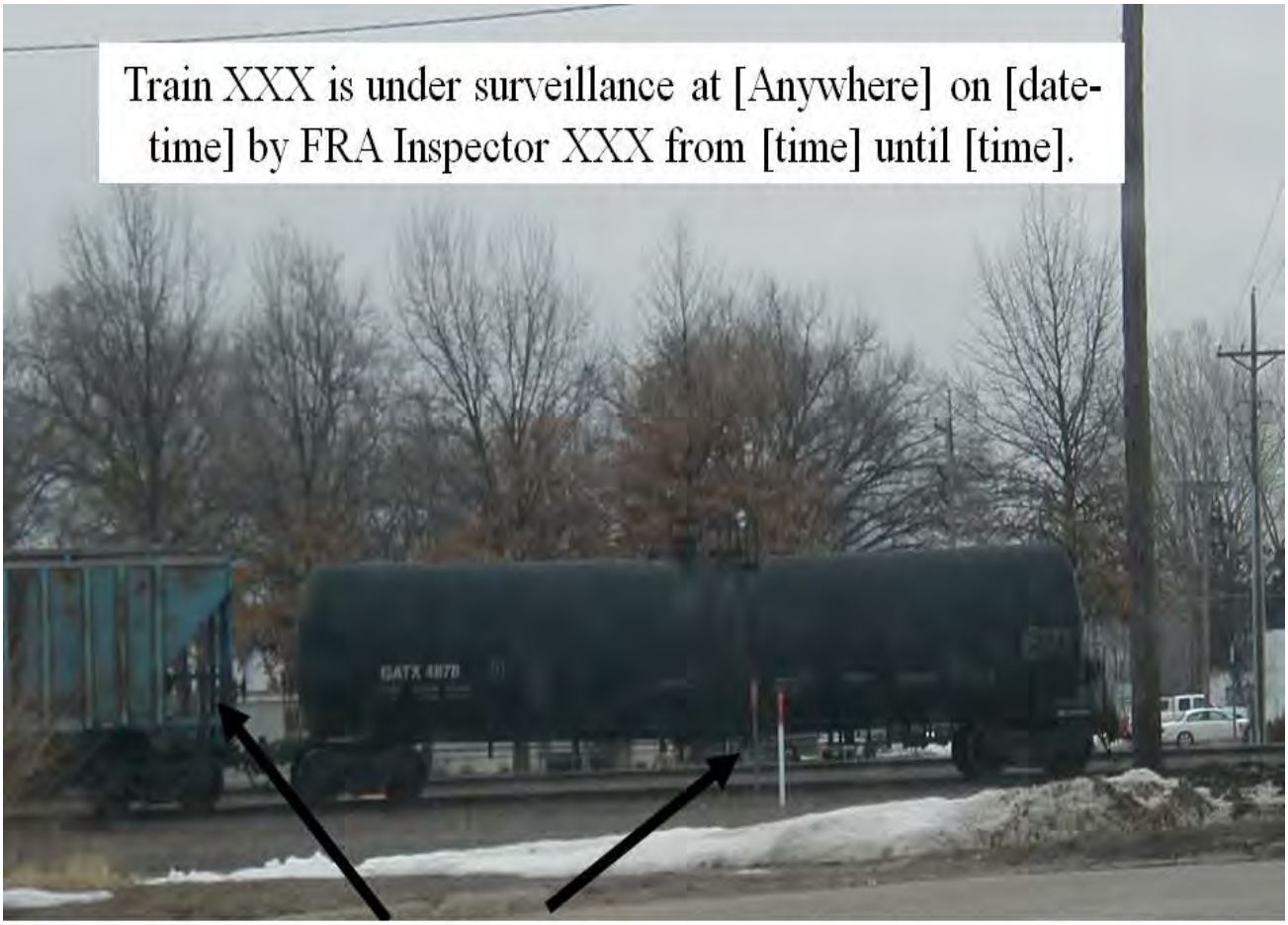
The penalty schedule for partial failures is less than for complete failures.

It is usually more practical for the OP inspector working alone to provide evidence of the partial failure to perform an inspection rather than the complete failure to perform an inspection. OP inspectors can obtain the evidence required by placing a small portion of the train, perhaps only a few cars, under complete surveillance. Providing evidence of pictures of those specific cars that the OP inspector had under their complete surveillance, with the time and date noted, is not mandatory, but it is helpful. Once the railroad cars are placed under surveillance, the OP inspector should maintain the integrity of that surveillance until the observation is complete. If the proper airbrake test was performed, the OP inspector should record that correctly. If the crew failed to perform the proper airbrake inspection on those specific cars under constant surveillance, then the OP inspector should have enough evidence to easily prove a partial failure to perform an inspection, even though logistics prevented the inspector from being able to satisfactorily prove a "complete failure," providing the inspector correctly documents all the facts.

NOTE: Consequently, when you have a train and its crew under surveillance regarding compliance with performing the required airbrake test, it is generally easier to keep one or two cars of the train under surveillance rather than the entire train or train crew. Photographs strengthen Chief Counsel's case. (See examples below.)

Examples of pictures used to support a violation for a "partial failure to perform an airbrake test

As shown below, it would be almost impossible for an inspector working alone to prove a complete failure during an observation.

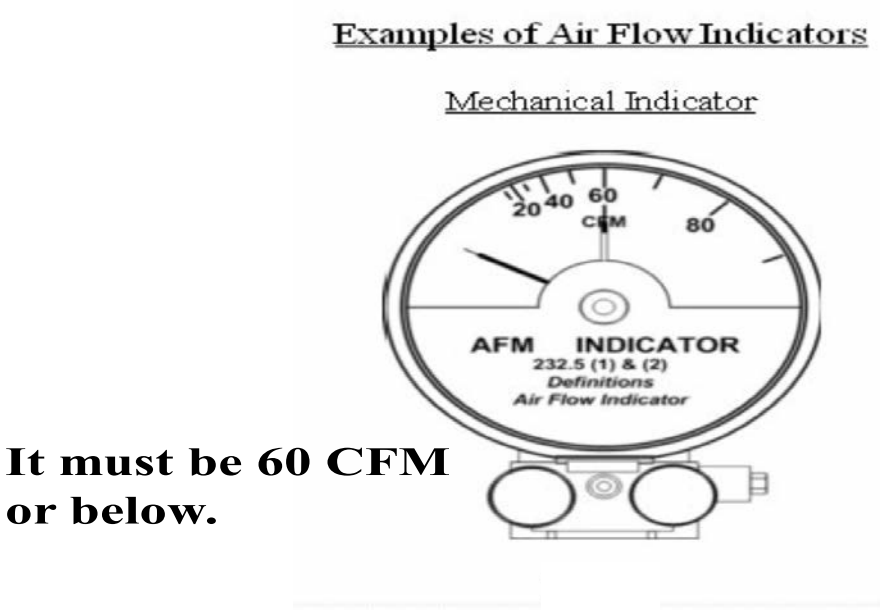


Note that the inspector can clearly see the brake cylinders and any crew member who is performing an air brake test on either side of these two cars that are under surveillance. Inspectors must maintain the surveillance to ensure the accuracy of their evidence provided Chief Counsel.

Note that the inspector can clearly see if an employee is inspecting this side of the cars. The train crew is allegedly performing a Class I air brake test on the three cars picked up in route. Inspectors must maintain the integrity of the surveillance to ensure the accuracy of their evidence provided to FRA Chief Counsel.

Air Flow Meters Used to Perform Airbrake Leakage Tests

When observing an engineer performing an airbrake leakage test for Class 1, 1A, or 2 airbrake tests, inspectors should be aware of these two typical types of air flow meters. If the air flow meter does not exceed 60 cubic feet per minute (CFM), then the leakage is acceptable.



1. GE Computer Screen

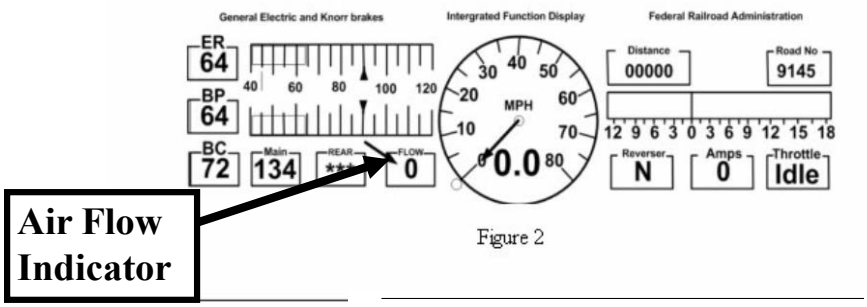
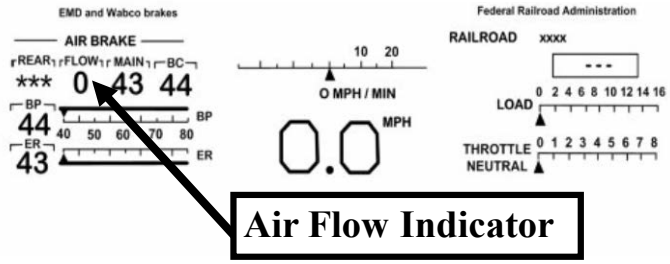


Figure 2

2. EMD Computer Screen



§ 232.203 – Training requirements

OP inspectors should understand the difference between a qualified mechanical inspector (QMI) and a qualified person (QP).

A QMI is a QP who has received (as a part of the training, qualification, and designation program required under § 232.203) instruction and training that includes hands on experience (under appropriate supervision or apprenticeship). The QMI shall be a person whose primary responsibility includes work generally consistent with the functions listed in this definition. Therefore, the QMI is usually a Carman who is <u>not currently working in the operating department</u>. This may be important to the OP inspector because the railroad's QMI is the only individual who is permitted to perform a complete airbrake test on any extended haul train.

A QP is a person who has received (as a part of the training, qualification, and designation program required under § 232.203) instruction and training necessary to perform one or more functions required under this section. Therefore, train crewmembers are most often QPs.

Although the regulation uses the term "qualified person" to describe some train, yard, and engine personnel, they may be deemed qualified to perform certain functions but not others. For example**,** although a person may be deemed "qualified" to perform the Class 2/intermediate brake test required by § 232.203, that same person may or may not be deemed qualified to perform the Class 1 initial terminal airbrake test. The railroad's training records of the individual should reflect the job the employee is performing.**

**OP inspectors should not review training records under Part 232 without first consulting with their regional specialist and/or the MP&E discipline.

§ 232.205 – Class 1 brake test; initial terminal inspection

Guidance inspecting trains outside the yard
Inspectors that find a train outside the yard should ensure that any portion of the train has not been "off air" ("off air" means not connected to a continuous source of compressed air of at least 60 psi for a period of more than **<u>4 hours</u>**.)

If any portion of that train has been off air for more than 4 hours, that portion will require an airbrake test prior to that portion of the train departing. Inspectors can document this noncompliance by requiring a railroad manager to review the event recorder data on the locomotive.

§ 232.207 – Class 1A brake tests; 1,000-mile inspection

OP inspectors should note that in addition to the other requirements of this section, Class 1A airbrake tests require a QMI, and the test does not include an inspection of the airbrakes released.

§ 232.209 – Class 2 brake tests; intermediate inspection

OP inspectors should allow the MP&E discipline to determine if the train requires a Class 2 airbrake test under this section, but OP inspectors should ensure train crews are performing this airbrake test when required.

§ 232.211 – Class 3 brake tests; trainline continuity inspection

OP inspectors should allow the MP&E discipline to determine if the train requires a Class 3 brake test under this section, but OP inspectors should ensure train crews are performing this airbrake test when required.

§ 232.213 – Extended haul trains

OP inspectors should allow the MP&E discipline to determine if the train requires an extended haul airbrake test under this section.

§ 232.215 – Transfer train brake tests

OP inspectors should allow the MP&E discipline to determine if the train requires a transfer airbrake test under this section, but OP inspectors should ensure train crews are performing this airbrake test when required.

§ 232.217 – Train brake tests conducted using yard air

OP inspectors should allow the MP&E discipline to determine compliance with this rule.

§ 232.219 – Double heading and helper service

OP inspectors should allow the MP&E discipline to determine if the train requires a transfer airbrake test under this section, but OP inspectors should ensure train crews are performing this airbrake test when required.

Subpart E – End-of-Train Devices

OP inspectors should reference the MP&E Compliance Manual concerning the requirements of Subpart E.

OP inspectors should be aware that the end-of-train (EOT) devices found on the rear of a train communicates with a head-end device (HED) found in the cab of the locomotive. This communication is intended to be two-way, but at times, communication will fail. It is important that OP inspectors taking issue with failed communication understand the entire regulation, and reference the MP&E Compliance Manual.

When OP inspectors are reviewing an incident regarding the revoking of an engineer certification involving the failed communication of the EOT device and HED, it should be determined if the communication failure was:

1. HED to EOT: Head-end to rear-end communication failure only.
2. EOT to HED: Rear-end to head-end communication failure only.
3. Both: The devices were not communicating at all.

A communication failure regarding the HED to the EOT device is a much more serious safety concern than the other circumstances described, and is much more likely to result in a revocation of the locomotive engineer's certificate because it **will not** allow the locomotive engineer to induce the train into an emergency brake application from the rear of the train. In contrast, communication failures only consisting of EOT to HED **will** allow the locomotive engineer to induce an emergency brake application from the rear of the train.

HED Communication with EOT +/- 3 pounds
Section 232.409(b) states as follows (emphasis added):

> After each installation of either the front or rear unit of an end-of-train device, or both, on a train and before the train departs, the functional capability of the device shall be determined, after charging the train, by comparing the **quantitative value of the air pressure displayed on the front unit with the quantitative value of the air pressure displayed on the rear unit** or on a properly calibrated air gauge. The end-of-train device shall not be used if the difference between the two readings **exceeds three pounds** per square inch.

OP inspectors should not be concerned with the airline pressure when observing this test. This test is to determine the accuracy of the HED and EOT, specifically their ability to communicate back and forth. Railroad employees (crews) do this by reading the train quantitative values of air pressure on the EOT and the HED, and then comparing the readings on both devices. The difference must not exceed +/-3 pounds.

§ 232.409 – Inspection and testing of end-of-train devices

When testing an EOT device, it must be armed and tested at the point of installation or initial terminal before the train departs. Dispatching of trains with unarmed two-way EOT devices, due to "dead spots," is permitted at certain locations provided the train operates at restricted speed for a distance **not to exceed 1 mile** in order to establish communication.

OP inspectors must keep the following points in mind when inspecting EOT devices.

- After charging the train line, the quantitative values of air pressure on the EOT device and the HED must be compared. The difference must not exceed +/-3 pounds.

- The devices must be checked to see if the HED will initiate an emergency application of the EOT device by activating the emergency brake function switch on the HED.
- A record of the EOT test must be provided to the engineer at point of installation or initial terminal **if** function test is conducted by person other than member of the train crew.
- The record must contain the date, time, location, and name of person conducting test.
- The written record of the EOT device test must be in the cab of the controlling locomotive **if** the function test is conducted by person other than member of the train crew.
- The calibration information sticker is to be affixed on the device where it can be easily accessed.

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Chapter 14: Part 238, Passenger Equipment Safety Standards

Subpart C – Specific Requirements for Tier I Passenger Equipment 14-1
§ 238.231 – Brake system 14-1
Subpart D – Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment 14-1

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CHAPTER 14
PART 238: PASSENGER EQUIPMENT SAFETY STANDARDS

OP inspectors should reference the Motive Power and Equipment (MP&E) Compliance Manual for general guidance regarding Part 238. Inspectors must thoroughly review the air brake and train handling rules, and the operating rules regarding intercity passenger and commuter operations of the railroads in their inspection territories.

MP&E inspectors have the primary responsibility for enforcement of Part 238. OP inspectors conducting inspections under Part 238 should reference the OP Activity Code Table for specific instructions on completing their inspection reports.

Subpart C – Specific Requirements for Tier I Passenger Equipment

Tier I passenger equipment is designed to operate at speeds not exceeding 125 mph. All commuter railroads use Tier I passenger equipment.

§ 238.231 – Brake system

Securement of passenger equipment should be recorded by OP inspectors. Some railroad operating rules are more restrictive than the regulations required when determining how many hand brakes or parking brakes must be applied on unattended equipment; therefore, an OP inspector should always reference the railroad operating rules at that specific location.

All locomotives, whether used in passenger or non-passenger service (e.g., work train, stone train, extra service, wreck train, etc.) will be inspected as per Part 238. Some carriers use freight equipment for their maintenance-of-way operations, and those cars in such non-passenger train service will be inspected under Part 232.

Subpart D – Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

Most Tier I interior calendar-day mechanical inspections and most Class I air brake tests on passenger equipment are conducted by the mechanical department during hours of inactivity, which is usually at night. Normally, these inspections are conducted by OP inspectors only while accompanying an FRA MP&E inspector.

OP inspectors can expect to see Class II brake tests performed in terminals and stations where trains change direction (or number), and/or running brake tests performed after departure from a terminal or crew change.

INSERT CHAPTER TAB HERE

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CHAPTER 15
PART 239: PASSENGER TRAIN EMERGENCY PREPAREDNESS

General

OP inspectors with passenger train service in their territories should review a copy of the railroad's Emergency Preparedness (E-Prep) Plan, or the joint E-Prep Plan if the passenger railroad is a tenant carrier (i.e., if the passenger railroad operates over a host railroad's track), and base their passenger train inspections on that program and related regulation compliance.

Inspectors that have almost exclusively passenger train service in their territories will approach these duties somewhat differently than inspectors with considerably less passenger service in their territories. This is due to the fact that those regions with almost exclusively passenger train service have an inspector specifically assigned the responsibility for Part 239 compliance who is available to assist the OP inspectors in that region (e.g., by providing a copy of the railroad's E-Prep Plan on file with FRA).

The guidance herein is not intended to be guidance for any type of audit or team inspections performed regarding this part of Title 49 Code of Federal Regulations. The OP regional specialists should provide guidance regarding how much oversight each OP field inspector should provide in his or her territory because there are different levels of passenger service in each FRA region,.

On-Train Inspection

Whenever possible, inspectors performing a train inspection while riding in the passenger portion of the train should make contact with as many crewmembers as possible. This contact should include the inspector inquiring when the crewmember last received E-Prep training (there is a 2-year interval required by § 239.101(a)(2)(i)). This may require the inspector to perform a followup inspection by reviewing the training records to validate the information the crewmembers provided. In addition, when encountering crewmembers, an OP inspector should inspect the train's auxiliary portable lighting per § 239.101(a)(6)(iii), if possible, to ensure compliance with the railroad's E-prep Plan (e.g., flashlight). Note that this is a distinct requirement from that in § 239.101(a)(6)(i)(C) (which requires one flashlight per on-board crewmember). Further, the auxiliary portable lighting must be accessible to passengers and must be maintained and replaced in accordance with the schedule set forth in the E-Prep Plan, per § 239.101(a)(6)(iv).

Inspectors should also reference the Train Ride Checklist found in the online OP Library.

Control Center Inspection (Dispatchers)

When performing a control center inspection:

- Obtain a current copy of the emergency telephone notification numbers, including numbers for emergency responders, railroad management, and any parallel railroad contact information.

- Call one or more of the numbers to verify the list is current. Ensure that the railroad (and, if applicable, any host railroad) has designated an employee (at a minimum by title) to maintain and correctly update emergency phone numbers.
- Ask control center personnel when the last E-Prep training was received to verify that training is repeated at least once every 2 calendar years.

Subpart A – General

§ 239.3 – Application

Part 239 applies to:

- Railroads that operate intercity or commuter passenger train service on standard gage track that is part of the general railroad system of transportation.

- Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area, including public authorities operating passenger train service.

- Passenger or freight railroads hosting the operation of passenger train service (as described above).

NOTE: "Other short-haul passenger service" includes a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, as it does not have the transportation of commuters within a metropolitan area as its primary purpose. *See* Appendix A to Part 209. If this service fits the definition of "urban rapid transit," then this part does not apply (*see* exceptions).

Part 239 does <u>not</u> apply to:

- Rapid transit operations in an urban area not connected to general system (*see* Appendix A to Part 209 for what FRA considers to be "urban rapid transit operations").
- Private cars, business cars, or circus trains.
- Tourist, scenic, historic, or excursion trains, regardless of if they are on the general system.

NOTE: While the term "tourist, scenic, or excursion trains" is not defined in Part 239, Part 238 provides some insight with its definition of a similar term. The term "tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose. Train movements of new passenger equipment for demonstration purposes are not tourist, scenic, historic, or excursion operations." 49 CFR § 238.5.

Additionally, railroads hauling private cars in a passenger train would still need to consider these cars in their E-Prep Plans as they could affect a railroad's ability to carry out its plan (e.g., an

evacuation of the cars in passenger train service in an emergency situation, especially where a car-to-car evacuation route is the preferred route).

§ 239.7 – Definitions

A **crewmember** is a person, other than a passenger, who is assigned to perform either:

- On-board functions connected with the movement of the train (i.e., an employee of a railroad, or of a contractor to a railroad, subject to the hours of service laws).
- On-board functions in a sleeping car or coach assigned to intercity service, other than food, beverage or security service.

An **emergency or emergency situation** is an unexpected event related to the operation of passenger train service involving a significant threat to the safety or health of one or more persons requiring immediate action, including a derailment, a fatality at a grade crossing, a passenger or employee fatality, a serious illness or injury of a passenger or crewmember requiring admission to a hospital, an evacuation of a passenger train, or a security situation.

Joint Operations signifies rail operations conducted by more than one railroad on the same track, except as necessary for interchange.

Subpart B – Specific Requirements

§ 239.101 – Emergency Preparedness Plan

Each railroad to which this part applies shall adopt and comply with a written E-Prep Plan approved by FRA under the procedures of § 239.201. There are seven elements that must be addressed in the plan. The requirements for these elements are contained in 49 CFR §§ 239.101(a)(1)–(a)(7) under the following headings: (1) Communication, (2) Employee Training and Qualification, (3) Joint Operations, (4) Special Circumstances, (5) Liaison with Emergency Responders, (6) On-Board Emergency Equipment, and (7) Passenger Safety Information.

Compliance with Passenger Train Emergency Preparedness Plan

The following guidelines contain suggestions for inspecting a railroad's compliance with its E-Prep Plan. Inspectors must be aware that this plan should already have been submitted to FRA headquarters and approved before implementation. The railroad should be able to provide the FRA approval letter to the field OP inspector. Many FRA regions have an inspector specifically assigned the responsibility for Part 239. If your region is one of them, coordinate with the designated inspector to obtain the current E-Prep Plan and become familiar with its contents. Refer any questions to the regional Part 239 inspector, and include your regional OP specialist.

Emergency Preparedness regulations are contained in Title 49 Code of Federal Regulations Part 239; Part 238 contains related passenger train emergency systems requirements, most of which are discussed in this chapter of the OP Manual. In addition to these regulations, inspectors should be aware that Executive Order 13347, issued on July 22, 2004, encourages railroads to include provisions for persons with disabilities in their emergency plans.

As a general starting point, inspectors (especially those with moderate to substantial passenger operations in their district) should periodically attend E-Prep training classes in order to provide oversight of the efforts by the railroad to comply with its own training program, pursuant to § 239.101(a)(2). Prior to attending these training classes, OP inspectors should review the railroad's current program regarding hands-on training. The inspector should compare that program to the training monitored, and then document any differences on the inspection report.

Inspectors should consider attending training for both the train crews (on-board personnel) and control center employees. Inspectors monitoring training should also ensure that the plans are being implemented properly in the field by reviewing (1) the debriefing and critique records (*see* § 239.105(d)) for **all** evacuations (as the records may indicate one or more problem areas where training needs to be strengthened), and (2) the number of passenger train emergency simulations (sometimes referred to as "disaster drills") specified in the railroad's plan and comparing it to the number actually conducted.

§ 239.101(a)(1) – Communication

Initial and On-Board Notification. On-board crewmembers need to be able to quickly and accurately assess the emergency situation and notify the control center. Review the plan to ensure there are specific communication responsibilities for on-board personnel, and discuss this with the employees.

Crewmembers need to inform passengers about the nature of the emergency and the corrective actions in progress. Look for examples of how on-board crewmembers keep passengers informed in the event of emergencies. As crewmembers often rely on a public address (PA) or intercom system for this purpose, ensure that the system meets the emergency communication requirements in § 238.121.

Notifications by Control Center. The control center shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials about the emergency. Visit each control center and look for procedures that outline how the control center communicates with crewmembers and emergency responders in emergencies. Ask for a copy of the emergency phone log and determine when it was last updated. Ensure that the railroad (and, if applicable, any host railroad) has designated an employee (at a minimum by title) to maintain and correctly update emergency phone numbers.

§ 239.101(a)(2) – Employee Training and Qualification

Training for on-board and control center personnel should address individual employee responsibilities and should be repeated at least once every 2 calendar years. While "on-board personnel" is not defined in Part 239, the term includes, at a minimum, all crewmembers and any non-passengers assigned duties under the plan.

NOTE: A freight train crew relieving a passenger train crew need not be qualified on the E-Prep Plan if one member of the expired passenger crew remains on board and is available to perform excess service under the Federal hours of service laws. *See* § 239.101(a)(2)(vi)(B).

It is recommended that inspectors:

- Inspect records for compliance with the requirement that new employees be provided initial training within 90 days, per § 239.101(a)(2)(iii).
- Inspect the training outlines for initial and periodic training for on-board and control center personnel and ensure that the training includes all of the required elements in §§ 239.101(a)(2)(i)(A)–(E) and 239.101(a)(2)(i)(A)–(B), respectively (discussed further, below).
- Attend at least one initial and one periodic (refresher) class for on-board and control center personnel.
- Determine whether the qualification test is:
    - Designed to accurately measure an employee's knowledge of his or her responsibilities under the plan.
    - Objective in nature.
    - Administered in written form.
    - Conducted without reference to books or other materials unless the question is in regards to how to use the reference books or materials.

NOTE: If you have concerns about this training, present them to your OP regional specialist for guidance prior to documenting them on your .96 report.

For on-board personnel, make sure the training includes:

- Passenger evacuation.
- Situational awareness.
- Equipment familiarization.
- Information on how situations are coordinated with respect to assigned functions under the plan.
- Hands-on training for the on-board emergency equipment (*see* § 239.101(a)(6), such as operation of fire extinguishers).

FRA expects that the instruction would focus on the following:

- How to open emergency windows, doors, and, if applicable, roof exits with an emphasis on how to operate these types of exits in adverse conditions (e.g., overturned rail car).
- How to use emergency tools and fire extinguishers.
- How to use portable lighting when the passenger train's main power source is unavailable.
- How to use PA systems or alternative mass communication devices (e.g., megaphones).

NOTE: FRA will not approve a plan that provides for "hands-on" training exclusively by allowing employees to watch a video (as this can be ineffectual). FRA would find the use of a video acceptable if in combination with a scale model of an emergency window (mock-up) containing a rubber pull strip, and the E-Prep Plan provides for small groups of employees taking turns handling window glazing and practicing emergency escape using the mock-up.

For the control center personnel, make sure the training includes:

- Dispatcher familiarization.
- Protocols governing internal communications between the appropriate control center whenever an imminent potential emergency situation exists.

The dispatcher familiarization training should be designed to point out locations with special concerns for handling emergencies. The plan must describe how control center personnel for the railroad will be trained on dispatch territory familiarization (e.g., review track charts and timetables, territory familiarization through train rides, or viewing a video or digital video disc (DVD) with narration describing the physical characteristics of the territory). Control center personnel must be trained on the protocols governing the proper internal routing of (1) communications received from on-board personnel and (2) information that needs to be provided to outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials, so as to permit the control center to make prompt notifications pursuant to § 239.101(a)(1)(ii).

NOTE: Inspectors must ensure that control center personnel of host railroads that control passenger trains receive training and qualification on emergency preparedness requirements for the railroads they dispatch. It is recommended that the inspector visit the host railroads' control centers and inspect for copies of the E-Prep Plans (to ensure that the communications protocols and phone numbers are available for quick reference in the event of an emergency) and inspect for communications that are listed above.

§ 239.101(a)(3) – Joint Operations

Ensure that each railroad hosting passenger train service (host railroad) addresses its specific responsibilities consistent with Part 239. The host railroad is required to communicate and coordinate applicable portions of the plan. Joint operations railroads are required to jointly adopt one E-Prep Plan that addresses each railroad's responsibilities.

NOTE: Make sure there is only one plan between the joint operators.

§ 239.101(a)(4) – Special Circumstances

Tunnels. Ensure the plan, when applicable, reflects procedures that are designed to ensure passenger safety in emergencies in tunnels of 1,000 feet or longer.

The plan shall include:

- Availability of emergency lighting.

- Access to emergency evacuation exits.
- Benchwall readiness.
- Ladders for detraining.
- Effective radio or other communication between on-board crewmembers and the control center.
- Options for assistance from other trains.

Tunnels of 1,000 feet or more. These tunnels must be identified in the plan and there must be a discussion of each of the six areas outlined above. Determine what is available in the tunnels and conduct inspections to ensure readiness. OP inspectors should coordinate with Track and Signal and Train Control inspectors for this requirement.

Other Operating Considerations. The plan must address E-Prep Plan procedures involving operations on elevated structures (e.g., bridges) and in electrified territory, where applicable. Determine if there are any elevated locations, parallel lines, or other such special circumstances that could make handling emergencies difficult. If so, review the location against the plan requirements.

Parallel Operations. The plan shall require reasonable and prudent action to coordinate emergency efforts where other rail modes of transportation run parallel to either the passenger railroad or the host railroad. Note that the term "rail modes of transportation" is intended to cover all types of transit operations by rail or magnetic guideways running parallel to passenger railroad operations and their hosts.

§ 239.101(a)(5) – Liaison with Emergency Responders

Each railroad shall establish and maintain a working relationship with on-line emergency responders by developing and making available a training program for the responders. The program must include an emphasis on access to railroad equipment, location of railroad facilities, and communications interface. Ask for copies of all training programs and material provided to emergency responders related to handling passenger train emergencies. Look for information on rail cars and engines, basic rail safety, and communication procedures, along with emergency contact information.

Ask for a list of the emergency response organizations that the railroad works with along the right-of-way. Determine if the network of response organizations covers the entire right-of-way. Contact emergency responder organizations to confirm that they have received or were offered training or training materials, and that they were invited to participate in emergency simulations. It should be noted that railroads such as Amtrak may be involved with more than 22,000 responding agencies. The intent is to ensure that the railroad makes training available to all agencies, if requested.

The railroad needs to provide information to emergency responders who may not have participated in simulation training. The program should provide a method for inviting

emergency responders to participate in emergency simulations. Applicable portions of the E-Prep Plan must be distributed to the emergency responders at least once every 3 years or when material changes are made to the plan that could reasonably affect the railroad's interface with the on-line emergency responders.

The applicable portions of the plan that must be distributed include documentation concerning the railroad's equipment, physical characteristics, necessary maps, and titles and phone numbers of relevant railroad officers. Inspectors may need to make phone calls to determine the extent of coordination and if there are any concerns on the part of the responders.

Determine how the railroad updates the material provided to responder organizations and ensure that updates are being provided at least once every 3 years.

§ 239.101(a)(6) – On-Board Emergency Equipment

Each E-Prep Plan shall state the types of emergency equipment to be kept on board and indicate their locations on each passenger car.

On-board emergency equipment shall include:

- One fire extinguisher per passenger car.
- One pry bar per passenger car.
- One flashlight per on-board crewmember. (Note: This is a distinct requirement from the requirement for auxiliary portable lighting per § 239.101(a)(6)(iii).)

Ask the MP&E inspector to determine if the equipment is inspected regularly.

Intercity passenger service (i.e., currently, Amtrak and the Alaska Railroad Corporation*)* shall also have on board:

- One first aid kit that contains two small gauze pads at least 4 inches by 4 inches.
- Two large gauze pads at least 8 inches by 8 inches.
- Two adhesive bandages.
- Two triangular bandages.
- One package gauze roller bandage at least 2 inches wide.
- Wound cleaning agent.
- One set of tweezers.
- One roll of adhesive tape.
- Two pairs of latex gloves.
- One resuscitation mask.
- One pair of scissors.

NOTE: Some commuter railroads choose to carry this first aid equipment, but it is not required. If their plan indicates they carry the first aid kit, then they must comply with their plan requirements.

Inspect a sample of cars to determine the availability of emergency equipment, and that there is one pry bar and one fire extinguisher per car.

On-Board Emergency Lighting

Consistent with the requirements of 49 CFR Part 238, auxiliary portable lighting (e.g., a handheld flashlight) must be accessible and provide:

- Brilliant illumination for the first 15 minutes of an emergency.
- Continuous or intermittent illumination for at least 60 minutes thereafter.

Some railroads will have a rechargeable flashlight installed in each car; ensure it is operational.

NOTE: This is a distinct requirement from that in § 239.101(a)(6)(i)(C) (which requires one flashlight per on-board crewmember). Further, the auxiliary portable lighting must be accessible *to passengers* and must be maintained and replaced in accordance with the schedule set forth in the E-Prep Plan, per § 239.101(a)(6)(iv).

Inspect the above emergency equipment as well as the emergency systems required by Part 238 to determine whether:

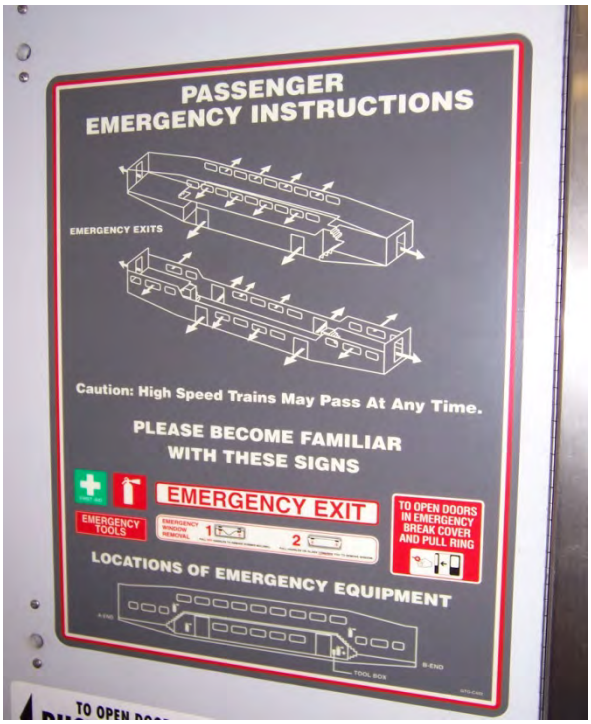
- Emergency equipment is located and maintained in compliance with program plan requirements (*see* § 239.101(a)(6)(iv)).
- Emergency window and door exits and rescue access windows and doors are properly marked (with luminescent material on the inside of each car for emergency exits, and with retroreflective material on the outside of each car for rescue access) and have clear/legible and understandable instructions provided for their use (*see* §§ 239.107, 238.113, 238.114).
- PA systems are working properly in all cars, if required (*see* § 238.121(a)).
- Passenger emergency intercoms (PEI) are readily accessible with proper identification and instructions, if required (*see* § 238.121(b)).

NOTE: As some of the above items are not required for all equipment, an inspector should carefully check the applicability dates of the various provisions in the rule text and determine whether the equipment falls under any of the exceptions for existing equipment. The emergency systems requirements are discussed in more detail in the section titled “Related Passenger Train Emergency Systems Requirements in Part 238.” An implementation matrix titled “Important Compliance Dates for Passenger Train Emergency Systems” is located at the end of this chapter for quick reference.

§ 239.101(a)(7) – Passenger Safety Information

Passenger awareness dissemination

- Each railroad's E-Prep Plan must contain a means to provide passengers with emergency preparedness safety information (e.g., posters, seat drops, public timetables).
- Emergency instructions must be posted inside all passenger cars (e.g., on car bulkhead signs, seatback decals, or seat cards).
- Railroads shall use one or more additional methods to provide safety awareness information, including, but not limited to:
    - On-board announcements.
    - Laminated wallet cards.
    - Ticket envelopes.
    - Timetables.
    - Station signs or video monitors.
    - Public service announcements.
    - Seat drops.



Emergency Exit and Rescue Access Marking Requirements

General Markings

- All doors and windows intended for emergency exit must be either lighted (not applicable to windows) or conspicuously and legibly marked with luminescent material on the inside of the car, with clear (for doors)/legible (for windows) and understandable instructions posted at or near such exits (*see* §§ 239.107(a)(1), 238.113).
- All doors and windows intended for emergency access by emergency responders for extricating passengers must be marked with retroreflective material (windows must also be marked with a unique and easily recognizable symbol, sign, or other conspicuous marking). Clear (for doors)/legible (for windows) and understandable instructions shall be posted at each such door or at or near each such rescue access window. *See* §§ 239.107(a)(2) and 238.114.
- Determine which doors and windows of the passenger cars are intended for emergency **exit**. Inspect those doors and windows to ensure they are marked with luminescent material or lighted (not applicable to windows), and have appropriate operating instructions posted at or near such exits.
- Determine which windows and doors are intended for emergency **access**. Inspect those doors and windows to ensure they are marked with retroreflective material (and conspicuous symbol/marking, for windows), and that instructions are posted at each such door or at or near each such rescue access window.

Marking of Exit Doors

- Doors must be lighted or conspicuously and legibly marked with **luminescent** material on the **inside** of the car.
- There must be clear and understandable instructions posted at or near each door exit.

NOTE: If the same door is also intended for emergency **access**, the door must be marked with **retroreflective** material on the **outside** of the car, with clear and understandable instructions posted at each such door.

Related Passenger Train Emergency Systems Requirements in Part 238

While Part 239 requires railroads to have a plan for evacuating passengers in an emergency situation, the requirements to have passenger cars equipped with passenger train emergency systems (*e.g.*, emergency communication, emergency egress, and rescue access) that would assist in such an evacuation are contained in Part 238. Part 238 was added by the Passenger Equipment Safety Standards final rule on May 12, 1999 (64 FR 25540), and was amended on February 1, 2008 (73 FR 6370), by revising an existing provision and adding new provisions relating to passenger train emergency systems.

Emergency Window Exits

In accordance with § 238.113:

- Four emergency window exits are required on **each single-level passenger car** and **each main level in a multi-level passenger car**.

  - One exit shall be located in each side of each end (half) of the car, in a staggered configuration *where practical*.
  - *See* Figures 1, 1b, and 1c to Subpart B of Part 238 for examples depicting the location and staggering of emergency window exits on a single-level passenger car.
- Two emergency window exits are required in each seating area of an **intermediate level of a multi-level passenger car**, one on each side. The intent is to locate these windows in such a manner that passengers would be able to exit from each passenger compartment without requiring that they first go to another level of a car or through an interior door.
  - *See* Figures 2, 2a, and 2b to Subpart B of Part 238 for examples depicting the emergency window exit requirements for intermediate level seating areas of a multi-level passenger car.
- Note: the same window may function as both an emergency window exit and a rescue access window. Other types of flexibility are also proposed to avoid or minimize redesign and retrofit costs while still addressing FRA's safety concerns.
- Each exit shall be designed to permit **rapid and easy** removal from the inside of the car **without requiring the use of a tool or other implement**.
- Each exit shall have an **unobstructed** opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. There are exceptions for windows located in exterior side doors (re: the orientation of the dimensions) and for **older** existing equipment (*see* dates, which are different for rescue access windows).
- Each exit must be conspicuously and legibly marked with **luminescent** material on the **inside** of each car.
  - Note: The American Public Transportation Association (APTA) standard for emergency signage requires emergency window locator signs, which must be luminescent.
- Legible and understandable operating instructions, **including instructions for removing the window**, must be at or near each window exit.
  - If a combination of fixtures, such as headrests and luggage racks, as well as large and heavy windows, can create a situation where the most effective and efficient method for removing a window is not immediately apparent, the additional instructions (in written or pictorial format) must take this into account.

Rescue Access Windows

In accordance with § 238.114:

- Two rescue access windows are required on **each single-level passenger car** and **each main level of a multi-level passenger car**, one on each side.
  - One rescue access window shall be located in each side of the car, entirely within 15 feet of the car's centerline (for most cars).

  - The principal reason for requiring only two windows for rescue access (versus four as is required for emergency exit) is that rescue access windows are the third means of egress in the overall emergency evacuation approach, whereas door exits serve as the first (preferred) means of egress and emergency window exits are the second.
  - *See* Figures 1a, 1b, and 1c to Subpart B of Part 238 for examples depicting the location of rescue access windows on a single-level passenger car.
- Two rescue access windows are required in each seating area of an **intermediate level of a multi-level passenger car**, one on each side.
  - The intent is to locate these windows in such a manner that emergency responders would be able to gain direct access to each passenger compartment without requiring that they first go to another level of a car or through an interior door.
  - *See* Figures 2, 2a, and 2b to Subpart B of Part 238 for examples depicting the rescue access window requirements for intermediate level seating areas of a multi-level passenger car.
- Note: the same window may function as both an emergency window exit and a rescue access window. Other types of flexibility are also proposed to avoid or minimize redesign and retrofit costs while still addressing FRA's safety concerns.
- Each rescue access window shall be capable of being removed without undue delay **by an emergency responder** by using either a provided external mechanism or tools or implements commonly available to the responder (e.g., a screwdriver).
- Each rescue access window shall have an **unobstructed** opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. There are exceptions for windows located in exterior side doors (regarding the orientation of the dimensions) and for **all** existing equipment (*see* dates, which are different for emergency window exits).
- Each rescue access window must be marked with **retroreflective** material on the **outside** of each car. Such windows must also be marked with a unique and easily recognizable symbol, sign, or other conspicuous marking.
- Legible and understandable window-access instructions, **including instructions for removing the window**, shall be posted at or near each such window.

EMERGENCY EXIT
EMERGENCY EXIT

EMERGENCY EXIT
EMERGENCY WINDOW REMOVAL
1
2
EMERGENCY EXIT
PULL HANDLE - REMOVE RUBBER

Emergency Communications: Public Address (PA) and Intercom Systems

In accordance with § 238.121, all passenger cars must have at least a basic PA system by January 1, 2012. The PA system will allow the train crew to keep passengers informed in an emergency situation and provide guidance to all passengers in a timely manner, thereby reducing the likelihood that passengers will take actions that could place them in greater danger. If inspecting a new Tier I passenger car (*see* dates) or any (existing or new) Tier II passenger car, note that the PA system must also include the capability for a train crewmember to communicate with those in the immediate vicinity of train (*e.g.*, persons on the station platform).

Passenger cars that currently do not have PA systems should be retired from service before the new requirement becomes effective.

All new Tier I passenger cars (*see* dates) and all Tier II passenger cars must have intercom systems. The intercom system will enable passengers to quickly communicate in emergency situations with the train crew.

Inspection, Maintenance, and Repair

Pursuant to § 239.107(b), the railroad must:

- Provide scheduled inspection, maintenance, and repair of emergency window and door exits.
- Test a representative sample of emergency window exits on its cars at least once every 180 days to verify proper operation.
- Repair each inoperative emergency window and door exit on a car before returning it to service.

If you need to ensure that a sample of emergency exit windows is tested every 180 days, work with the MP&E inspector in your territory. Together, you can ask for the procedures for any tests that explain a procedure that is designed to replicate a passenger operating the emergency window.

Railroad records of the above repairs shall be maintained for 2 calendar years after the end of the calendar year to which they relate (*see* § 239.107(c)).

Daily Mechanical Inspections of Passenger Equipment/Cars Required by Part 238

Enforcing the regulations regarding §§ 238.303 and 238.305 (regarding exterior and interior calendar day mechanical inspections) falls outside the OP scope. Therefore, OP inspectors should include MP&E inspectors when communicating their concerns to the railroads. Nonetheless, OP inspectors should enforce obvious line-of-sight defects such as defective or missing markings, signage, or instructions, or if a defective door is encountered with no notice posted.

Exterior Calendar Day Mechanical Inspection:

- Section 238.303(e)(18) requires that all rescue-access-related **exterior** markings, signage, and instructions required by § 238.114 (rescue access windows) and § 239.107(a)(2) (door exits intended for emergency access) be in place and, as applicable, conspicuous, and/or legible.
  - It also sets forth certain conditions for continued use of the cars (e.g., until the fourth exterior calendar day mechanical inspection or next periodic inspection under § 238.307, depending on the defect) with defective markings, signage, or instructions. This allows railroads to schedule repairs at locations where they can be performed safely and in a manner that would avoid disrupting normal operations.
  - Records concerning the above defective conditions must be retained until all necessary repairs are completed (*see* § 238.303(e)(18)(iv)).
  - Records of each exterior calendar day mechanical inspection shall be maintained at the place where the inspection is conducted or at one central location and retained for at least 92 days (*see* § 238.303(g)).

Interior Calendar Day Mechanical Inspection:

- Section 238.305(c) identifies the various components that are required to be inspected as part of the interior calendar day mechanical inspection.
  - With a few exceptions, all noncomplying conditions under this section must be repaired at the time of the daily interior inspection or the equipment is required to be locked out and empty in order to be placed or remain in passenger service.
- Section 238.305(c)(10) requires that all end doors and side doors operate safely and as intended.
  - A car with noncompliant end doors and side doors may continue in service pursuant to paragraph (d) of this section if at least one operative and accessible door is available on each side of the car, the train crew is provided written notice, and a notice is prominently displayed directly on the defective door indicating that the door is defective.
- Section 238.305(c)(12) requires that, on passenger cars so equipped, PA and intercom systems are operative and function as intended.
  - Noncompliant equipment may remain in service until the fourth (or eighth, if long-distance intercity train service) interior calendar day mechanical inspection or next periodic inspection under § 238.307, whichever comes first, provided that the train crew is given written notification of the defect and a record of the time and date the defect was discovered is maintained.
- Section 238.305(c)(7) requires that all safety-related signage is in place and legible.

- Safety-related signage includes markings and instructions required by Parts 238 and 239. *See* discussion in the February 1, 2008 final rule at 73 FR 6394 (indicating that the Task Force understood this and clarification was unnecessary).

§ 239.103 – Passenger Train Emergency Simulations

Each railroad is required to conduct full-scale emergency simulations at least once a year or once every 2 years (depending on the type and/or route miles of passenger service provided), in order to determine its capability to execute its E-Prep Plan in an emergency situation.

Attend a full-scale simulated exercise. Attending emergency simulations will increase familiarization and provide oversight to the railroad's compliance with their current training program regarding content and hands-on training.

Frequency of Simulations

- Commuter or short-haul with less than150 route miles and less than 200 million passenger-miles per year.
  - One every 2 years.
- Commuter or short-haul with more than150 route miles and more than 200 million passenger-miles per year.
  - One every year.
- Intercity passenger service.
  - One every year.

NOTE: The activation of a railroad's E-Prep Plan during an actual emergency situation may not be counted towards the minimum number of simulations required; however, if the activation was in response to a "major emergency" (*see* § 239.103(d)), a railroad may postpone a scheduled full-scale simulation for up to 180 calendar days in order to evaluate the effectiveness of its plan during that emergency and, as appropriate, modify the re-scheduled simulation

§ 239.105 – Debriefing and Critique

Oversight of a Debriefing and Critique

The inspector's oversight of passenger service should include observing a debriefing critique session as required after a qualifying emergency situation or full-scale simulation involving:

- Passenger or employee fatality.
- On-train passenger or crewmember injury requiring hospital admission (not necessarily FRA reportable).
- Evacuation of a passenger train.
- Others as noted in the regulation.

When monitoring or reviewing each emergency situation or full scale simulation during a debriefing and critique:

- Ensure that all five issues required to be addressed by paragraph (c) (e.g., whether the on-board communications equipment functioned properly, etc.) were in fact addressed.
- Determine the effectiveness of the E-Prep Plan.
- Discuss the railroad's requirement to improve and/or amend the plan as a result of the emergency or simulation.

Exceptions to Debriefing and Critique

- **Evacuation of a train.** Detraining passengers at a station does not require a debriefing and critique. All other passenger evacuations require a debriefing and critique meeting, which may be accomplished by having a "morning call" discussion about the evacuation, so long as all 5 issues are discussed.

- **Certain collisions.** No debriefing and critique is required when the incident is a collision between passenger equipment and any of the following:
  - Pedestrians.
  - Trespassers.
  - Motor vehicles at a highway-rail grade crossing.

§ 239.107 – Emergency Exits

OP inspectors should consult with MP&E inspectors regarding noted defects discovered during inspections of emergency exits. Enforcing the regulations regarding § 238.307(c)(4), Testing, Inspection and Repair, falls outside the OP scope. Therefore, OP inspectors should include MP&E inspectors when communicating their concerns to the railroads. Nonetheless, OP inspectors should enforce obvious line-of-sight defects such as window gasket seals, missing labeling, or decals.

NOTE: The marking requirements for door exits intended for emergency egress or access are discussed extensively in the section titled "Emergency Exit and Rescue Access Marking Requirements."

Items of Clarification in Final Rule on Passenger Train Emergency Preparedness; Title 49, Code of Federal Regulations, Parts 223 and 239 (Formally Technical Bulletin OP-04-18)

The following guidance is being issued in response to three issues and has been copied to the National Railroad Passenger Corporation, the Association of American Railroads on behalf of its member freight host railroads, and the American Public Transportation Association on behalf of its member commuter railroads. The three issues, with accompanying discussions and responses, are as follows:

Issue 1: Does the requirement contained in 49 CFR Section 239.105, that a railroad conduct a debriefing and critique session after each passenger train emergency situation or full-scale simulation, apply in a situation involving the illness of a passenger: (1) when it is determined to be necessary to remove a passenger from a train, (2) in the event the passenger is offered but declines medical attention and removal from the train, and (3) when a passenger is provided on-board assistance, e.g., first aid, but declines the opportunity to be removed and transported to a hospital for further observation?

Discussion: The purpose of the new regulation is to reduce the magnitude and severity of casualties in railroad operations by ensuring that railroads involved in passenger train operations can effectively and efficiently manage passenger train emergencies. Section 239.7, Definitions, defines "emergency or emergency situation" as meaning "an unexpected event related to the operation of a passenger train service involving a significant threat to the safety or health of one of more persons requiring immediate action, including…(3) A passenger or employee fatality, or a serious illness or injury to one or more passengers…." Section 239.105, Debriefing, states that "… each railroad operating passenger train service shall conduct a debriefing and critique session after each passenger train emergency situation or full scale simulation to determine the effectiveness of its emergency preparedness plan, and shall improve or amend its plan, or both, as appropriate, in accordance with the information developed."

As FRA reviews the implementation of this new final rule, we will learn a great deal about the most appropriate ways to handle passenger train emergency situations. For the most part, the first responder to a passenger in need of assistance will be a member of the train crew, or possibly another passenger. Generally, train crewmembers have little medical training, and a limited number of passengers may have a certain degree of medical knowledge. The responding member of the train crew needs to be alert to make the initial emergency evaluation and then assist in the determination of the acuteness of the emergency and appropriate options. Many of these determinations may be shaped with the assistance of an on-board passenger who is a physician, nurse, or other medically or emergency trained person. As appropriate, an announcement requesting the help of such individuals should be initiated by a member of the train crew.

Experience has shown that significant numbers of passengers, regardless of formal medical training, are willing to assist crewmembers and fellow passengers during emergency situations. A passenger in distress provides various emergency indicators, e.g, shortness of breath, seizures, or unconsciousness. Each member of a train crew should be aware of the indicators, what they

mean, the proper questions to ask, and understand what suitable emergency actions must be taken.

For example, certain situations may require assistance involving the administering of heart medication at the request of a passenger. Other situations may suggest the need to call for on-board medically trained personnel for help. Still other situations may require a call from the train crew to a local emergency responder requesting that paramedics meet the train and provide the next level of response. The American Red Cross (ARC) provides both basic and more intense courses designed to help people respond to first alert and emergency response situations. The ARC also conducts more comprehensive training to prepare emergency responders for complex emergency situations. In situations of emergency circumstances involving passengers, it is important to know the health-threatening indicators and the appropriate questions to ask.

In situations where a quick decision must be made to call an ambulance/emergency responder, the action must occur in an accurate and timely fashion. The planning to familiarize members of train crews should be a key focus and an integral element of the training needs of crewmembers, as part of the "Employee training and qualification" planning element of the passenger train emergency preparedness program. See 49 CFR Section 239.101(a)(2).

Railroads needs to employ partnership approaches in the development of first alert/response informative signals in order to determine the appropriate actions to take in passenger emergency situations. Prudent railroad actions suggest: providing for reporting of all passenger emergency situations; awareness of passenger distress signals in terms of observation and action determinations; and progress in the crafting of information training. More so than ever before, passengers look to railroads to provide for their complete safety by initiating safeguarding practices and policies that include passenger emergency situations. A missed opportunity occurs when passenger railroads fail to fully provide for the needs of their customers.

Response: In passenger train emergency situations, as a minimum, it is important that railroads provide a debriefing report about emergency situations and actions taken, thereby enabling a subsequent review by railroad staff and FRA. This report should be done consistent with the requirements set forth in 49 CFR Section 239.105(c). When done in this manner, this action fulfills the debriefing and critique requirement of the regulations in the requisite situations. Further, the review of these situations enhances the opportunities for making continued improvements in passenger train emergency preparedness.

However, in more critical emergencies, the debriefing and critique requirement can only be fully satisfied by the preparation of a debriefing and critique report that the railroad prepares after all the necessary parties participate in an appropriate followup critique session to review actions taken after this serious emergency or full-scale simulation. Railroads need to know these crucial details in order to ensure the promotion of continued improvement in the planning process.

Suggested Debriefing Reports

Example A.

In response to a request from his supervisor for a debriefing report about an emergency situation that took place on Train 234 West the week before, a conductor writes (in a report dated October 12, 1998) that: At about 1:00 p.m. on October 5, 1998, Mr. Smith, a passenger on Train 234 West, informed an adjacent passenger that be believed he was showing signs of a heart attack. This incident occurred near Milepost 13. The adjacent passenger then contacted me to convey this information about a possible medical emergency. I asked Mr. Smith if he wanted me to announce his plight to the engineer and then request assistance from a medically-trained passenger (if one was on board) or arrange for him to be removed from the train for treatment. He informed me that his doctor had prescribed medication for such circumstances, and asked if I would get one from his pocket and administer it to him. I responded to his request. After he took the medication, he appeared to become relaxed. I offered to have an emergency response team meet the train to take him to the hospital, but he declined the offer.

NOTE: FRA noted in the final rule that the intended purpose of a debriefing and critique session is to review with railroad personnel the reports of evaluators, to present comments or observations from other persons, and to assess the need for any remedial action, either to correct deficiencies or to generally improve the effectiveness of the emergency operations and procedures. However, FRA primarily expects a railroad to conduct a **formal** evaluation process as part of the debriefing and critique session only when the emergency situation or full-scale simulation is sufficiently unique in character or of educational value to the railroad, so as to warrant the energy and time commitment. Accordingly, since in Example A the nature of the passenger's illness and the emergency response by the conductor is fairly routine in nature, FRA would not expect an elaborate session. Since the conductor routinely prepares a written synopsis for his supervisor of the passenger's medical event (and provided that the requirements of 49 CFR Section 239.105(d) are fully met), an in-person meeting or debriefing and critique session would merely be duplicative of the conductor's report. Moreover, because the nature of the passenger's emergency was rather routine, it is doubtful that an elaborate session would provide any better insight for the railroad on how to improve or amend its emergency preparedness plan than does the short report.

Example B.

In response to a request from his supervisor for a debriefing report about an emergency situation that took place on Train 234 West the week before, a conductor writes (in a report dated October 12, 1998) that:

At about 1:00 p.m. on October 5, 1998, Mr. Smith, a passenger on Train 234 West, appeared to be sleeping while I was collecting tickets. However, after nudging him, it became clear to me that he had lost consciousness. I immediately initiated an emergency call to the engineer and then searched for an on-board physician, nurse, or medically-trained person to assist in Mr. Smith's treatment and evaluation. Fortunately, both a physician and nurse responded. Cardio-pulmonary resuscitation treatment was administered and the passenger quickly responded. The

physician recommended that the passenger be taken off the train and sent to the nearest hospital for observation. The train dispatcher (who had been contacted by the engineer at approximately 1:03 p.m.) made a call for an emergency response team to meet the train at the next station. Five minutes later, an emergency response team met the train as requested, removed the passenger, was given information about the medical situation, and proceeded to take the passenger to the hospital.

NOTE: In Example B, since Mr. Smith's loss of consciousness constituted an unexpected event relating to the operation of passenger train service, and involved a significant threat to his health that required immediate action, his medical crisis constituted and "emergency situation" for purposes of 49 CFR Section 239.105(a). See 49 CFR Section 239.7. Moreover, Mr. Smith's illness did not fall under one of the exceptions to the debriefing and critique session requirement set forth at 49 CFR Section 239.105(b). Accordingly, the railroad must conduct a debriefing and critique session, which in this particular scenario, was accomplished by means of the conductor's report to his supervisor. The issue of whether the hospital actually chose to admit Mr. Smith as a patient is irrelevant.

The question arose as to whether a debriefing and critique session is required if a passenger is injured or becomes ill while on a train, is removed by emergency responders and taken to a hospital, but is treated and released in the emergency room.

Apparently, most railroads only arrange for emergency assistance for an injured or ill passenger, but do not later contact the hospital to determine whether the person's illness or injury required admission to the hospital. In accordance with 49 CFR Section 239.105, the question of whether an individual was treated in the emergency room or in fact admitted as a patient is only relevant when a crewmember or passenger is transported to a hospital after a collision between passenger railroad rolling stock and a pedestrian, trespasser, or a motor vehicle or other highway conveyance at a highway-rail grade crossing. If the transportation to a hospital occurs for any other reason, regardless of whether the crewmember or railroad passenger is treated and released in the emergency room, then a debriefing and critique session must be conducted. However, the need for emergency room information becomes irrelevant.

If an individual is sent to the hospital in accordance with the exception to the debriefing and critique requirement set forth in 49 CFR Section 239.105(b), and the railroad cannot determine whether admission to the hospital occurred, there are two available options. The first option is to assume that a hospital admission occurred and to conduct a debriefing and critique session regardless of whether it would be actually required under the regulations. The second option is to make a good faith determination at the time that the passenger is removed from the train as to whether hospitalization was likely and to either perform or omit the debriefing and critique session based upon the information that was available at that time. Accordingly, if at the time of removal from a train an injured passenger appeared to need only stitches, but in fact was later hospitalized for internal injuries, a railroad would not be in violation of 49 CFR Section 239.105 for failing to conduct a debriefing and critique session. However, if based upon the nature of a passenger's injuries after the highway-rail grade crossing, e.g., the passenger suffers a severed limb, FRA would expect the railroad to conduct a debriefing and critique session even if it had not verified the passenger's admission to a hospital.

Issue 2: In the case of joint operations, which railroad has the responsibility to conduct the debriefing and critique session required under the provisions of 49 CFR Section 239.105?

Discussion: There are two distinct issues raised by this question. In the case of an **intercity passenger train,** where it is operated over the territory of a host railroad(s), the host railroad(s) involved in the joint operations participates in the development of the emergency preparedness plan. Presumably, in the portion of the emergency preparedness plan developed by the **intercity passenger railroad** to satisfy the requirements of 49 CFR Section 239.101(a)(3) concerning joint operations, the items of responsibility will be clearly stated. As noted in that subsection, all of the railroads involved in hosting, providing, or operating a passenger train service operation can provide for an assignment of responsibility for compliance among those railroads, but the assigning railroad shall not be relieved of compliance responsibility. Accordingly, in the case of intercity passenger operations, the **intercity passenger railroad** has the ultimate responsibility to conduct the debriefing and critique session.

In the case of a **commuter railroad**, where one or two contract operators are involved (and perhaps a host railroad as well), again it becomes necessary for each entity to participate in the development of the one emergency preparedness plan submitted by the **commuter railroad.**

In this way, whether in joint operations or supported through a contract operator scenario, all of the participants become responsible partners, and their roles and responsibilities need to be designated. However, ultimate responsibility for compliance rests with the **commuter railroad.** When appropriate, FRA will intervene to assist any entity that is having difficulty crafting a joint emergency preparedness plan, and help facilitate a solution.

Response: Simply put, each passenger railroad required to submit an emergency preparedness plan is expected to work with the other railroads involved in a joint operation to address matters of responsibility in connection with responsibility for conducting/preparing a debriefing and critique.

Issue 3: Since the regulation requires that all doors that the railroad intends to be used for emergency egress be clearly marked (and therefore they have to function as intended), then locking of an emergency door exit would be viewed as a violation of the regulation. See 49 CFR Section 239.107(a)(1).

Discussion: Several passenger railroads have a practice of locking the interior car end doors on the front and rear cars of trains for several important safety reasons. The first reason is to prevent access to the control compartment of multiple unit equipment and cab cars on push-pull equipment. The second reason is to prevent passengers from inadvertently walking out the end door onto the track structure, particularly when the train is in motion. A third reason is for security purposes, so that fugitives cannot escape out the end doors, thereby eluding police and further endangering the safe operation of trains.

Response: FRA agrees with the above safety rationale, and interior car end doors may continue to be locked, provided that appropriate signage indicates that the particular door will not be available for emergency egress if it is the first or last car of the train. For example, “Emergency

Exit Except When at End of Train." In addition, other interior car end doors may be locked to restrict access to another part of the train, such as other cars that are not needed for a particular trip, provided that they do not restrict egress out of a car that is occupied. Subpart C – Review, Approval, and Retention of Emergency Preparedness Plans.

§ 239.201 – Emergency Preparedness Plan; Filing and Approval

As discussed in the section titled "Compliance with Passenger Train Emergency Preparedness Plan," inspectors must be aware that this plan should **already have been submitted** to FRA headquarters and **approved before implementation**. The railroad should be able to provide the FRA approval letter to the field OP inspector. Therefore, unless you are dealing with a new start railroad, you will primarily be checking to make sure that any amendments were properly filed.

When railroads file amendments to their plan, please note the following:

- Any amendment to their plan must be filed with the Associate Administrator for Railroad Safety/Chief Safety Officer **before** the railroad begins implementing the amendments.
  - These amendments must be submitted at least 60 days prior to the date that the railroad intends for the amendments to take effect, per § 239.201(a).
- Any amendment to their plan must be reviewed within 45 days.
- The railroad must be notified in writing by FRA of any exceptions to their plan.
- Any deficiencies to their plan must then be corrected and FRA must be notified before implementation, per § 239.201(a)(3)(ii).

§ 239.203 – Retention of E-Prep Plan

Each railroad (including each host railroad that jointly adopts the plan) shall maintain one copy of the plan required by § 239.201 **and** one copy of **each subsequent amendment** to that plan at the system and division headquarters. The plan and all amendments to the plan must be made available to FRA and State inspectors. Railroads should have a copy of the E-Prep Plan approval letter from FRA; inspectors should ask to see the letter.

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

§ 239.301 – Operational (Efficiency) Tests

Each railroad is required to periodically conduct operational (efficiency) tests of its on-board and control center personnel. The railroad must maintain a written record of each operational test that includes:

- The date, time, place, and result of each test.
- The name of the officer who administered the test, and the name of each employee tested.
- The relevant facts relied on for the evaluation.

Efficiency test records must be retained in two locations (i.e., at the system headquarters of the railroad **and** at the division headquarters for the division where the test was conducted) for 1 calendar year after the end of the year to which the test relates efficiency testing compliance.

Inspectors should review the railroad's operational (efficiency) testing of on-board and control center employees to determine the extent of compliance with its current E-Prep Plan on file. It should be noted that many railroads combine the operational efficiency testing required by this section with the written program of operational tests and inspections required by § 217.9(c). If that is the case, ask the railroad for a copy of its Part 217 operational testing program and have them identify all operational tests designed to evaluate on-board and control center employees' understanding of their assigned responsibilities under the current E-Prep Plan. Otherwise, ask for a copy of the railroad's Part 239 operational tests. In either case, examine the instructions provided to supervisors to determine the frequency of the testing. Audit a sample of the Part 217 or Part 239 records to determine if the railroad is complying with its plan.

In addition to ensuring that the railroad is conducting the appropriate number of tests in accordance with its plan, ensure that the written records of the tests include all of the information required, as noted above (e.g., the date, time, place, and results of the test).

§ 239.303 – Electronic Recordkeeping

Railroads may use electronic recordkeeping, provided that the railroad:

- Limits accessibility and control to the database and identifies individuals who have access.
- Provides a terminal (at the system headquarters **and** at each division headquarters) that is equipped to retrieve and produce information in a usable format for review by FRA and State inspectors (who must be granted immediate access to these records and printouts upon request).
- Has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the records.

Important Compliance Dates for Passenger Train Emergency Systems

Compliance Date: **Requirement applies to—**	**Requirement:**
ALL (existing and new) **Tier I and Tier II equipment** on April 1, 2008	• **Rescue access windows:** Number, location, and ease of operability, except for certain single-level cars. • **Emergency window exit instructions** taking into account any fixtures that may hinder removal. • **Back-up power** for PA and intercom systems, if so equipped.[1] • **Roof access** markings and instructions, if so equipped.[2] • **Daily inspection** of rescue access markings; train crew notification of inoperative doors; PA and intercom systems, if so equipped. • **Periodic inspection** of roof access markings, if so equipped.
ALL Tier I and Tier II Equipment on August 1, 2009	• Emergency window exits in **intermediate levels** of multi-level cars. • **Rescue access windows:** Number and location for single-level cars equipped with certain door safety features.
ALL Tier I and Tier II Equipment on April 1, 2010	• **Intercom markings and instructions**, if so equipped.[1]
Existing Tier I Equipment (opposite of "new," therefore, ordered prior to April 1, 2008, **and** placed in service for the first time prior to April 1, 2010) on January 1, 2012	• **Public address (PA) system** for train crew to communicate with at least passengers (as opposed to passengers **and** those in immediate vicinity of train).[1]
New Tier I Equipment ordered on or after April 1, 2008, *or* placed in service for the first time on or after April 1, 2010; and **ALL Tier II Equipment** on April 1, 2008	• **Intercom system**.[1] • **PA system** including capability to communicate with those in immediate vicinity of train.
Newest Tier I and Tier II Equipment ordered on or after April 1, 2009, or placed in service for the first time on or after April 1, 2011.	• Dimensions for **rescue access** windows. • **Emergency roof access**.[2]

[1] Similar requirements had been in effect since July 12, 1999, for Tier II equipment in former § 238.437, per the May 12, 1999, Passenger Equipment Safety Standards (PESS) final rule, now addressed in § 238.121.
[2] For Tier II equipment applicability (as similar Tier II requirements had been in effect since July 12, 1999, per the May 12, 1999, PESS final rule), see § 238.441, as amended by the February 1, 2008, Passenger Train Emergency Systems final rule.

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Chapter 16

PART 240, QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

General Guidance

FRA is not involved in the actual certification process for individual engineers. The final rule establishing minimum qualification standards for locomotive engineers is a certification program, not a licensing program. In summary, the rule requires that railroads have a formal process for evaluating prospective operators of locomotives and determine that they are competent before permitting them to operate a locomotive or train. The rule requires that railroads:

1. Make a series of four determinations about a person's competency.
2. Devise and adhere to an FRA-approved training program for locomotive engineers.
3. Employ standard methods for identifying qualified locomotive engineers and monitoring their performance.

Suspending a certification occurs when the engineer has been notified that the railroad is considering revoking his or her certificate.

Revoking a certification occurs after a hearing or after the engineer signs a waiver. This usually occurs after a suspension.

Qualification and Certification Final Rule

On February 22, 2010, a final rule was issued on 49 CFR Part 240 – Qualification and Certification of Locomotive Engineers; 74 FR 68173 (Dec. 23, 2009). In addition to making minor corrections and updates, the rule made the following substantive changes to Part 240:

- Prohibited a railroad from reclassifying a person's locomotive engineer certificate to that of a more restrictive class of certificate or to a student engineer certificate during the period in which the certification is otherwise valid.

- Required a railroad to indicate in its certification program the types of actions it will take, beyond prohibiting the engineer from operating a locomotive until a test is passed, if a person fails a skills performance test.

- Required a railroad to describe in its certification program the scoring system it will use during a skills performance test administered in accordance with § 240.211, including a description of the skills to be tested and the weight or possible score that each skill will be given.

- Required a railroad to indicate in its certification program the types of actions it will take in the event it finds deficiencies with an engineer's performance during a monitoring ride or evaluation, or an unannounced operating rule efficiency test administered in accordance with the procedures required under § 240.303.

- Clarified that railroads may revoke an engineer's certificate only for conduct specifically identified in § 240.117(e) (also known as the "six cardinal rules").

The final rule also stated that these changes are not material modifications to the program and it will not be necessary for railroads to resubmit their program to FRA for approval. However, railroads are expected to have these changes made in their programs after the effective date.

Inspectors who visit shortline railroads should advise them of the required changes. To simplify the process, offer to provide them the FRA-approved standard shortline engineer certification program that includes the required changes.

Public information about the qualification and certification of locomotive engineers can be found on FRA's Web site at: www.fra.dot.gov.

Subpart A – General

§ 240.3 – Application and responsibility for compliance

Inspector Guidance – Tourist Railroads
For tourist railroads that do not operate over the general railroad system, or those that do not own track that is part of the general railroad system (INSULAR or NON-INSULAR), inspectors should reference the FRA General Manual, specifically the FRA's Exercise of Jurisdiction Decision Tree.

§ 240.7 – Definitions

Locomotive means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual-purpose vehicle operating in accordance with § 240.104(a)(2)):

- With one or more propelling motors designed for moving other equipment.
- With one or more propelling motors designed to carry freight or passenger traffic or both.
- Without propelling motors but with one or more control stands.

Locomotive engineer is any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment, *except*:

- A person who moves a locomotive or group of locomotives within the confines of a **locomotive** repair or servicing area as provided for in §§ 218.5 and 218.29(a)(1).
- A person who moves a **locomotive** or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

Subpart B – Component Elements of the Certification Process

§ 240.103 – Approval of design of individual railroad programs by FRA

Railroads must submit a Part 240 program to FRA for review and approval. All modifications of the Part 240 program must be approved before the railroad can implement the program.

§ 240.104 – Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer

Regarding Part 240, a non-certified employee can manipulate switches and levers in the cab of a locomotive in relation to securement, air brake tests, etc. Part 240 addresses the operation of the locomotive only, and does not address the manipulation of levers and switches while the equipment is standing still. Therefore, any employee manipulating the controls of a standing locomotive does not necessarily need a Part 240 certification, although other regulations may apply.

Locomotives operating roadway maintenance equipment
Not all remote controlled locomotives (RCL) or locomotives operated outside a mechanical facility require a certified locomotive engineer. The regulations noted above exempt certain functions, such as the one in the picture noted below:

The train in the photograph above was being operated via an RCL on the main track near Lincoln, Nebraska. This train's backhoe operator was picking up railroad ties along the tracks. FRA considers this roadway maintenance equipment. Therefore, Part 240 regulations did not require the remote control operator (RCO) to be certified.

§ 240.105 – Designated supervisors of locomotive engineers – contractors

Numerous inquiries have been made regarding the use of outside contractors for certification purposes and for the temporary use of third party engineers, such as during a work stoppage. The use of service continuation engineers during a recent major labor dispute has raised many questions.

Policy: Section 5 of Appendix B in the regulations makes provisions for training companies to exist, and for railroads to use those companies. Actual certification must be done by the railroad. Use of an outside contractor and how that contractor will be used must be described in the railroad's plan submission.

Contractors who offer railroads temporary engineers, much like a "temp agency" offers temporary employees in other fields of work, are certainly an acceptable business under Part 240.

The problems raised by outside contractors involve the fact that only a railroad can qualify a locomotive engineer under Part 240. However, a contractor can be useful to a railroad by offering persons with experience, testing those persons for knowledge of certain required criteria, and completing some of the required background checks. For example, a contractor may check prior safety conduct as a motor vehicle operator, operating rules compliance data, and data on substance abuse disorders and alcohol/drug rules compliance. In addition, contractors may ensure compliance with the criteria for vision and hearing acuity, initial and continuing education, testing knowledge, examining skill performance, and monitoring operational performance. Railroads must continue to meet the maintenance records' requirements imposed by the regulation. While railroads are free to work with these contractors, the railroads remain liable for compliance with the regulation.

One or more of these temporary engineers employed by the certification service could be certified by multiple railroads and carry multiple certificates. Each certificate would have to be issued by the railroad, not by the contractor, a non-railroad entity. For each certificate to remain valid, the certificate holder would have to remain current on the issuing railroad, i.e., by an annual check ride and operational test.

Under ordinary circumstances, a railroad would require a minimum of two certified locomotive engineers. Each locomotive engineer could be used to perform monitoring and check rides on the other. However, by using a contractor, a shortline could achieve compliance without employing two certified locomotive engineers. For example, a shortline railroad with one certified engineer could contract to a certification service. The certification service could conduct all of the tests and checks for the railroad's engineer as well as for the certification service's employee. The certification service's employee could conduct the required annual check ride for the railroad's engineer as long as the railroad's engineer did the same for the certification service employee. Railroads must continue to meet the maintenance records requirements imposed by the regulation.

§ 240.107 – Criteria for designation of classes of service

A railroad may issue certificates for any or all of the following classes of service:

- Train service engineers
- Locomotive service engineers
- Remote control locomotive engineers
- Student engineers

Each railroad is authorized to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified in this section, provided those conditions or restrictions are not inconsistent with this section.

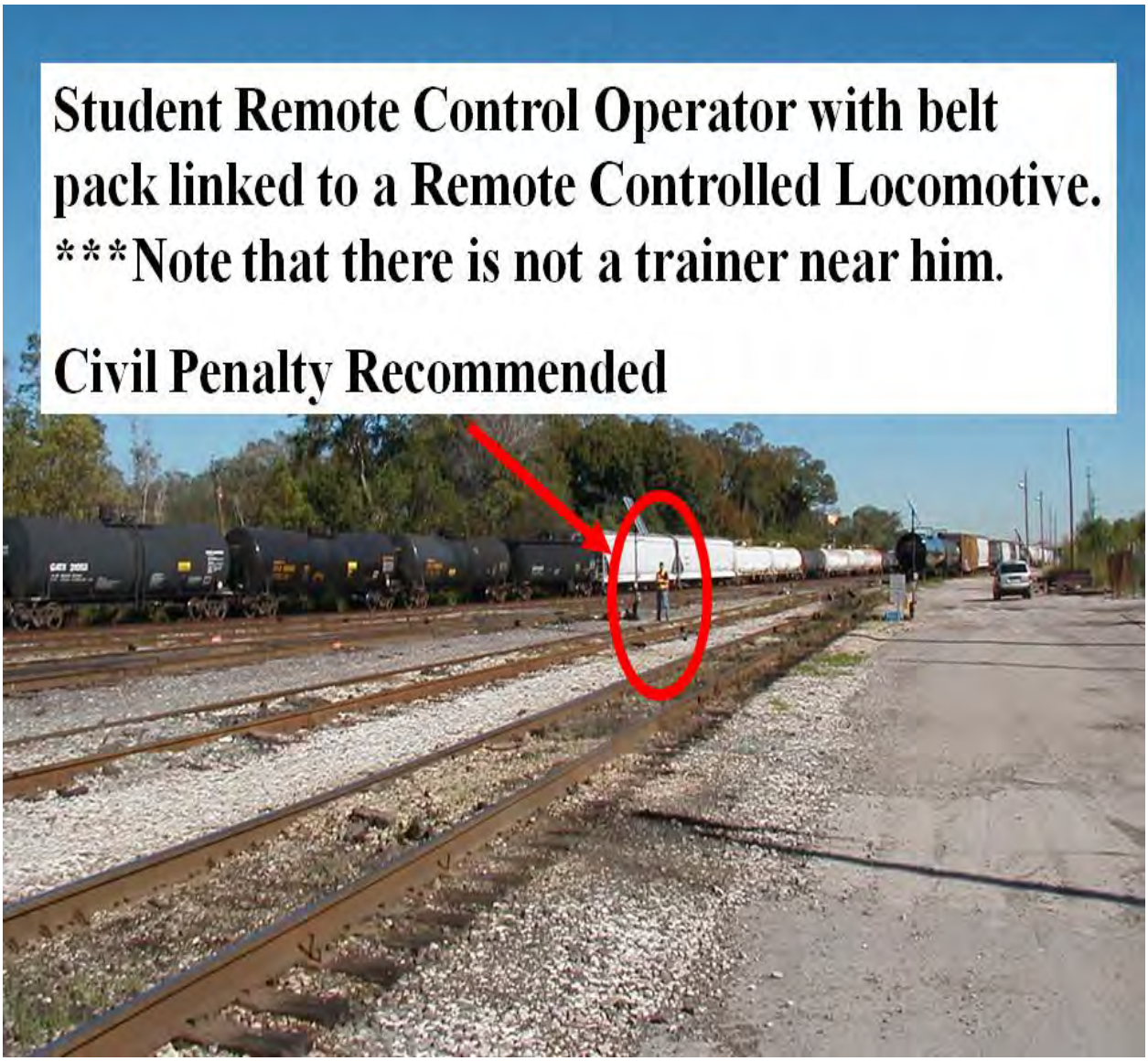
Student Engineers

Student engineers, whether operating a conventional locomotive from the cab or operating an RCL from the ground, must have a qualified locomotive engineer trainer in a position to take immediate action to prevent the student engineer from making dangerous errors. Consequently, an RCO acting as an instructor to a student RCO during switching operations must be in a position to take immediate action when training a new locomotive engineer. If an inspector finds a student RCO operating an RCL without the qualified RCO instructor near enough to the student to take immediate action to prevent a potentially dangerous situation or a rule violation, the inspector should take exception to that RCO instructor.

The requirement of a locomotive engineer trainer to be in a position to take immediate action during the operation of the locomotive includes situations such as:

1. In a conventional cab of a locomotive when the student locomotive engineer is operating the locomotive and the instructor locomotive engineer is in the restroom.
2. In a conventional cab of a locomotive when the student locomotive engineer is operating the locomotive and the instructor locomotive engineer does not have situational awareness, (e.g., reading, sleeping, etc.)
3. In RCL operations when the student RCO is operating the RCL while the instructor is riding on the side of a railroad car and the student is riding on the other side of the railroad car.
4. In RCL operations when the student RCO is operating the RCL while the instructor is a distance away performing other switching duties or other unrelated tasks, that place the instructor in a position where he or she cannot take immediate action in an emergency.

See example photograph below.



FRA policy allowing more than one class of service on the same certificate
FRA did not intend for railroads to issue two certification documents when engineers are certified in more than one class of service. An endorsement to the locomotive servicing certificate or its supplementary documents will be sufficient to reflect the person's status as a student train service engineer. The intent of the provision is met when the locomotive servicing engineer, with the documentation described, functions as student and operates under the immediate supervision of an instructor engineer.

A second set of interpretive questions was generated by the desire of some railroads to certify a person as a train service engineer but then impose significant limits or constraints on the operational authority of that person. Section 240.107 permits railroads to take such action and can be employed by them to address issues such as using persons who have sufficient skills to perform in terminal or yard service but lack the knowledge or skill to operate trains beyond

terminal areas. Railroads that elect to follow this approach will, of course, need to structure their implementation program submissions to reflect any differences in the training and testing of these engineers that would flow from their more limited operating responsibilities.

Locomotive movers working inside a designated mechanical facility
The employees moving locomotives inside a mechanical facility are usually NOT required to have an engineer certification. They **may** be covered by other regulations enforced by OP, such as hours of service, Part 218, etc. There are two exceptions permitted by the regulation that indicate when locomotive engineer certification is NOT required:

1. A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or service area as provided for in §§ 218.5(f) and 218.29(a)(1).

   Guidance: Inspectors should ensure the area meets all of the requirements as stated in §§ 218.5(f) and 218.29 (a)(1).

2. A person who moves a locomotive or group of locomotives for distances of less than 100 feet when this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

§ 240.111 – Individual's responsibility to furnish data on prior safety conduct as motor vehicle operator

FRA has received questions from rail labor and management regarding the requirement that an individual seeking engineer certification must furnish data on prior safety conduct as a motor vehicle operator, pursuant to 49 CFR Part 240. All references to provisions of Part 240 are to provisions of Part 240 as amended to date.

The General Requirements in Section 240.111, Individual's Duty to Furnish Data on Prior Safety Conduct as Motor Vehicle Operator, state that, except in circumstances that are not relevant in this instance, each person seeking certification or recertification must do the following within 366 days preceding the date of the railroad's decision on certification or recertification: (1) request, in writing, that the chief of the driver's licensing agency that last issued the applicant a driver's 2 license provide a copy of the agency's available information concerning the applicant's driving record to the railroad that is considering such certification or recertification; (2) request, in writing, that the chief of the driver licensing agency of any other State or States that issued or reissued the applicant a driver's license within the preceding 5 years, provide a copy of the available information concerning the applicant's driving record to the railroad that is considering such certification or recertification; and (3) request that the chief of the National Driver Register at the National Highway Traffic Safety Administration perform a search of the National Driver Register database to identify additional information concerning the applicant's driving record and that any resulting information be provided to the railroad considering certification or recertification. See 49 CFR § 240.111 (b)–(d).

Question 1: What must a Mexican citizen who has never held a U.S. driver's license do to fulfill the requirements of § 240.111?

Answer 1: Pursuant to § 240.111(c)(1), a Mexican citizen without a U.S. driver's license record must request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency in the United Mexican States that last issued the applicant a driver's license. Such a person must also request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency of any other jurisdiction, in Mexico or elsewhere, that issued the applicant a driver's license within the preceding 5 years. See § 240.111(c)(2). Such an applicant must also request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 2: What must a Canadian citizen who has never held a U.S. driver's license do to fulfill the requirements of § 240.111?

Answer 2: A Canadian citizen who has never held a U.S. driver's license and who wishes to be certified under Part 240 must request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency in the Canadian Province that last issued the applicant a driver's license. Such an applicant must also request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency of any other jurisdiction, in Canada or elsewhere, that issued the applicant a driver's license within the preceding 5 years. See § 240.111(c)(2). Such an applicant must also request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 3: What must an American citizen who, within the preceding 5 years, has held a driver's license from another country do to fulfill the requirements of § 240.111 ?

Answer 3: In addition to requesting a copy of the required information from the chief of the driver's licensing agency in the United States that last issued the applicant a driver's license, the applicant must also request a copy of the required information from any other jurisdiction that issued him/her a driver's license in the preceding 5 years. The applicant must also request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 4: How must a certified locomotive engineer with a current Canadian or Mexican driver's license, or a person with a current Canadian or Mexican driver's license seeking initial certification under Part 240, comply with the disclosure requirements of § 240.111(h)?

Answer 4: Such a person must disclose any incidents described in §§ 240.115(b)(1) and (2) involving specified convictions or completed State actions by a Canadian or Mexican jurisdiction. Section 240.111(h) requires the person to report to the employing railroad motor vehicle incidents described in §§ 240.115(b)(1) and (2) within 48 hours after "a conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while impaired by alcohol or a controlled substance" (per § 240.115(b)(1); or for "refusal to undergo such testing as is

required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance" (per § 240.115(b)(2)).

FRA is interpreting "State action" to mean action of the jurisdiction that has issued the motor vehicle driver's license. A person with a Canadian driver's license must disclose the above described actions of the Canadian jurisdiction that issued the license, and a person with a Mexican driver's license must disclose the above-described actions of the Mexican jurisdiction that issued the license.

§ 240.117 – Criteria for consideration of operating rules compliance data

General Guidance
The events listed in § 240.117 are intended to hold locomotive engineers accountable for their conduct as engineers. Mandatory revocations for specific railroad operating rules were derived from accident data analysis.

§ 240.117(e) (paraphrased)

A railroad that revokes a locomotive engineer's certificate **s**hall only consider violations of its operating rules and practices that involve:

1. Stop signal violation; excluding hand/radio signals.
2. Train speed 10 mph or more over maximum authorized speed.
3. Restricted speed causes an FRA-reportable accident or injury as required under Part 225 (covered data is exempted).
4. Air brake tests.
5. Main track authority.
6. Tampering.
7. Section 219.101.

Signals and Banners
The preamble to the interim final rule gives guidance to eliminate confusion over whether failure to respond to signals requiring speed reduction has certification consequences under this section. FRA intends this section to apply to both active stop signals (e.g., wayside automatic block or cab signal indications) and passive stop signals (e.g., stop boards, flags or gates).

> ***FRA Policy:*** It is FRA's view that unattended fusees and banners (see Railroad Stop Banners Used in Operational Tests section of this chapter) used in operational tests are the functional equivalent of a flag. Passing an unattended fusee under circumstances that require a stop should be considered a violation of § 240.117(e)(1). This definition does not include hand signals and radio signals.
>
> FRA intended that the individual railroad operating rules and practices would control what devices or methods would be deemed signal indications. FRA did not intend to limit the

term to wayside signals, which are subject to FRA's signal and train control regulations, but the intent was to take an expansive view.

Speeding
An excerpt from the interim final rule states, "This change will eliminate confusion that is predicated on the fact that FRA's locomotive safety regulations permit a variance of 3 to 5 mph between the speed depicted on a locomotive's speed indicator and the unit's actual rate of speed. It will also promote greater uniformity in how railroads respond, for certification purposes, to more limited and inadvertent overspeed incidents ascribable to factors such as variations in topography." Section 240.117(e)(2) states, in part: "A railroad shall only consider violations of its operating rules and practices that involve: Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour."

Restricted Speed
A major source of concern has become the proper application of § 240.117(e)(2) to decertification of engineers for violations of restricted speed or the operational equivalent of restricted speed. Generally, restricted speed rules provide a maximum speed and a "conditional clause," stating that an engineer must be able to stop the train within one-half the range of vision.

> ***FRA Policy:*** Railroads shall consider only those violations of the conditional clause of restricted speed rules, or the operational equivalent thereof, which cause reportable accidents or incidents under Part 225 as instances of failure to adhere to the speed limitations.

Use of Train or Engine Brakes
FRA's regulation was amended only a couple of years after Part 240 was first promulgated to avoid ambiguity. FRA explained that it was "revising the language so that it explicitly provides that only failure to comply with procedures for safe use of train and engine brakes when testing a train's air brakes at initial and intermediate terminals will have certification consequences to those required for achieving compliance with Federal regulations in Part 232. This change will eliminate confusion about which railroad procedures should be viewed as sufficiently safety related to warrant revocation under this provision."

Mandatory Directive
This term is used in Part 240 as it has historically been used in Part 220: "authority for the conduct of a railroad operation." It includes all situations where a segment of main track is occupied without permission or authority in accordance with the railroad's operating rules. It does not include occupying a segment of track contrary to advisory information, such as that from a yardmaster concerning which track to use in a yard.

Authority vs. Permission
The regulation was intended to ensure that the engineer complied with whatever prerequisite was required to operate on a main track, regardless of nomenclature. There is no difference in the risk to safety flowing from the semantics. Further, the engineer's conduct or operational error does not change with the wording. Although there may be differences between authority and

permission in a number of contexts depending on the railroad operating rules in question, they are functionally equivalent for decertification purposes.

§ 240.119 – Criteria for consideration of data on substance abuse disorders and alcohol/drug rules compliance

Coworker Report
FRA fully supports voluntary peer prevention programs such as Operation RedBlock. FRA recognizes that these types of programs provide an excellent means of promoting an alcohol- and drug-free workplace. For example, FRA interprets its regulations to waive the 9-month ineligibility period for a violation of § 219.101 when the violation is revealed through a formal co-worker report and the engineer is under the care of a substance abuse professional (SAP).

A formal co-worker report provides a safe haven for an engineer under the care of a substance abuse professional. However, as pointed out in the preamble to the final rule, FRA believes it is important to have a standard period of revocation for § 219.101 violations that were not revealed through co-worker peer prevention programs.

Drug and alcohol revocation offenses
Drug and alcohol violations that affect a locomotive engineer's certificate can be as follows:

1. Drug and alcohol violations resulting from **Federal** tests ***only.***
2. In § 240.119(b), FRA established a fitness requirement that "[a] person who has an active substance abuse disorder shall not be currently certified as a locomotive engineer." Consequently, a person who has a disorder would be considered "ineligible" to hold a certificate until an employee assistance professional (EAP) determines that the person is safe to operate and other conditions are met. See § 240.119(d). This period of ineligibility is unlike other revocation periods in that there is no set period of revocation. The person is simply ineligible to return to locomotive engineer status until the conditions are met. ***Guidance***: If the railroad terminates the person's employment, another railroad may refer the person to an EAP for evaluation and to meet any other conditions necessary under the regulation.
3. Sections 219.101 and 219.102. ***Guidance***: Although the term "revocation" is not used in the section identifying different periods of "ineligibility" for violations of § 219.101 and § 219.102, FRA has provided written guidance on its Web site that equates the two terms. Thus, a Federal alcohol or drug violation that requires a period of ineligibility will trigger an opportunity for a revocation hearing (unless a valid waiver is signed) under § 240.307.
4. A violation of § 219.101 will require a mandatory 9-month revocation.
5. A violation of § 219.102 will require an evaluation from a qualified substance abuse professional to determine when the engineer can return to work. ***Guidance***: Engineers have the potential to return to work sooner under noncompliance with § 219.102 than § 219.101 because § 219.101 mandates *at least* a 9-month revocation.

Reducing the revocation period
The regulations specifically identify when a locomotive engineer is eligible to have his or her revocation period reduced. It is an option for the railroad and the decision is entirely up to the

railroad's discretion and **NOT** FRA's or the employee's. However, OP inspectors should monitor the railroad's use of this option to ensure the railroad is in compliance and that railroads are consistent in their application of reduced revocation periods.

Inspectors should ensure the following questions have been considered:

- Was the initial period of revocation 1 year or less?
- Was the certification denied or revoked for reasons other than a Federal alcohol or drug violation?
- Was the person evaluated by a designated supervisor of locomotive engineers for the proper safety concerns? Inspectors should determine if the evaluation was for bona fide safety reasons and not for non-safety-related issues such as missing calls, working on rest days, etc.
- Did the person successfully complete any mandatory program of training or retraining prior to returning to work?
- Did the person serve at least one-half of the pertinent period of revocation specified in the regulation?
- Is the railroad using this option for valid reasons?

Certified locomotive engineers working as conductors
The rule addresses a concern over situations in which an engineer is found to have engaged in operational misconduct while serving as a conductor or brakeman. Typically, these events in which a demoted locomotive engineer is working as the conductor will not result in the conductor having his or her locomotive certification revoked. (See § 240.117(c)(3).)

It is not FRA's intent that they be held accountable, for certification purposes, for operational noncompliance incidents when they were not serving as an engineer. In FRA's judgment, there are too many potential instances in which it is difficult for other train crewmembers to effectively intervene to prevent operational misconduct by the person at the controls of the locomotive.

Certified locomotive engineers working as DSLEs, pilots, or instructors
Under § 240.117(c)(2), each railroad is required to revoke the certificate of a Designated Supervisors of Locomotive Engineers (DSLE), pilot, or instructor who fails to take appropriate action to prevent a violation of one of the operating rules or practices described in § 240.117(e). The regulation states that "appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation." Thus, in an audit to determine whether the railroad was correct in determining whether to revoke a DSLE, pilot, or instructor's certificate, FRA should consider if the person made any attempt to warn or prevent the revocable event from occurring. There may also be a question of whether the violation was foreseeable under the particular factual circumstances.

A DSLE will not be held culpable for taking action to prevent a violation when the DSLE is performing operational compliance tests, as doing so would defeat the purpose of such tests.

Leaving the controls of the "operation" of a locomotive
An individual who is at the controls of a moving locomotive is in a position to control the locomotive if the need arises. It does not mean there has to be actual manipulation of a control. Therefore, it is a violation of the rule for a non-certified person to "sit in the seat" and "watch" or "sound the horn" while the engineer is temporarily away, even if no controls are touched. This same rationale applies if nobody is at the controls (for example, if an engineer leaves the seat vacant and leaves the control compartment for any reason while the locomotive is in motion and there is no other certified locomotive engineer to take the engineer's place). FRA considers this a violation. As another example, an engineer may not vacate the seat to use the toilet in the cab nose. This does not prohibit an engineer from exiting the engineer's chair in order to move around the control compartment, but it does require that the engineer remain personally in charge of the operation of the locomotive at all times.

§ 240.121 – Criteria for vision and hearing acuity data

Distant Vision Acuity
If an employee does not meet the requirements of this section, a railroad is allowed to waive the regulation and certify the candidate anyway. FRA allows a railroad's medical officer to determine whether a candidate can safely operate a locomotive or train despite not meeting the threshold.

Corrective Lenses
Appendix F to Part 240 – Medical Standards Guidelines, states:

> (1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of § 240.121 and § 240.207.
>
> …
>
> (5) Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Appendix F to Part 240 provides guidance on the procedures that should be employed in administering the hearing and vision requirements. The guidance found in Appendix F regarding having corrective glasses available when the employee is wearing contact lenses is **not mandatory**. It should not be recorded as a Federal observation or Federal defect.

Reading Glasses
The vision acuity standards **do not** address marking the certificate for the need to wear reading glasses. The vision requirements are limited to addressing distant visual acuity, field of vision, and color blindness issues **only**.

Section 240.223(c) permits the railroads to annotate the certificate with a "reading glasses" restriction, if they desire. They can also put this supplemental information on the certificate under "corrective lenses." If the railroad does this, it should be clearly indicated that they are required for reading purposes only.

Laser Eye Surgery
When an engineer certificate indicates that the employee is required to wear corrective lenses and the inspector witnesses the employee operating the equipment without the required corrective lenses, but the employee insists his or her eyesight has been corrected due to a successful laser eye surgery, the inspector should ensure the safety of the public by immediately contacting the railroad managers and informing them of his or her findings. It will then be the railroad's responsibility to ensure that the employee is in compliance with this regulation.

After this event, the inspector should do a re-inspection to determine the proper enforcement action.

1. Did the employee contact the railroad properly or did the employee fail to contact the railroad to inform them that he or she had surgery and no longer requires corrective lenses as noted on their certificate?
2. Did the railroad fail to correct the certificate in a reasonable amount of time?
3. Are there medical records that support the engineer's determination that his or her eyesight has been corrected to meet the regulatory requirements without corrective lenses?
4. Did the railroad take reasonable efforts to ensure the public was not at risk? If the public was at risk at any time, what exactly was the risk?

Inspectors are required to follow up on these concerns and document their efforts on their inspection reports until compliance is obtained. Inspectors should use the proper re-inspection source codes. These issues should generally be treated as deficiencies unless the employee clearly notified the railroad that their eyesight had been corrected and the railroad had ample time to correct the certificate. If the railroad did not take timely action to correct the certificate, a recommended civil penalty should then be considered.

§ 240.123 – Criteria for initial and continuing education

Training Program
Inspectors should monitor training in the field and in the classroom to ensure the railroad is complying with its training program currently on file. If the railroad is not providing the training to the field as stated in their Part 240 program, the inspector should address this concern after first discussing it with his or her regional specialist.

An inspector who has an issue with a railroad's Part 240 written program submitted to FRA should NOT take deficiencies against the program until discussing it with his or her supervisors. Inspectors should take meticulous notes concerning their concerns and immediately provide the information to their supervisors so that FRA staff can take a unified approach to issues found in the railroad's program.

Class III Railroad Training Requirements
It has become apparent that the American Short Line and Regional Railroad Association (ASLRRA) Class III Standard Program for the qualification and certification of locomotive engineers may not be appropriate for all railroads that fall under this classification. The program

was initially developed to provide initial training guidance for light switching operations conducted at slow speeds. Under this program, the total training period required to become a certified train service engineer is just over 3 weeks; 48 hours of classroom training and 80 hours of on-the-job training (OJT). See the Class III Standard Program, Section 5, Paragraphs A, B, and C. FRA considers this program to be the baseline model that provides the minimum training necessary for basic railroad operations, and will not accept programs of lesser content.

Many Class III railroad operations are becoming more sophisticated and demand a greater degree of training for engineers. Track speeds are faster due to successful track maintenance programs, and train size has increased as these railroads expand operations to aggressively seek their share of the shipping market. Similarly, due to joint operation ventures, many of these Class III railroads operate over the Nation's major railroads, which again dictates that engineers receive additional training due to the complex methods of train operation, larger trains, and higher speeds encountered on those railroads.

To ensure that engineer training is commensurate with the actual operations the engineer will experience on that railroad, FRA has been working individually with each Class III railroad whose operations exceed those intended for the Class III Standard Program. When these engineers are expected to operate in more complex operations, most of the contacted railroads require engineer trainees to acquire more OJT than that stated in the Class III program. However, because of the large number of railroads involved, FRA's policy (as explained below) will provide a broader and more consistent means to ensure that engineers are receiving sufficient training for the type of operations they will encounter.

> ***FRA's Policy:*** FRA requests that railroads who have adopted or used, in part, the ASLRRA Class III Standard Engineer Certification Program, and whose operations exceed those intended for the Class III program, consider modifying Section 5, Paragraph C of that program to provide for any additional training necessary. Specifically, FRA is recommending that these railroads increase the student engineer's OJT period stated in the program, i.e., "of not less than the higher of 80 hours or 15 road trips," accordingly. For example, FRA recommends that, at a minimum, a Class III railroad whose operations are similar to those of a Class II railroad, should adopt the ASLRRA Class II Standard Program. This program requires a minimum of 240 hours of OJT and also slightly increases classroom training time.

FRA has taken this approach based on an evaluation of training programs of larger railroads with similar operations. FRA's intent is to address this safety concern without having to mandate specific minimum training periods.

This approach is consistent with the intended design of the regulation, which was to set basic training guidelines and allow railroads the latitude to develop training programs specific to their individual needs and operations. Given the past cooperation of the ASLRRA and its members, FRA expects that the vast majority of Class III railroads will amend their programs accordingly.

However, if FRA perceives this issue to be a problem on a specific railroad and that railroad refuses to voluntarily address this issue in its program, FRA intends to serve notice of such deficiencies pursuant to the formal process for disapproval of a program. (See §§ 240.103(c) and

(d).) This disapproval process requires that the FRA Administrator notify the railroad in writing and inform the railroad of the specific deficiencies. (See § 240.103(c)(1).) Under such circumstances, a railroad must resubmit its program with the necessary revisions within 30 days after the date of such notice of deficiencies. (See § 240.103(d).) Failure to make a timely resubmission with the necessary revisions will be considered a failure to implement a program under this section, and FRA will use its enforcement discretion as to whether a civil penalty or alternative enforcement action is appropriate. (See § 240.11, which explains the consequences for noncompliance, and Appendix A, which cites FRA's standard civil penalty for a violation of § 240.103(d).)

§ 240.125 – Criteria for testing knowledge

Knowledge Testing
Railroads may divide and conduct knowledge testing in sections, which may be conducted at different times. FRA recognizes that a railroad may have a need to administer portions of its testing activities at different points in time, and the rule does not prohibit this.

Oral vs. Written Testing
Section 240.125(c)(3) requires that testing be administered in written form. The rule does not allow the railroads to administer oral testing of locomotive engineers.

§ 240.127 – Criteria for examining skill

The examination of an engineer's skill should be in the most demanding service in which the engineer will work. This is also true of RCOs. If an RCO will be handling 75–100 cars, FRA would expect the skills test to be conducted with the same level of difficulty.

Simulators
The regulation allows for the use of Type I or Type II simulators for examining skill performance. This section does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with the regulation.

FRA takes no exception to the use of simulators as a training tool and has made provisions for their use in the regulation. However, FRA does not consider the use of simulators to be an acceptable substitute for practical experience in the initial training of persons previously untrained. It is not the intent of the regulation to allow the certification of locomotive engineers who have never operated an actual train.

Outside Training Organizations (Non-Railroad Contractors)
Section 240.103 specifically allows a railroad to employ an outside training organization to provide the initial or student training. The outside organization is not prohibited from performing ongoing or continual training, even though this is not addressed in the regulation. The railroad must declare in its submission to FRA its intent to employ an outside training organization. If the training is conducted away from the railroad's own trackage, the submission must describe how the student will be taught physical characteristics of the railroad (Appendix D to Part 240).

§ 240.129 – Criteria for monitoring operational performance of certified engineers

This procedure is performed by a DSLE and must be performed at least once each calendar year (January 1 to December 31). The operational monitoring observation date should appear on the engineer's certificate or in his or her supplemental documents. The certificate does not have to indicate the most recent monitoring ride, but it must indicate the date a monitoring ride was performed for each completed calendar year.

The requirements for the monitoring ride, such as the amount of time or the number of miles, should be found in the railroad's Part 240 submission to FRA. Inspectors should be familiar with these requirements when reviewing monitoring ride records.

Subpart C – Implementation of the Certification Process

Territorial Qualifications
FRA has received questions from rail labor and management regarding the requirements that must be met for a certified locomotive engineer to be considered qualified to operate over a specific territory. Some individuals have been confused by the regulation since these requirements are not covered in a single section of Part 240. All references are to a specific provision of Part 240, as amended in 1999. (See 64 FR 60966, Nov. 8, 1999.)

General Requirements
The regulation expressly states that railroads must initially train and test, and periodically thereafter reeducate, locomotive engineers to ensure that they (1) remain knowledgeable on the physical characteristics and (2) possess train handling skills commensurate for the territory over which they are expected to operate. (See §§ 240.123(b) and (c), 240.125, 240.127, 240.203, 240.213, 240.231(a), and Appendix B.) The general rule, added by amendment in 1999, is that "no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory." (See § 240.231(a).) The exceptions to this general rule either require a pilot or allow "unqualified"—although certified—locomotive engineers to operate when specified physical characteristics and operational conditions pose minimal risk.

Territorial Qualification and Certification Requirements – Question and Answers
The following are FRA's answers to some of the most frequently asked questions concerning territorial qualifications.

Question 1: What are the territorial qualification requirements for a railroad that elects to qualify a previously untrained person to be a locomotive engineer?

> **Answer 1:** The training requirements for a previously untrained person are listed in § 240.123(c). Both a knowledge test and a skills performance test must be passed. Furthermore, a railroad supervisor must make certain determinations for a person to be considered qualified to safely operate over a particular territory. In summary, the requirements include:
>
> 1. **Training.** See § 240.123(c) and FRA-approved program prepared by the railroad pursuant to § 240.103.

2. **Testing.** The engineer must pass a written knowledge test on the physical characteristics of the territory as prescribed by § 240.125(c)(4)(iv).
3. **Qualifying.** A DSLE, who must be qualified on the territory, must determine in writing that the engineer is familiar with the physical characteristics of the railroad or its pertinent segments pursuant to § 240.213(b)(3).

Question 2: What are the requirements of the regulation when a railroad wishes to qualify a certified engineer over territory in which the engineer has never operated?

Answer 2: The term "qualified" is defined in the 1999 amendment as meaning "a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified." (See § 240.7.) Qualifying a certified engineer over new territory, as required by § 240.231(a), is accomplished according to the provisions for continuing education in the railroad's own program. (See § 240.123(b) and Appendix B.)

In developing the continuing education provisions, a railroad will need to determine what kind of training, if any, is appropriate and address such possible training scenarios in the railroad's Part 240 program. (See § 240.123.) FRA recommends that a railroad's Part 240 program address those possible training scenarios in which an engineer is transferring to territory that demands greater train-handling skills, e.g., transferring from relatively flat territory to mountainous territory or transferring to territory that allows for the operation of extremely long trains the engineer has never experienced before. (See § 240.127.) Failure to address such scenarios may lead to a determination that the program is deficient. (See §§ 240.103(c) and (d).)

Question 3: What are the requirements of the regulation when a railroad wishes to requalify a certified engineer on the physical characteristics of a territory, i.e., the engineer has previously been territorially qualified but has either allowed his or her qualifications to expire (according to the railroad's program) or is nearing that expiration date?

Answer 3: Section 240.123(b) requires that railroads address the concern that an engineer's knowledge of a particular territory can begin to erode over time. Failure to have adequate procedures for continuing education is a violation of that section. When a railroad has previously determined that an engineer is qualified to operate over a particular territory, FRA has permitted each railroad to address the subject of continuing education in its certification program filed pursuant to Part 240.

In Appendix B to Part 240, FRA makes clear that each railroad's program must address familiarization training for engineers who have been away from a territory for some time or whose territories have changed. Railroads have fulfilled this obligation by requiring engineers to requalify on a territory after a specified period of time has elapsed, *but under no circumstances may a railroad wait longer than 36 months to requalify an engineer on territorial qualifications since no interval for recertification can exceed 36 months.* (See § 240.217(c)(1).) Although a railroad could treat a previously territorially qualified engineer as it does a previously untrained person (see Answer 1) or a certified engineer

who has never operated over that territory (see Answer 2), FRA's policy is to permit a railroad to perform a less formal process as long as that process is clearly articulated and performed in accordance with the railroad's Part 240 program.

Question 4: What procedures must be followed if there is a disagreement between an engineer and a DSLE concerning the engineer's territorial qualification? In other words, what are the parties' responsibilities if a DSLE believes an engineer is territorially qualified but the engineer believes otherwise?

Answer 4: Section 240.231(a) expressly prohibits an engineer from operating over a territory if not qualified on its physical characteristics. Under that section, FRA could hold railroad officials and engineers individually liable in addition to holding railroads liable. A railroad may not order a person who is territorially unqualified to operate a locomotive or train in that territory. Likewise, an engineer who operates over territory in which he or she is unqualified on the physical characteristics risks facing FRA enforcement proceedings, e.g., civil penalties, disqualification from safety-sensitive service, etc.

Under some circumstances, a railroad official—such as a DSLE—and an engineer may disagree as to whether the engineer is territorially qualified. The dispute may be resolved by checking the territorial qualification records kept for this engineer to see if the person was initially qualified properly over this territory, checking the engineer's certificate to see if it indicates the territory on which the engineer is qualified, or determining whether a DSLE has determined the engineer to be qualified on this territory since his or her initial certification (See § 240.213(b)). If the railroad cannot determine through one of these means whether the engineer is qualified on the territory, FRA strongly recommends that the railroad not order the engineer to operate a train under such conditions. Ordering an engineer to operate a train when the railroad has no basis for believing the engineer is territorially qualified is likely to result in FRA taking enforcement action under § 240.231(a) against the railroad or the officials who approved such an order, if it turns out that the engineer was in fact not qualified. In addition, if the engineer's certificate actually contains a territorial restriction and the railroad requires the engineer to perform service beyond that specified certificate limitation, this action would also violate § 240.305(c). Of course, FRA's decision as to whether enforcement action is warranted will be based on the facts specific to each incident.

Please note that if an engineer is not territorially qualified, a railroad may permit the train movement with the engineer and a pilot pursuant to § 240.231. Who may be considered a qualified pilot will depend on the experience of the engineer as specified in that section of the regulation.

Question 5: What degree of knowledge and skills must a DSLE possess to test and qualify engineers over his or her assigned territory?

Answer 5: The regulation outlines DSLE requirements in § 240.105(b). The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she:

1. Knows and understands the requirements of this part.
2. Can appropriately test and evaluate the knowledge and skills of locomotive engineers.
3. Has the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge, or skills of a person seeking to obtain or retain certification.
4. Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a DSLE.

Compliance with these requirements will ensure that any DSLE who is responsible for qualifying engineers over a specific territory will be a proficient engineer who can perform the basic duties of a supervisor. If a DSLE lacks the knowledge or skill required of engineers who operate over the specific territory, that person should not be a DSLE. FRA intends to strictly enforce these requirements of the regulation to ensure that each DSLE is qualified to perform his or her supervisory duties.

FRA notes that it is possible for a lone DSLE to perform the required testing and qualify for both physical characteristics and skills performances simultaneously; however, a railroad that wishes to enjoy the advantages of combining these requirements must use a DSLE who is qualified on the physical characteristics of the territory over which the test will be conducted. Compare § 240.213(b)(3) (requiring a qualified DSLE to determine upon completion of a training program that the person is familiar with the physical characteristics of the railroad or its pertinent segments) with § 240.127(c)(2) (explaining that a skills performance test does not require a DSLE to be qualified on the physical characteristics of the territory over which the test will be conducted). The additional requirement of annual operational performance monitoring explicitly allows a railroad's program to contain procedures that permit a DSLE to conduct the monitoring even if that DSLE is not qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted. (See § 240.129(c)(2).)

Question 6: Under what conditions may an engineer operate over territory on which he or she is not qualified?

Answer 6: As a threshold issue, it is important to distinguish between whether the engineer in question is operating in joint operations territory. If an engineer is operating in joint operations territory over which he or she is not qualified, the engineer could operate a locomotive or train:

1. With a qualified person as a pilot pursuant to § 240.229(e). Qualified person is defined in that section to mean "either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory."
2. Without a qualified person as a pilot pursuant to § 240.229(f) as long as a minimal joint operation is involved. Minimal joint operation is defined in this section.

3. If a railroad has a need for a territorially unqualified engineer to operate a locomotive or train in other than joint operations territory. This scenario is more common than the others. Like a railroad's options when an engineer is operating in joint operations territory, some circumstances do not require a pilot. Who may serve as a pilot and when a pilot is unnecessary are specifically addressed in § 240.231.

Responsibilities in Joint Operations

Except under "minimal joint operations" pursuant to § 240.229(f), the regulation recognizes that several parties are responsible for the safe operation of locomotives or trains in joint operations territory and identifies their duties. (See § 240.229(c).) For instance, the engineer must be qualified on territory over which he or she is ordered to operate, and has a duty to immediately notify his or her railroad employer if he or she is not qualified to perform that service. (See § 240.229(c)(3).) Similarly, an engineer's railroad employer, i.e., the foreign or guest railroad, shall determine that the engineer is both certified and qualified to operate in the joint operating territory in question. (See § 240.229(c)(2).)

Although other parties carry responsibilities for safe joint operations, a railroad responsible for controlling joint operations (controlling railroad) carries the greatest burden for ensuring the safety of such locomotive or train movement. A controlling railroad is required to make a minimum of four determinations: (1) that the engineer has been certified as a qualified engineer by the engineer's railroad employer; (2) that the engineer has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different; (3) that the engineer has the necessary operating skills to safely operate in the joint operations territory; and (4) that the engineer has the necessary familiarity with the physical characteristics for the joint operations territory. (See §§ 240.229(c)(1)(i) through (iv).) A controlling railroad that provides a pilot, i.e., a "qualified person to accompany a locomotive engineer who lacks joint operations certification," is only required to determine that the engineer has been certified as a qualified engineer by the engineer's railroad employer. (See §§ 240.229(a) and (e).)

Since a controlling railroad may rely on the certification issued by a foreign railroad, FRA is concerned that controlling railroads may abdicate their responsibilities to make the four determinations required by § 240.229(c)(1). That is, the regulation permits reliance on the other railroad's certification as a less burdensome alternative to applying its full certification program to these guest railroad engineers. (See § 240.229(b).) At the same time, the regulation still requires that the host railroad independently make certain determinations. (See § 240.229(c).)

Blind acceptance of a foreign railroads' list of qualified engineers does not satisfy the intent of the regulation. In order to make these four determinations, a controlling railroad has an obligation to take some affirmative action to ensure that the engineers operating over its lines are properly trained for those operations. One reason for this affirmative action is to resolve the problem of disparities in training among the different classes of railroads. (That is, engineers from Class II or III railroads may not necessarily receive the same level of training as engineers who receive the same classification from the Class I railroads.) A controlling railroad needs some method of addressing this concern so that engineers who would be considered under-trained by the procedures set forth in the controlling railroad's Part 240 program are not allowed to operate in complex joint operations alongside trains operated by engineers who have been

required by the controlling railroad to have significantly more training for that operating environment. Failure to adequately address this issue poses a significant threat to railroad safety.

> ***FRA's Recommendation.*** In addition to the requirements of § 240.229, when a controlling railroad accepts the certification of a foreign railroad in lieu of issuing its own certification, FRA recommends that a controlling railroad evaluate the training program of the foreign railroad. A controlling railroad's review of a foreign railroad's training program will ensure that foreign engineers have received sufficient training for operating over the controlling railroad's lines. A controlling railroad that follows this recommendation should have an easier time making the required determinations pursuant to § 240.229(c)(1) and will be in compliance with both the letter and intent of the regulation.

§ 240.215 – Retaining information supporting determinations

Audits on shortline railroads
Inspectors may request that all Part 240 records needed for an audit be brought to one location. However, a railroad is not required to keep its Part 240 records in one location. It simply means that a railroad should, upon FRA's request, make the records available in one location for an audit. Part 240 records that are kept at another facility will still be required to be made available to FRA during normal business hours. FRA inspectors requesting the Part 240 records should ensure the railroad understands those records should be available to them in a reasonable amount of time.

§ 240.223 – Criteria for the certificate

Each locomotive engineer who has received a certificate required under this part shall have that certificate in his or her possession while on duty as an engineer and display that certificate when requested by an FRA representative.

Possession of the certification on the locomotive engineer

See guidance on § 240.305(b).

Subpart D – Administration of the Certification Programs

§ 240.303 – Operational monitoring requirements

§ 240.303(b) – Operational monitoring observations
If a locomotive engineer is certified in more than one class of service, such as an engineer who holds both an RCO and train service engineer certificate, a DSLE can sign a monitoring ride for two classes of service while conducting only one monitoring ride. A yearly monitoring ride is conducted in the service the engineer is working in at the time the monitoring ride takes place.

§ 240.303(c) – Operating rules compliance test
FRA considers the failure of an engineer to pass a properly conducted operational test subject to provisions of § 240.117. However, FRA inspectors and the Locomotive Engineer Review Board

(LERB) must ensure that operational tests are conducted fairly and are applied consistently. Operational tests that are not conducted in accordance with the railroad's current operational testing program on file, or are for some other reason tainted, should not be used to revoke an engineer's certification.

§ 240.305 – Prohibited conduct

FRA's general policy is not to assess a civil penalty against a railroad for an alleged violation of one of the cardinal operating rules listed in § 240.305(a), unless there are extenuating circumstances for doing so. The main purpose of paragraph (a) is to permit FRA to initiate individual liability enforcement action against a person who is not a certified locomotive engineer or against a certified engineer when a railroad fails to revoke the person's certificate.

Under most circumstances, the railroad will have initiated an opportunity for a revocation hearing under § 240.307 and FRA would not consider enforcement action against the railroad for such a routine handling of an individual engineer's alleged violation. FRA's rationale is that engineers should be held responsible for their actions and railroads have a burden to enforce the regulation through the suspension and revocation process required by Part 240.

FRA may want to initiate enforcement action against a railroad in the event that the railroad fails to initiate revocation action under this part; however, it is strongly recommended that FRA consider whether a violation taken under § 240.307 may be more relevant. FRA may also consider enforcement action under paragraph (a) when there is evidence that the railroad committed a willful violation. In other instances, a paragraph (a) violation may be warranted if FRA can prove that the railroad's training or testing of that engineer was inadequate; however, from an enforcement perspective, it may often be better to cite to those underlying sections of Part 240 that require adequate training and testing.

Paragraph (b) guidance regarding possession of the certification.
Generally, "possession" means the right under which one may exercise control over something to the exclusion of all others. If railroad employees have their certificates in their privately owned vehicle (POV) or locker and the POV or locker is nearby, then FRA should consider this in compliance, as the employees have exercised adequate control for possession. In addition, if the certificate is in the employee's grip and that grip is easily accessible, FRA would consider that to be in compliance. If that same employee cannot produce a certificate to the FRA inspector within a reasonable amount of time, then the inspector should use good judgment (inspector discretion) regarding enforcement.

If the inspector makes the decision to write a deficiency or recommend a civil penalty, the inspector must explain in the report the specific facts that prevented the engineer or conductor from being considered in compliance. An example would be an engineer who has left a certificate in a POV and has an assignment that takes the engineer out of the yard or vicinity where the POV is parked. FRA's Office of Chief Counsel would expect the details of why the inspector has selected that level of enforcement be included in the report. When deciding whether to cite a defect or a violation, consider whether the engineer operated over a public grade crossing outside of the yard where the certificate was left behind.

Paragraph (c) guidance regarding locomotive engineers called to exceed certificate limits. Inspectors may cite an individual engineer who does not protest being called for duty for which the engineer is unqualified. Similarly, paragraph (c) may be cited against a railroad when the railroad requires an engineer to exceed certificate limitations.

Paragraph (d) guidance regarding engineers with more than one valid certificate. Inspectors do not often cite this part, but it requires an engineer who has a valid certificate from more than one railroad to notify the other certifying railroad(s) if the engineer has certification denied or revoked on any of those railroads.

§ 240.307 – Revocation of certification

The railroad is responsible for determining whether a rules violation warrants suspension of an engineer's certificate. Because the railroad cannot always make that determination immediately, the regulation does not require that a railroad prohibit an engineer from operating a train immediately after the occurrence of a possible revocable event.

Section 240.307(i) provides the railroad the option of not revoking the certificate under certain circumstances. If the railroad does, in fact, choose to NOT revoke the certificate after a revocation event, the railroad should have a record that explains the rationale of their decision, and that record should clearly document that the railroad exercised good discretion. FRA will not take enforcement action if a record is maintained *and* if FRA determines that the railroad made a good faith determination after a reasonable inquiry that complies with § 240.307(k).

Multiple Decertification Events During Same Duty Tour

FRA has recently received petitions from engineers who have been decertified for multiple events during the same tour of duty, resulting in 1- to 5-year decertification periods.

In response to these petitions, FRA has found that the regulation is silent concerning what constitutes a single incident for decertification purposes. The closest regulatory guidance is found in § 240.117(f), which deals with multiple violations during the course of a single incident. It reads as follows: "If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section."

This provision prevents engineers from receiving excessive penalties involving multiple rules violations that occurred during a single incident, such as passing a stop signal without first stopping. The engineer violated a stop signal rule and in so doing, entered a main track without authority, thus violating another rule. Under these circumstances, the engineer is only charged with one rule violation.

This provision does not, however, address those events that are set apart from the original event by time, circumstance, or distance. It can be argued that unless there is a nexus of common denominator between the instances of operational misconduct, logic, and equity demand, that each instance be treated as a separate (single) incident.

Conversely, if multiple incidents can occur during a single tour of duty, there is or at least appears to be, a lack of the progressive discipline on which the regulation is based. It is not beyond the realm of possibility that an engineer could report for duty with a clean record, and yet by the time he goes off duty, he could be subject to a 5-year decertification for the commission of three decertifiable offenses.

FRA Policy: A single incident is a unique identifiable occurrence caused by an operational error of an engineer. It is possible for an engineer to be involved in more than one single incident during a tour of duty if these incidents are separated by time, distance, or circumstance. Recognizing that some cases may be difficult calls, FRA has provided the following scenarios.

Scenario 1: An engineer operating a train from Chicago, Illinois; to Lincoln, Nebraska, overlooks a 45 mph speed restriction for a car in his train and operates at the maximum speed of 60 mph. He repeatedly accelerates to this speed after making intermediate stops.

Question: Is this a single incident, or does a new single incident occur each time the engineer operates above 45 mph?
Answer: This is a single incident.

Scenario 2: Assume the same facts as Scenario 1, then assume that the engineer passes a signal requiring a stop at Alton.

Question: Is passing the signal at Omaha a single incident?
Answer: Yes.

Question: Is the engineer therefore subject to two de-certification proceedings, one for the excess speed and one for passing the signal?
Answer: Yes.

As a consequence of multiple decertification events occurring within a single tour of duty, there appears to be a conflict with the intent of the progressive ineligibility periods for certification. As applied, engineers would not be afforded any probationary periods between events for any remedial corrective actions. In order to address this paradox, FRA is considering proposing that the decertification periods under Section 240.117 be revisited. FRA will place this issue on the agenda of the Railroad Safety Advisory Committee for consideration.

Subpart E – Dispute Resolution Procedures

Public information about the LERB can be found on FRA's Web site at: www.fra.dot.gov.

§ 240.401 – Review board established

Locomotive Engineer Review Board (LERB)
Inspectors should not assist an employee in appealing or writing their petition to present to the LERB.

Inspectors should not indicate to any railroad employee how the LERB will rule regarding an issue that is pending before the LERB, or an issue that has the potential to be appealed to the LERB. This will require inspectors investigating Part 240 complaints to be vigilant that they do not make any statements, conclusions, or report any findings that may conflict with the unknown outcome of a LERB decision.

Inspectors should assist the employees by providing them with information on where to find the petition, the submission format, and the time limitations by directing them to Part 240, Subpart E, Dispute Resolution Procedures.

Remote Control Operators

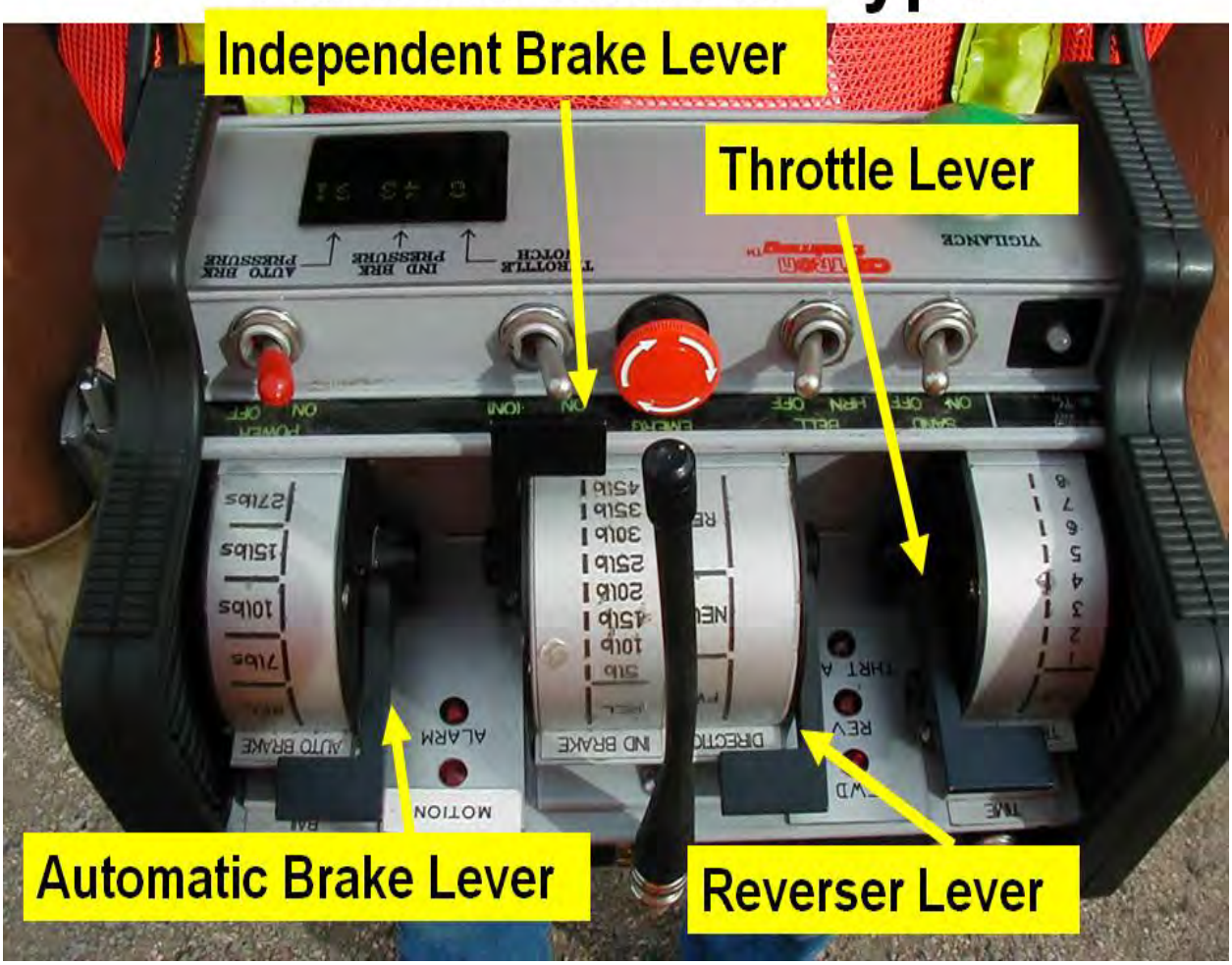
Examples (Certified Locomotive Engineers)

RCOs are usually a separate class of locomotive engineers when operating a locomotive via a remote control transmitter (belt pack) that has speed settings, brakes settings, etc. These locomotive engineer classifications are not the same as the conventional engineer and usually require fewer skills to operate and may also require shorter training periods. (See picture below.)

Remote Control Transmitter - Speed Controlled by Computer

The speed is set by the RCO and the computer regulates the speed. Same with the air brakes.

Remote Control Transmitter - Throttle and Air Type



Throttle and Air Type of RCO Transmitters

There are remote controlled transmitters that will almost always require a conventional train service engineer classification, as the photograph above illustrates, and will therefore require more training. These belt packs have spring loaded throttle and brake controls that require the same skill sets as a conventional locomotive engineer operating the controls inside the locomotive's cab. These control levers on the remote control transmitter pictured above are controlled by the skills of the locomotive and thus require a different skill set than those remote control operations using the more sophisticated transmitters.

Railroad Stop Banners Used in Operational Tests

What follows is a copy of a letter sent from FRA to the Brotherhood of Locomotive Engineers and Trainmen that states FRA's position regarding stop banners used as stop signals for operational testing purposes.

August 22, 2008

Mr. William A. Thompson
Brotherhood of Locomotive Engineers and Trainmen
2nd Vice-Chairman, Norfolk Southern Railway System Lines
P.O. Box 16039
Asheville, NC 28816

Dear Mr. Thompson:

Thank you for your July 1, 2008, letter to the Federal Railroad Administration (FRA) expressing your concern about Norfolk Southern Railway's use of banners for purposes of conducting operational (efficiency) testing for compliance with railroad operating rules. You allege that the banners are being used unrealistically as a disciplinary tool against train crews. While FRA has no jurisdiction over railroad discipline policies, we will certainly be happy to address the operational testing issues you raised since they relate directly to a Federal regulation (Title 49 Code of Federal Regulations Part 217).

In FRA's experience, banners were initially developed to resemble obstructions or rolling equipment (locomotives and cars). They were used to determine a crew's compliance with rules that require train movements to proceed, prepared to stop within half the range of vision, short of obstructions, rolling equipment, derails, and switches improperly lined, among other things. Several years ago, railroads also designated and defined banners as stop signals, similar to red flags and boards. These types of stop signals are normally used to identify and control entrance to track work areas and to stop trains under emergency conditions when radio communication cannot be established. While FRA may agree that red flags and banners may not meet the definition of "fixed signals," they are, nonetheless, considered "stop signals" and must be complied with while operating under restricted speed or other rules that require a crew to operate at a speed that permits stopping within half the range of vision.

The FRA understands that, on occasion, there may be questions surrounding a test. Labor organizations can appeal the discipline resulting from such tests through the provisions in the Railway Labor Act. Additionally, regarding locomotive engineer certification, 49 CFR § 240.117(f)(3) states:

An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under Sec. 217.9 of this chapter, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

Therefore, if an engineer feels his or her certificate has been wrongfully revoked by the railroad, that engineer can appeal the railroad's revocation decision to FRA's Locomotive Engineer Review Board (Board). The Board has reviewed many appeals involving operational testing and, if it is determined that the test was improperly conducted or that the crew's actions were mitigated by unusual conditions, the Board has overturned the railroad's revocation. Considering the importance of this process, FRA is certainly aware of the frustration employees experience waiting for decisions, and strives to review and issue decisions in a timely manner.

Regarding the current use of banners for testing, FRA believes it is important to note that their dual purpose has become confusing in recent years. When banners have been called obstructions, arguments have been made that they need not be illuminated at night because they could represent the rear car of a train with an inoperable rear end marking device. Conversely, arguments have been made that when banners are used as stop signals, they should be illuminated, because most railroad operating rules include in their application of a stop signal a "red flag by day and a *white or red light by night*."

Based on the foregoing, it is FRA's opinion that banners used as stop signals for operational testing purposes should mimic the requirements outlined in railroad operating rules. Logic dictates that stop signals should not be obscured from view. They should be immediately visible in order to alert crews to dangerous conditions. This is especially true during hours of darkness or during periods of restricted visibility. FRA has previously expressed its concern on this issue (see enclosure). The opposite is normally true of banners used to simulate obstructions or rolling equipment. When operating under a rule that requires stopping within half the range of vision, crews must stop short of obstructions or rolling equipment whether it is illuminated or not, under *all* operating conditions.

The FRA notes that, in lieu of a red light, railroads use reflectorized material for illumination purposes at night. Currently, FRA believes the newer material (highly reflective) is sufficient for illumination. However, where reflectorized material is used, its illumination is dependent on an external light source (the locomotive headlight). If the headlight does not shine directly on the material, the illumination can be significantly diminished. Under these circumstances, the signal may not be considered a properly displayed stop signal by FRA for decertification purposes. Therefore, each test must be reviewed on a case-by-case basis.

I hope this information is helpful, and we appreciate the assistance and support FRA receives from your organization. I look forward to working with you and your membership on other issues related to railroad safety.

Sincerely,

Jo Strang
Associate Administrator for Safety

Wrecking Operations

Several incidents have been brought to FRA's attention involving the operation of locomotives by uncertified persons during wrecking operations. Some have taken the position that these operations are *de minimis* in nature and are neither directly associated with railroad operations nor applicable to the intent of Part 240. Others have indicated that these operations are conducted while personnel are located in close proximity to equipment and are therefore, sensitive in nature, requiring the expertise and training intrinsic to engineer certification.

By definition, FRA excludes from engineer certification any person who:

> (1) moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area in which the testing, servicing, repair, inspection or rebuilding of locomotives is under the exclusive control of mechanical department personnel, and the area is protected by a blue signal displayed at or near a switch providing entrance to or departure from the area; or
>
> (2) moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or group of locomotives is for inspection or maintenance purposes.

The language is clear and unambiguous. Except for these two exclusions, nowhere is it stated, nor intended, that anyone other than a certified locomotive engineer is permitted to operate a locomotive or locomotives with cars attached. Conversely, the language is clear that there is no exclusion as to "where" a locomotive may be moved for the purposes of inspection or maintenance as long as this distance is less than 100 feet. Clearly, the movements of locomotives and/or cars during wrecking operations are not provided for within the regulation. The prime function of a wrecking operation is to "clear the railroad of damaged equipment" in order to restore service. In so doing, it is not uncommon for the rerailed locomotive(s) and/or equipment to be moved to locations beyond the wreck site, thereby extending these operations.

FRA Policy: It is FRA's belief that the operation of a locomotive(s) during wrecking operations is beyond the scope of the aforementioned exclusions and, therefore, requires the railroad to conduct these operations in the same manner as any other locomotive operation, i.e., with a certified locomotive engineer.

Locomotive Engineer Certification Jurisdiction; Questions and Answers

The Rail Safety Improvement Act of 1988 gave FRA broad regulatory authority over the Nation's railroads. The term "railroad" as used in the Act means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high-speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such terms do not include rapid transit operations within an urban area that are not connected to the

general railroad system of transportation. For policy reasons, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. See 49 CFR Part 209, App. A.

Plant Railroads

FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (i.e., "plant railroads"), such as those in steel mills that do not go beyond the plant's boundaries. Some regulations exclude not only plant railroads but also all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Of course, even where a railroad operates outside the general system, other railroads that are definitely part of that system may have occasion to enter the first railroad's property (e.g., a major railroad goes into a chemical or auto plant to pick up or set out cars.) In such cases, the railroad that is part of the general system remains part of that system while inside the installation; therefore, all of its activities are covered by FRA's regulations during that period. The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Of course, in the opposite situation, where the plant railroad itself operates on the general system, it becomes a railroad with respect to those particular operations, during which its equipment, crew, and practices would be subject to FRA's regulations.

In some cases, the plant railroad leases track immediately adjacent to its plant from the general system railroad. Assuming such a lease provides for, and actual practice entails, the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant, the lease would remove the plant railroad's operations on that trackage from the general system for purposes of FRA's regulations, as it would make that trackage part and parcel of the industrial installation. See 49 CFR Part 209, Appendix A.

Question 1: I operate a plant railroad that is currently excluded from FRA regulations. However, a building within the plant has been leased to a lumberyard for purposes of receiving and off-loading lumber cars. Will I lose my plant railroad status if I handle cars for this new operation or if it begins handling its own cars within the plant?

> **Answer 1:** Yes. The plant railroad exemption is for an operation that handles cars exclusively for its own operations. If a plant begins handling cars of other companies, it becomes a common carrier engaged in switching operations.

Tourist, Scenic, and Excursion Railroads

FRA exercises jurisdiction over tourist, scenic, and excursion railroad operations whether or not they are conducted on the general system of railroad transportation (general system). There are

two exceptions: (1) operations of less than 24-inch gage (which, historically, have never been considered railroads under the Federal railroad safety laws); and (2) operations that are off the general system and "insular."

Question 2: What does insular mean?

Answer 2: Insularity is an issue only with regard to tourist operations over trackage outside of the general system used exclusively for such operations. FRA considers a tourist railroad insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public "except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser" would be affected by the operation.

Question 3: When is a tourist railroad not considered insular?

Answer 3: A tourist operation will not be considered insular if one or more of the following exists on its line:

- A public highway-rail crossing that is in use;
- An at-grade rail crossing is in use;
- A bridge over a public road or waters used for commercial navigation; or
- A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

Question 4: Does FRA exercise any jurisdiction over insular tourist railroads?

Answer 4: No.

Question 5: Does FRA exercise any jurisdiction over non-insular railroads?

Answer 5: Yes. The following regulations and laws apply: Federal signal inspection laws, hazardous materials regulations, noise emission regulations, freight car safety standards, accident/incident reports regulations, hours of service restrictions on duty hours, steam locomotive inspection regulations, grade crossing signal system safety regulations, and all general power and enforcement provisions of the rail safety statutes (e.g., subpoena authority, civil penalty authority, disqualification authority, and emergency order authority).

Question 6: How would a tourist railroad sever its connection to the general system?

Answer 6: Clearly define where tourist operations begin and end. There must be a distinct severance from the system. There should be no regular interchange with another railroad. A locked switch or placement of a derail alone would not render the railroad insular. A barricade of some sort would be appropriate. The idea is to prevent movements from coming onto or going off of the affected track. However, at some point new equipment may need to be received or old equipment dispatched for repairs at a general system connection. These rare moves can be conducted without jeopardizing the tourist railroad's insular status.

Question 7: I have just been given permission to operate an excursion train on a freight railroad's trackage as a separate business. How do I certify engineers for my operation?

> **Answer 7:** You have a few options. 1) You can have the freight railroad's engineers operate your train; 2) You can have the freight railroad certify your engineers under its program and issue your employees the certificates; or 3) You can submit a certification program to FRA and certify your engineers. Of course, since the freight railroad is the host railroad in these operations, it has a responsibility to determine that your engineers are properly certified and qualified to operate on its railroad.

Certification Program Approval

Question 8: I am starting up a new railroad. Is there a specified time period that my certification program should be submitted to FRA?

> **Answer 8:** Yes. The program should be submitted for approval at least 60 days before commencing operations.

Question 9: I filed my certification program with FRA. How do I know it has been approved?

> **Answer 9:** Your program is deemed approved if you do not hear from the FRA within 30 days of the filing date. You will not be notified in writing that the program is approved.

Question 10: What if I materially modify my program after I submit it to FRA?

> **Answer 10:** You must resubmit the modified program at least 30 days prior to implementing the modifications. "Materially Modify" means a significant change in the training program or a change in the individual responsible for maintaining the program.

Certification Exclusions

Question 11: Are there any situations or conditions that would allow non-certified employees to operate a locomotive on the general system?

> **Answer 11:** Yes, but only under extremely limited circumstances. The answer is found in the definitions section of the regulation under "locomotive engineer." See 49 CFR Part 240.7. The regulation applies to "any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:
>
> (1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as provided for in 49 CFR §§ 218.5 and 218.29(a)(1); or
>
> (2) A person who moves a locomotive or group of locomotives for a distance of less than 100 feet and this incidental movement of a locomotive or group of locomotives is for inspection or maintenance purposes."

Question 12: What does 49 CFR §§ 218.5 and 218.29(a)(1) mean?

Answer 12: 49 CFR § 218.5 – Definitions, defines a *locomotive servicing track area* as one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel. Emphasis added.

49 CFR § 218.29(a)(1) defines the limits of the locomotive servicing area. This section of the regulation states, "A blue signal must be displayed at or near each switch providing entrance to or departure from the area." This provision of the regulation is used to define the limits of the locomotive servicing track area. A blue signal does not have to actually be displayed for this exclusion to take place.

Note: Sliding blue signal limits are not allowed! The designated switch or derail at the entrance to such facilities must be permanent.

Eligibility Based on Prior Safety Conduct (49 CFR § 240.109)

Question 13: When I am considering a person for locomotive engineer (re)certification, what areas of safety conduct do I evaluate?

Answer 13: You are required to evaluate the person's: 1) prior safety conduct as a motor vehicle operator (§ 240.115), 2) prior operating rules compliance (§ 240.117), and prior substance abuse disorders and alcohol/drug rules compliance (§ 240.119).

Question 14: I am in the process of certifying an engineer that came from another railroad. The prior employing railroad will not furnish me with the employee's service record information for the required "employee safety conduct" background check. What can I do?

Answer 14: You can notify the other railroad that this is a federal requirement and the information must be provided or you are notifying FRA. Specifically, you are looking for any prior decertification. If you get a piece of paper from the railroad stating that the engineer was or was not decertified, this would suffice. If the information is not provided, make note of this in the employee's file and also notify the FRA. You can continue with the certification process. Also note that the regulation requires engineers to notify other railroads if their certification has been revoked. See 49 CFR § 240.305(d).

Question 15: When hiring an engineer from another railroad, is there any difference between using that railroad's certification under 49 CFR § 240.225 as opposed to performing a recertification on the engineer under "certifying engineers with extensive operating experience" in the shortline program?

Answer 15: Yes. If you use the other railroad's certification, it will not be necessary to conduct the motor vehicle check and the hearing and visual acuity exam. However, you will still be required to give the engineer a knowledge and skills performance test and train the engineer on the physical characteristics of your railroad.

Question 16: When performing the employee prior safety conduct evaluation, is there a specific time period involved?

> **Answer 16:** Yes, you can only consider incidents that occurred within a period of 36 consecutive months prior to the effective date of your certification decision.

State Department of Motor Vehicle (DMV) and National Driver Register (NDR) Evaluations (49 CFR §§ 240.111 and 240.115)

Question 17: Is there a specific time period when evaluating an employee's motor vehicle driving incidents?

> **Answer 17:** Yes, you cannot consider driving incidents that occurred more than 36 consecutive months from the effective date of your certification decision.

Question 18: Can I consider license suspensions that involve speeding?

> **Answer 18:** No. You can only consider license suspensions that result from drug and/or alcohol use or a refusal to test.

Question 19: I am having trouble getting an engineer's motor vehicle records. Can I certify an engineer before his motor vehicle records have been evaluated?

> **Answer 19:** No. All components of certification must be fulfilled before you can certify the engineer. However, if you are having problems tracking down an incident that was identified by the NDR in another state, you can continue with the certification process. See 49 CFR Part 240, Appendix C, under Actions When a Probable NDR Match Occurs.

Question 20: Is an engineer required to report to the railroad that his/her license was suspended because of drugs or alcohol?

> **Answer 20:** Yes. The engineer has 48 hours to report the suspension to the railroad after the conviction or completed state action.

Question 21: Some states now suspend the motor vehicle operator's license on the spot. Is the engineer in this situation required to report the suspension to the railroad at that time?

> **Answer 21:** No. Even though the state suspended the motor vehicle operator's license, the engineer has not had his/her day in court. Once this occurs, if the engineer is convicted, he/she must report the suspension to the railroad at that time. Of course, if the engineer intends to plead guilty to the charge, he/she can notify the railroad ahead of time to begin the evaluation process.

Question 22: Once the engineer reports the suspension to the railroad, is the railroad required to immediately suspend the engineer's certificate? Is this a violation warranting a certificate revocation?

Answer 22: The answer is "No" to both questions. The railroad is required to suspend an engineer's certificate once it has reliable information that the engineer violated one of the six cardinal rules listed in the regulation. See 49 CFR § 240.117(e). A motor vehicle license suspension is not a violation of any of these rules. Therefore, no certificate suspension or revocation is warranted. A driver's license suspension merely indicates that the engineer may have a substance abuse problem. The railroad's only obligation is to refer the engineer to an Employee Assistance Program (EAP) counselor for evaluation. However, this should be done within a reasonable time period. The employee should not be left working for weeks and months without having had an EAP counselor evaluation.

Question 23: I am hearing rumors that the NDR is not going to perform NDR searches anymore. Is this true?

Answer 23: No. The NDR will continue to do the searches.

Hearing and Visual Acuity Examinations (49 CFR §§ 240.121 and 240.207)

Question 24: What is the railroad's obligations regarding the hearing and visual acuity test?

Answer 24: The railroad must ensure that the person or clinic that is performing the test has a copy of the test standards outlined in the regulation. The railroad cannot assume that the clinic will use the correct standards. As a matter of fact, clinics perform many DOT commercial drivers' license tests, which have different standards. These clinics may see the DOT form and assume that engineers get the same test. Railroads should verify that this is not happening.

Question 25: If the employee fails the hearing and/or visual acuity test, is the railroad required to perform additional tests?

Answer 25: Yes. A person not meeting the hearing and visual acuity standards, upon request, can be subject to further medical evaluation. In accordance with the guidance prescribed in Appendix F of the regulation, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely.

Question 26: If an engineer fails a hearing and visual acuity test, can the engineer still be certified?

Answer 26: Yes. If the railroad can determine that the engineer can operate a locomotive or train safely without meeting the requirements of the regulation, the railroad can still certify the engineer.

Knowledge Tests (49 CFR §§ 240.125 and 240.209)

Question 27: Is the knowledge test that is required prior to certification the typical railroad operating rule test that has been given for years?

Answer 27: Not quite. In addition to operating rule questions, the test should also include questions on personal safety practices (safety rules), equipment inspections, federal safety rules (any rules related to regulations), and train handling practices including familiarization with territorial physical characteristics.

Question 28: If an engineer is qualified on multiple divisions, must the engineer be tested on the physical characteristics of each of the divisions?

Answer 28: Yes. The preamble to the final rule clearly states that engineers must be tested on all the territories they are currently qualified on at the time of the test.

Question 29: Can the test be conducted in workbook fashion, where the engineers can refer to a book in order to answer questions?

Answer 29: No. The test must be closed book (proctored). However, if portions of the test are designed to test the engineer's ability to use reference materials such as timetables, then these materials can be referred to.

Performance Skill Tests (49 CFR §§ 240.127 and 240.211)

Question 30: What is the difference between a performance skills test and a monitoring "check" ride?

Answer 30: The criteria for both are actually the same, i.e., the engineer is observed while operating a train or Type 1 or 2 simulator. However, the performance skills test is a test that is required every three years prior to recertification. The engineer demonstrates his/her ability to operate a locomotive or train safety. A monitoring ride is merely an observation of an engineer's operation of the locomotive or train. Failure to receive a monitoring ride, while a violation of the regulation, does not affect an engineer's certification status. Additionally, the skills test must be conducted in the most demanding class or type of service that the person will be permitted to perform while the monitoring ride does not need to be conducted under those conditions.

Question 31: Can a railroad supervisor, who is not an engineer, conduct a skills test?

Answer 31: No. A Designated Supervisor of Locomotive Engineers (who must be an engineer) must conduct the test.

Question 32: Can the railroad use a simulator to conduct the skills test?

Answer 32: Yes.

Monitoring Operational Performance of Engineers (49 CFR §§ 240.129 and 240.303)

Question 31: If I conducted an engineer's monitoring ride in March 2005, do I have until March of 2006 to conduct the next check ride?

Answer 33: No. When determining annual monitoring obligations, use a calendar year (January 1st to December 31st).

Question 34: Can the monitoring ride be conducted by someone who is not a DSLE?

Answer 34: No.

Question 35: Must the DSLE always ride on the locomotive with an engineer to conduct a monitoring ride?

Answer 35: No. The railroad can evaluate locomotive event recorder data or have the engineer operate a type I or II simulator to fulfill these requirements.

Question 36: Does the annual check ride fulfill all the requirements of monitoring the operational performance of engineers?

Answer 36: No. Railroads must also conduct an operating rule efficiency test each calendar year.

Question 37: Does the efficiency test date have to be documented on the certificate?

Answer 37: No. The information can be kept in the railroad's efficiency test records.

Question 38: Does the date of the last monitoring ride have to be documented on the certificate?

Answer 38: No. However, the date must be kept on supplementary documents that the engineer must have in his or her possession while operating a locomotive. However, most railroads include the date on the certificate.

Question 39: If a skills test was performed during the last year of certification in preparation for issuing a new certificate, would this test satisfy the monitoring ride requirement for that year?

Answer 39: Yes. There is a provision in Section 6 of the shortline program that addresses this.

Designated Supervisors of Locomotive Engineers (DSLE) (49 CFR § 240.105)

Question 40: Must a DSLE be an engineer?

Answer 40: Yes.

Question 41: Must a DSLE be qualified on the physical characteristics of a territory to administer a skills test or a monitoring ride?

Answer 41: No. The DSLE is not piloting the engineer, the DSLE is watching the engineer operate the locomotive or train to determine the engineer's compliance with the rules.

Question 42: Must a DSLE be qualified on the physical characteristics to qualify an engineer over a particular territory?

> **Answer 42:** Yes. The DSLE must have an intimate knowledge of the territory if he/she is required to determine if an engineer is knowledgeable about the territory and can operate over it safely. See 49 CFR § 240.213(b)(3).

Question 43: I have a manager that is also an engineer, but he has little experience as an engineer. Can I designate this manager as a DSLE?

> **Answer 43:** This is the railroad's call. However, the regulation is clear that DSLEs must be able to appropriately test and evaluate the knowledge and skills of locomotive engineers. They must also possess the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge, or skills of a person seeking to obtain or retain certification. This implies that the DSLE must have at least the same skills as the engineers being supervised and preferably better. See 49 CFR § 240.105.

Question 44: Since I have a new operation, how do I certify engineers? I do not have a Designated Supervisor of Locomotive Engineers (DSLE) to perform the skills test that is required prior to certification (see 49 CFR§ 240.127).

> **Answer 44:** The regulation allows you to certify your first engineer and designate him/her as a DSLE by waiving the skills test requirements one time only. However, the chief operating officer of the company or other individual who is responsible for the operations must make a determination in writing that the DSLE candidate possesses the necessary performance skills in accordance with 49 CFR § 240.127. This determination should take into account any special operating characteristics that are unique to that railroad, e.g., heavy grades, high speed, etc. The determination should be kept in the DSLE's file.

Question 45: Must the DSLE's signature be on the certificate in addition to the date of the monitoring or check ride?

> **Answer 45:** No. The regulation only requires the date to be entered on the certificate. However, most railroads have provided space for the DSLE's signature after the check ride date to document "who" performed the check ride.

Transferring Engineer Certifications (49 CFR § 240.223)

Question 46: I have a current valid certification. I just quit railroad "A" and have been hired by railroad "B." Do I have to repeat the entire certification process to receive a certificate from railroad B?

Answer 46: No. 49 CFR § 240.225 allows railroads to accept the certification of another railroad when issuing its own certificate. However, railroad B must make the following determinations:

1. The prior certification must be valid (not expired);
2. The prior certification is for the same class of service as the certification being issued;
3. The engineer has received training on and visually observed the physical characteristics of the new territory (document the training);
4. The engineer is trained on the operating rules if different (knowledge test must be documented and placed in file); and
5. The engineer has demonstrated the necessary performance skills to operate over the new railroad (skills test must be documented and placed in file).

This process eliminates the need for railroad B to perform a hearing and visual acuity test and an NDR and state motor vehicle operator's license check. When issuing the new certificate, however, the railroad should carry over the old certificate's expiration date.

Question 47: In the same scenario above, what if the engineer's certificate has expired?

Answer 47: Refer to your standard shortline certification program. There is language in it that allows you to perform a standard recertification on the engineer with one exception. Since the engineer is new to your railroad, you must have a DSLE evaluate the engineer to determine how much on-the-job training will be needed, if any, and how many trips will be necessary for the engineer to learn the physical characteristics of the new territory. These procedures can also apply to engineers who have never been certified, but who have experience as an engineer.

Transferring Engineers or DSLEs from one Railroad to another when owned by the same Company

Question 48: I own several railroads. On occasion I need to transfer engineers or DSLEs from one railroad to another. Since I own all of the railroads, can I just send these employees to those railroads?

Answer 48: No. If you have separate programs and operating rules for each railroad, then you can transfer engineers according to 49 CFR § 240. 225. This section allows you to use a current former certification when issuing the certificate for the new railroad.

If you issue all certificates under a parent company name instead of individual railroads and if you use the same operating rules and certification program for all your railroads, the following will apply:

1. When your employee arrives at the new railroad, you must qualify him/her on that railroad. This is accomplished by requiring the employee to complete a certain number of qualifying trips.
2. Following completion of the qualification trips, a DSLE on that railroad must determine that the transferred engineer can safely operate trains on the new railroad (check ride).
3. Some type of documentation should be placed in the employee's file to show that the above procedures were followed and to prove that the transferred engineer was properly qualified on the new territory.
4. If the railroad conducts joint operations and the transferred engineer is expected to operate over joint operations territory, then the transferred engineer must also be qualified on that territory as well. The qualification procedures would be controlled by the foreign railroad.

It is important to note that you should be prepared to send the rest of the employee's files to that railroad if an FRA inspector requests to see the certification records for that employee when conducting inspections on that railroad. The above procedures are similar to a large railroad sending engineers to qualify on its many divisions.
Identification of Qualified Persons (49 CFR § 240.221)

Question 49: Do I need to send a list of my DSLEs and engineers to the FRA?

Answer 49: No. However, a list of your DSLEs and engineers must be maintained on the railroad.

Question 50: Do I need any other information on the list?

Answer 50: Yes. The list should include the class of service the engineer is qualified to perform and the date of the railroad's certification decision.

Special Equipment Certification Issues (49 CFR § 240.104)

Question 51: What is the difference between "specialized roadway maintenance equipment" and "dual purpose vehicles?"

Answer 51: Specialized roadway maintenance equipment is equipment that does not have the capability (no couplers) to move railroad rolling stock (freight and passenger cars). A dual-purpose vehicle is a piece of on-track equipment that is capable of moving railroad rolling stock.

Question 52: Do I need a certified engineer to move specialized roadway maintenance equipment?

Answer 52: No.

Question 53: Do I need a certified engineer to move a dual-purpose vehicle?

Answer 53: This depends on how the dual-purpose vehicle is being used. If you are using the dual-purpose vehicle to perform routine switching of cars in revenue service, then you need a certified engineer to operate it. You do not need a certified engineer to operate a dual-purpose vehicle if the vehicle is:

1. Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site.
2. Moving under the authority of railroad operating rules designated for the movement of roadway maintenance equipment that ensure the protection of such equipment from train movements.
3. Being operated by an individual trained and qualified in accordance with Sections 214.341, 214.343, and 214.355 (Roadway Worker Protection Rules) [See 49 CFR § 240.104(a)(2)].

Certification Records (49 CFR § 240.215)

Question 54: How long must I keep certification records?

Answer 54: All certification records must be kept for six (6) years from the date of certification.

Question 55: Can I keep my certification records in an electronic format?

Answer 55: Yes, provided that:

1. The railroad adequately limits and controls those who have access to such information;
2. The railroad employs a system for data storage that permits reasonable access and retrieval of the information in usable format when requested to furnish data for FRA representatives; and
3. Information retrieved from the system can be easily produced in a printed format, which can be readily provided to FRA representatives and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

Question 56: Do I have to make the records available to FRA?

Answer 56: Yes. If requested you must furnish the records during normal business hours.

Question 57: Can I keep my records at a central location if I own multiple railroads?

Answer 57: Yes. However, you should be prepared to transmit records to individual railroads that are being audited by FRA.

Decertification Procedures (49 CFR § 240.307)

Question 58: Can I decertify an engineer without holding a hearing?

> **Answer 58:** No. The engineer is entitled to a hearing, unless the engineer waives his/her right to the hearing.

Question 58: Are there any special requirements that the waiver must conform to?

> **Answer 59:** Yes. The waiver must:
> 1. Be made in writing.
> 2. Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them.
> 3. Be signed by the person making the waiver.

Question 60: Do I have to follow any special procedures to hold a hearing?

> **Answer 60:** Yes. If you have a collective bargaining agreement on the property, you can hold the decertification hearing according to that agreement. If you do not have any hearing procedures, refer to 49 CFR § 240.307(c). This section contains the hearing procedures that must be followed.

Audit Protocols – Part 240 audits of smaller railroad operations.

The following procedures will assist inspectors in conducting a thorough audit of a railroad's Locomotive Engineer Certification Program and its associated recordkeeping requirements. These protocols are designed to be guidance when conducting Title 49 Code of Federal Regulations (CFR) Part 240 audits on smaller railroad operations. For Part 240 audits of larger railroads (Class Is), inspectors should consult with FRA regional management prior to any audit efforts. The nature of these audits requires special considerations and coordination to maximize agency inspection efforts.

It is recommended that inspectors use the provided job aids to help record and organize information. The use of these job aids will also assist in the preparation of inspection and any subsequent violation reports that may result from the audit.

Protocol The audit protocols are divided into four elements:

1. Prior to the Audit
2. Conducting the Audit
3. Documentation, Closeout, and Followup
4. Job Aids

§ 240.3 – Application and responsibility for compliance

Inspector Guidance – For tourist railroads that do not operate over the general railroad system, or those that do not own track that is part of the general railroad system (INSULAR or NON-

INSULAR), inspectors should reference the FRA General Manual, specifically the FRA's Exercise of Jurisdiction Decision Tree.

Prior to the Audit: Review the Part 240 Program for Implementation Requirements

Since Part 240 permits each railroad to have its own certification program, it is imperative that inspectors become knowledgeable of the specific railroad program being audited. Understanding of the program requirements will allow the inspector to determine compliance or noncompliance with the regulation. Part 240 programs are approved by FRA Headquarters; therefore, OP field inspectors should not take exception to the substance of the Part 240 Program itself. If a program discrepancy is discovered during an audit, an inspector should consult with their regional OP specialist prior to taking formal exception with the railroad. The issue should be handled through the appropriate FRA chain of command for resolution.

For a successful audit, inspectors should be familiar with general content within the Part 240 Program. Review the railroad program for information that will be needed to determine compliance, such as:

- If the program is the current certification program on file with FRA. (See note below.)
- If the railroad employs contractors to maintain the records of its certified locomotive engineers or if records are maintained at an off-site location.
- The training requirements outlined in the program.
- Requirements for the selection criteria for DSLEs/Designated Supervisors of Remote Control Operators (DSRCO).
- If the DSLE/DSRCO have additional requirements beyond being a certified locomotive engineer or remote control operator.
- The program requirements for classes of certified engineers operating on the railroad.
- The annual monitoring ride criteria, such as length of time, location, class of service, simulator, event recorder data, etc.
- The skills performance evaluation for certification or recertification. Weighted scores, as required by the Part 240 regulation, update effective February 2010. (See note.)

NOTE: *On February 22, 2010, the final rule regarding 49 CFR Part 240–Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions, became effective. See 74 FR 68173 (Dec. 23, 2009). In addition to making minor corrections and updates, the rule made the following substantive changes to Part 240:*

- *Prohibits a railroad from reclassifying a person's locomotive engineer certificate to that of a more restrictive class of certificate or to a student engineer certificate during the period in which the certification is otherwise valid.*

- *Requires a railroad to indicate in its certification program the types of actions it will take, beyond prohibiting the engineer from operating a locomotive until a test is passed, if a person fails a skills performance test.*

- *Requires a railroad to describe in its certification program the scoring system it will use during a skills performance test administered in accordance with § 240.211, including a description of the skills to be tested and the weight or possible score that each skill will be given.*

- *Requires a railroad to indicate in its certification program the types of actions it will take in the event it finds deficiencies with an engineer's performance during a monitoring ride or evaluation, or an unannounced operating rule efficiency test administered in accordance with the procedures required under § 240.303.*

- *Clarifies that railroads may revoke an engineer's certificate only for conduct specifically identified in § 240.117(e) ["six cardinal rules"].*

The final rule stated that these changes are not material modifications to the program and it will not be necessary for railroads to resubmit their program to FRA for approval. However, each railroad is expected to have these changes made in its program after the effective date. ***Inspectors should verify each shortline railroad has updated its program accordingly.***

Contacting the Railroad Prior to the Audit

It is recommended that an inspector contact the railroad in advance to determine that all documents listed in the Documents Request Job Aid (below) will be available for review during the audit. Rail consortiums such as RailAmerica, Watco, Genessee & Wyoming Railroad, etc., maintain records at a central location. If these documents are not available as requested for the audit, the inspector should contact their regional specialist for guidance to resolve the issue.

In addition to the documents listed in the Documents Request Job Aid, inspectors should ensure that there will be a means to copy evidence, that key railroad managers are present to assist, and that a secure location is available at the railroad to perform the audit. Communicate to the railroad the precise time and place that the audit will be conducted.

Conducting the Audit

OP field inspectors should include in the scope of their audit, whether the railroad is in compliance with its own Part 240 Program. If in the opinion of the inspector, the railroad is not properly implementing the railroad's own training program, a discussion should take place with the regional specialist to determine enforcement options. The regional OP specialist must consider whether this same program is in effect in other inspectors' territories, or other FRA regions, so agency enforcement is consistent.

Certified Engineers List

Obtain and review a list of all certified engineers (DSLE/DSRCO may be included or a separate list may be maintained for these individuals) as required by §§ 240.221(a) and (b). This list should indicate the class of service and the certification date of each employee. Compare this list to a current roster of train service engineers working on the railroad.

Cross reference the list(s) noted above using railroad's hours of service records. Inspections of hours of service (HOS) records may reveal employees working as engineers who have not been documented on the appropriate list or who have not been properly certified. Any discrepancies should warrant a close review of related records. The following are suggested areas of focus:

- Target any DSLE/DSRCO not on the engineer's roster and scrutinize that supervisor's qualifications.
- Target any engineer not on the engineer's roster and scrutinize that engineer's qualifications.
- Target an engineer's records from other railroads, if applicable, for prior safety conduct to ensure the engineer was previously certified and in good standing.

If appropriate, obtain and review a list of previous engineers, including locomotive engineer supervisors, that are no longer employed by the railroad, or who are employed by the railroad but not working as locomotive engineers.

- Target those engineers and scrutinize their records to determine the reason they were dismissed or resigned.
- Target those engineers and scrutinize their records to determine if they were properly certified when working in locomotive engineer service.

DSLE/DSRCO Qualifications

Section 2 of the railroad's certification program describes the criteria the railroad will use when selecting its DSLEs/DSRCOs. Determine if these procedures were followed.

Cross-reference the name of the DSLEs/DSRCOs on the monitoring ride and skills test forms with the list of DSLEs/DSRCOs to ensure the proper individuals are performing these procedures. (Note: Newly appointed DSLEs/DSRCOs may not be on the list, since the list is only required to be updated annually.)

Classes of Service

Review the different classes of certified engineers to determine the extent of compliance by the railroad with the certification program.

Review records to determine compliance of engineers operating in the class of service qualified by sampling HOS records (i.e., certified as a hostler but working as a train service engineer).

Review records to determine that a DSLE/DSRCO conducting skills tests and monitoring rides was qualified in that class of service at the time he or she conducted those check rides.

Review the Written Knowledge Test

Review the "closed book" and "open book" portions of the written knowledge test for all applicable requirements found in § 240.125.

At a minimum, the test should cover the following subjects:

- Personal safety practices
- Operating practices (rules)
- Equipment inspections
- Train handling (including familiarity with physical characteristics)
- Federal regulations

(Minimum passing requirements should be located in Section 4 of the certification program)

Review of individual locomotive engineer records, including all DSLEs and DSRCOs

Review each locomotive engineer, DSLE, and DSRCO's file for documents related to the certification criteria, including, but not limited to:

- § 240.115 – Motor Vehicle Driving Records Search: Conducted not more than 366 days prior to certification date.
  **A National Driver Register (NDR) hit requires railroads to obtain additional State driving records. Failure to do so results in noncompliance with the related subpart. (Note: certification can be issued pending subsequent searches identified by the NDR check).*

- § 240.121 – Hearing and Vision Acuity: Conducted not more than 366 days prior to certification date.

- § 240.123 – Completion of Training Requirements found in the Part 240 Program. (Railroads are only required to keep records for 6 years per § 240.215(h). Subsequently, initial records for older engineers may not be available.)

- § 240.125 – Knowledge Testing: Conducted not more than 366 days prior to certification date.

- § 240.127 – Skills Performance Testing (must be conducted by a DSLE/DSRCO): Conducted not more than 366 days prior to certification date.

- § 240.109 – Prior Safety Conduct (if previously certified from another railroad).

- § 240.113 – Prior Railroad Service Record (if applicable).

- § 240.303(b) – Annual Monitoring Ride: Must be conducted during the calendar year.*

- § 240.303(c) – Unannounced Efficiency Test: Must be conducted during the calendar* year.

  **NOTE: Annual Monitoring Rides and Unannounced Efficiency Tests are essential; however, they are not required to be conducted before the issuance of a certificate. Therefore, the railroad failing to conduct either of these requirements are deficiencies or violations recorded under §§ 240.303(b) and (c), respectively, but they do not affect the engineer's certification status.*

Revocations – Procedures related to decertification

Inquire if there have been any certificate revocations on the railroad and determine if proper revocation procedures were followed, i.e., notification of certificate suspension, hearing conducted or hearing waiver signed, proper notice of revocation, proper revocation period assessed, etc.
Revocation records should include, but are not limited to, the following:

- Notification of Suspension.
- Notification of Revocation.
- Training assessment that is required prior to allowing any locomotive engineer to return to work as a locomotive engineer prior to serving the entire revocation period.
- Completion of any remedial training required from the assessment noted above.
- Documentation regarding any decision by the railroad to not revoke the certificate of a locomotive engineer involved in a revocation event.

Interview Employees

When practical, inspectors should interview locomotive engineers and operating employee supervisors for any concerns regarding information relevant to Part 240. These interviews should include an inspection of the engineer's certificate for compliance with applicable sections of Part 240 (possession of certificate, compliance with certificate restrictions, i.e., use of glasses, hearing aid, etc.; if applicable). Inspectors should then cross-reference any information obtained in the interview with audit records. Questions to employees may be of a general nature and may assist in the identification of problems with the implementation of the certification program not otherwise known to the inspector.

Documentation, Closeout Meeting, and Followup Inspections

Documentation

Inspectors must document comprehensive Part 240 audit activity on FRA inspection reports using OP Activity Code **CPR**. Narrative portions of inspection reports should clearly explain all relevant inspection activity. To claim Activity Code **CPR** on a smaller railroad operation, the inspector must have completed all relevant requirements found in the current Certification of Locomotive Engineers Audit Protocols.

All defects must be noted using appropriate defect codes (refer to Common RISPC Codes Job Aid). Line item narratives associated with defects should accurately and clearly describe any noncompliance. Any associated violation report should note that noncompliance was discovered during an audit of the railroad's locomotive engineer certification program.

Closeout Meeting

During the course of the audit, inspectors will notify the railroad of any discrepancies discovered. At the conclusion of the audit, inspectors must formally meet with representatives of the railroad to summarize and present the overall findings of the audit. This closeout meeting should include the positive as well as the negative aspects of the audit.

Followup and Re-inspections

Inspectors are expected to follow up on noncompliant issues until they are resolved. Inspectors should track the railroad's efforts to achieve compliance by using the proper source code for re-inspections in their .96 inspection reports, as well as note the followup inspection in the narrative portion of the followup report.

Conclusion

A thorough audit and inspection of records should reveal a railroad's compliance with Part 240. In order for an audit to be a viable inspection tool, it is imperative that each section of the regulation outlined above be checked for compliance. To assist in this process, a Document Request Job Aid, Common RISPC Codes Job Aid, Engineer Certification Audit Job Aid, and Certification Date Worksheet are attached. The Engineer Certification Audit Job Aid follows relevant sections of the regulation and is an excellent tool to determine the certification status of individual engineers. The Certification Date Worksheet will assist in keeping track of all employee records reviewed.

Job Aid – Notify the railroad prior to the audit that the following documents should be available at the audit.

The following documents are required to be supplied by the railroad for inspection:

- A copy of current engineer Part 240 Program.
- A copy of any amendments to railroad Part 240 Program.
- A roster of certified engineers to include employees and management, and identifies DSLE/DSRCO.
- Efficiency testing records for certified engineers, including DSLE/DSRCO.
- Records for yearly monitoring ride for engineers, including DSLE/ DSRCO.
- Training records for engineers, including DSLE/DSRCO. (May or may not be available for older engineers because of maximum 6-year record retention.)
- Vision and hearing acuity records (documentation of passing test is acceptable unless specific situations require it).

  Note: Determine if the railroad has provided the medical facility responsible for conducting the acuity tests with the proper criteria described under §§ 240.121 and 240.207. Clinics may be using Federal Motor Carrier Safety Administration standards for these tests, which differ from Federal Railroad Administration requirements.
- State and Federal motor vehicle records as required by Part 240 program.
- Prior railroad safety conduct information (if applicable).

Job Aid - Common RISPC Codes

Defect codes entered through RISPC are not always the same as contained in the actual Code of Federal Regulations text of Part 240. The following are the proper cites that should be entered into the RISPC system when documenting noncompliant conditions. This list contains some of the most common violations noted during Part 240 audits and is not all inclusive:

- § 240.203(a)1 – No State or National Driver Register motor vehicle record*
- § 240.203(a)2 – No hearing or vision record*
- § 240.203(a)3 – No knowledge test*
- § 240.203(a)4 – No skills performance record*

  **This series of cites requires that, prior to the issuance of certification, the railroad must determine these documents were received and reviewed. Without them, the railroad cannot make a determination that the individual meets the criteria for initial certification or recertification.*

- § 240.205(b) – When "driving under the influence," or a DUI, occurs within the initial or recertification period (3 years), there should be documentation by an Employee Assistance Program counselor to validate the locomotive engineer has a substance abuse disorder or he does not have a disorder.
- § 240.207(b)2 – The railroad has issued certification to a person that has demonstrated a vision or hearing deficiency as prescribed by 240.121, with no medical followup to determine the extent of the acuity loss.
- § 240.211(a) – The record provided by the railroad indicates the engineer received a skills performance evaluation; however, the evaluation is not in the most demanding service anticipated by the railroad.
- § 240.213(b)1 – There was a failure to document that the student actually performed the required on-the-job-training time. Payroll records merely indicate the student showed up for work, but fail to indicate if the student operated the locomotive or remote control locomotive for the time prescribed in the railroad program.

The following cites are directly related to the failure of the railroad to conduct the prescribed event. Neither of these events are a prerequisites for certification.

- § 240.303(b) – There was a failure to conduct the yearly monitoring event (check ride not done)
- § 240.303(c) – There was a failure to conduct the yearly efficiency test indicated in the railroad program (may or may not be a stop signal test).

Job Aid - Engineer Certification Worksheet

49 CFR § 240.203–Determining Certification Eligibility
49 CFR § 240.215–Retaining Information

Employee Name: _____ Railroad: _____

Certificate Issued (Effective) Date: _____

Current DSLE □
Train Service Engineer □
Locomotive Servicing Engineer □
Student Engineer □

DSRCO □
RCO □
Student RCO □

If applicable, has the railroad made the determination that the DSLE/DSRCO possesses the necessary performance skills – §§ 240.105(b)(1–4) and (c) Yes □ No □

How was this accomplished? _____

Prior Railroad Information (safety conduct if applicable) – § 240.113

Name of previous railroad_____

N/A □ Received □ Missing □

Motor Vehicle Driving Record Search – §§ 240.115 and 240.205

State _____ Missing □ National _____ Missing □

Was the search conducted not more than 366 days prior to the certification date – 240.217(a)(1):

***Yes* □ *No* □**

Physical Acuity Standards – § 240.121

Hearing Acuity _____ Missing □ - Hearing Aid Required - Yes □ No □

Vision Acuity _____ Missing □ - Corrective Lens Required Yes □ No □

Special Restrictions Required – Yes □ No □ (if yes, explain :_____)

Were the tests conducted not more than 366 days prior to the certification date -240.217(a)(2): ***Yes* □ *No* □**

Knowledge Testing – §§ 240.123 or 240.125

Personal Safety	☐	Date_____	Missing ☐
Operating Rules	☐	Date_____	Missing ☐
Mech. Condition of Equip	☐	Date_____	Missing ☐
Train Handling	☐	Date_____	Missing ☐
Physical Characteristics	☐	Date_____	Missing ☐

Were the tests conducted not more than 366 days prior to the certification date – § 240.217(a)(3):

***Yes* □ *No* □**

Skills/Performance Testing § 240.127

Date of Ride_____ Conducted by (DSLE/DSRCO) _____

Was the ride conducted not more than 366 days prior to the certification date – § 240.217(a)(4):
Yes □ No □

Type of train (most demanding service)
_____

If RCO, how many cars handled?
_____

Were the requirements stated in the railroad program met?
_____

Did the engineer meet or exceed the minimum passing score (as defined in the railroad's program) on the skills certification/recertification ride?
_____

Note: This ride is usually conducted during the initial certification or during the recertification of the engineer and must be conducted by a DSLE or DSRCO. Skills performance ride can be used as annual monitoring check ride required by § 240.303.

Monitoring Operational Performance (Annual Check Ride) – § 240.303(b)

Date: _____Missing □ Date: _____Missing □
Date: _____Missing □ Date: _____Missing □
Date: _____Missing □ Date: _____Missing □

Monitoring Requirements (Annual Unannounced Efficiency Test) – § 240.303(c)

Date: _____Missing □ Date: _____Missing □
Date: _____Missing □ Date: _____Missing □
Date: _____Missing □ Date: _____Missing □

Are all records required per § 240.215(h) retained for 6 years from date of certification?
Yes □ No □

Operating Rules Compliance (Decertification) – § 240.305

N/A □
Date Suspended _____Date Revoked _____
Involved Violations _____
Reinstatement of Certificate Date _____

Notes:_____
_____
_____
_____
_____

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Certification Date Worksheet

Name of Engineer	*CERT DATE*	*MV Record* State	National	*VISION*	*HEARING*	*KNOW TEST*	*SKILL TEST*	*CHECK RIDE*	*EFF TEST*	*NOTES*

INSERT CHAPTER TAB HERE

Chapter 17: Conductor Certification

PENDING

INSERT CHAPTER TAB HERE

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CHAPTER 18
THE FOCUSED INSPECTION PROCESS (FIP)

The Focused Inspection Process (FIP) for OP Field Inspectors

A Federal or State OP field inspector's duties regarding the Focused Inspection Process (FIP) are essential to the OP discipline's meeting the stated goals of the agency, and the OP field inspector meeting their own professional and performance goals.

OP field inspectors, including State inspectors, will develop FIP charts as determined by the regional OP specialist. The Regional OP specialist will provide guidance to the OP field inspector and OP State inspector when the FIP documents a serious noncompliance or safety concern.

Overview of the FIP for OP field inspectors

- The Federal and State OP inspector is required to chart, in a hand format, a computer format, or any format of the region specialist's choice, the following three items for their own territory:
    1. Accidents/injuries (Part 225 inspections, including the suggestion that they include Accountable Reports when feasible.)
    2. All FRA inspection activity (Dashboard or RISPC reports acceptable)
    3. Activity Code 217T Observations.
- Once the charting is of significant data it should be reviewed for obvious trends, noncompliance, or safety issues.
- The inspector should use his/her charting analysis to prioritize FRA time and resources.
- The Federal and State OP inspector will provide their regional OP specialist the charting and analysis at least once per quarter.
- Routine reviews of Operational Testing data without first narrowing the size and scope of the data by using FIP Steps 1-5, are not part of the FIP.
- The OP inspector is required to keep their regional OP specialist informed of any issues revealed by the FIP process.
- The OP inspector should use enforcement tools that involve Operational Testing Data inspections, to obtain compliance of identified issues documented by the FIP.
- Inspectors will Follow-up on all safety issues until they are resolved.

FIP Step 1: The OP Field Inspector Charting Part 225 Data.

Inspectors will create a database for the Focused Inspection Process by **charting** the accident/incident data for their inspection territory using the information found in the FRA Office of Railroad Safety Web site and any Part 225 Accountable Reports the OP field inspector receives directly from the railroads.

FRA Safety Data Web Site.

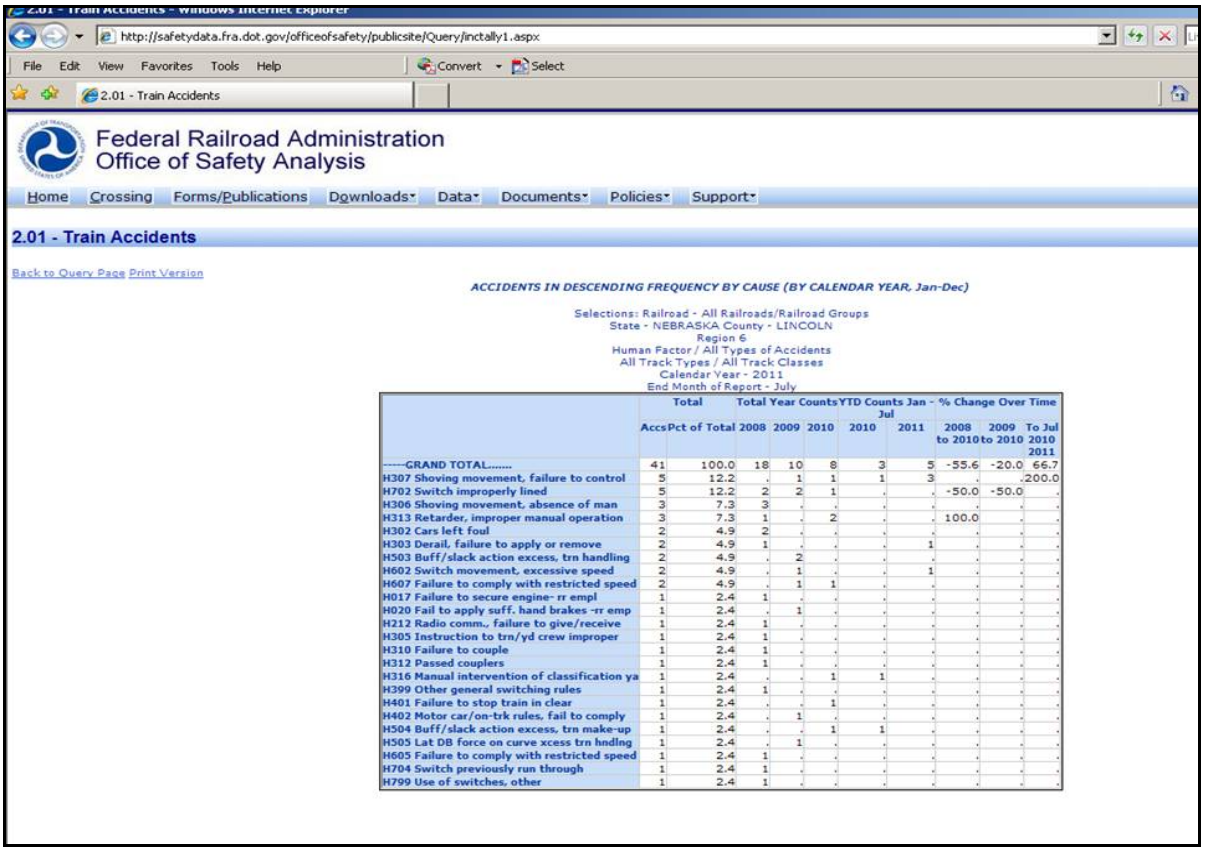
http://safetydata.fra.dot.gov/officeofsafety/

It is essential that inspectors make every effort to ensure that the railroad has reported the accidents and injuries accurately, including all Part 225 Accountable incidents.

2.01 Report – The Train Accidents Report (2.01 Report) is a potent data analysis tool that allows a user to retrieve detailed accident data on a particular railroad. This report provides the specialist with an overall picture of the accidents occurring on the selected railroad. From this report, the specialist should be able to gain a basic understanding of the location and causes of accidents that have occurred, and correlate that data to the assigned FRA field inspector territories.

Example 2.01 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step.



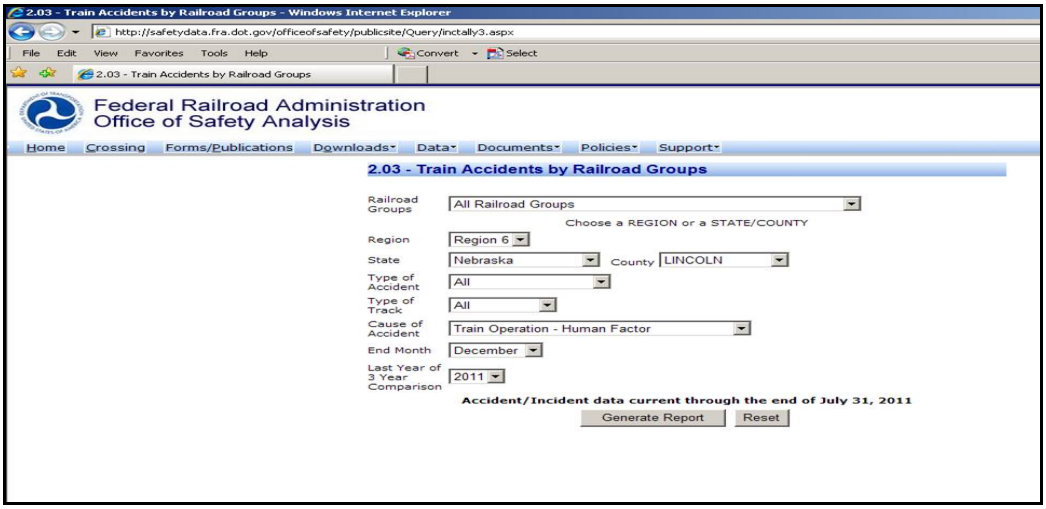
	Total		Total Year Counts			YTD Counts Jan - Jul		% Change Over Time		
	Accs	Pct of Total	2008	2009	2010	2010	2011	2008 to 2010	2009 to 2010	To Jul 2010 2011
-----GRAND TOTAL.....	41	100.0	18	10	8	3	5	-55.6	-20.0	66.7
H307 Shoving movement, failure to control	5	12.2	.	1	1	1	3	.	.	200.0
H702 Switch improperly lined	5	12.2	2	2	1	.	.	-50.0	-50.0	.
H306 Shoving movement, absence of man	3	7.3	3	.	.	.	.	.	.	.
H313 Retarder, improper manual operation	3	7.3	1	.	2	.	.	100.0	.	.
H302 Cars left foul	2	4.9	2	.	.	.	.	.	.	.
H303 Derail, failure to apply or remove	2	4.9	1	.	.	.	1	.	.	.
H503 Buff/slack action excess, trn handling	2	4.9	.	2	.	.	.	.	.	.
H602 Switch movement, excessive speed	2	4.9	.	1	.	.	1	.	.	.
H607 Failure to comply with restricted speed	2	4.9	.	1	1	.	.	.	.	.
H017 Failure to secure engine- rr empl	1	2.4	1	.	.	.	.	.	.	.
H020 Fail to apply suff. hand brakes -rr emp	1	2.4	.	1	.	.	.	.	.	.
H212 Radio comm., failure to give/receive	1	2.4	1	.	.	.	.	.	.	.
H305 Instruction to trn/yd crew improper	1	2.4	1	.	.	.	.	.	.	.
H310 Failure to couple	1	2.4	1	.	.	.	.	.	.	.
H312 Passed couplers	1	2.4	1	.	.	.	.	.	.	.
H316 Manual intervention of classification ya	1	2.4	.	.	1	1	.	.	.	.
H399 Other general switching rules	1	2.4	1	.	.	.	.	.	.	.
H401 Failure to stop train in clear	1	2.4	.	.	1	.	.	.	.	.
H402 Motor car/on-trk rules, fail to comply	1	2.4	.	1	.	.	.	.	.	.
H504 Buff/slack action excess, trn make-up	1	2.4	.	.	1	1	.	.	.	.
H505 Lat DB force on curve xcess trn hndlng	1	2.4	.	1	.	.	.	.	.	.
H605 Failure to comply with restricted speed	1	2.4	1	.	.	.	.	.	.	.
H704 Switch previously run through	1	2.4	1	.	.	.	.	.	.	.
H799 Use of switches, other	1	2.4	1	.	.	.	.	.	.	.

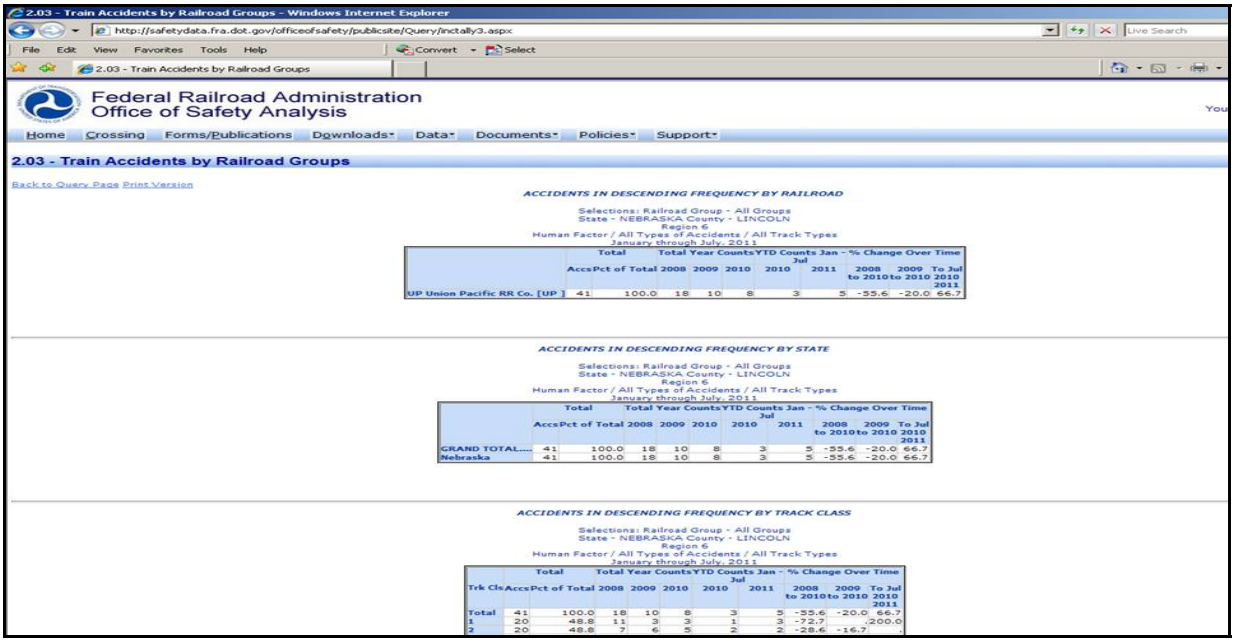
Gathering Accident Data for Charting.

2.03 Report – The Train Accident by Railroad Groups (2.03 Report) is the starting point for data analysis and will guide the specialist toward areas of concern. The report presents relevant information in a clear and understandable format. Raw accident numbers are visible, as well as percentage increases or decreases. After a railroad is identified as an "area of concern," the process moves to the "2.01 Report" for a more in-depth analysis.

Example 2.03 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step.





3.07 Report – The Accident by State/Railroad Report (3.07) presents relevant data in a spreadsheet form and allows direct access to railroad-submitted Rail Equipment Accident/Incident Reports (FRA Form 6180.54). Information on the Form .54 is extremely detailed and provides narrative descriptions of accidents not found in searchable data. A review of these reports provides the specialist an additional level of understanding related to the accidents occurring in the region.

Example 3.07 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step.

Incabbr Output Page

Federal Railroad Administration
Office of Safety Analysis

Home Crossing Forms/Publications Downloads Data Documents Policies Support

3.07 - Accidents By State/Railroad

Back to Query Page Print Version

ALL REPORTS FOR ALL RAILROADS ARE SHOWN. PRIMARY CAUSE OF ACCIDENT DEFINED BY FIRST POSITION OF CAUSE, T = TRACK, H = HUMAN FACTOR, E = EQUIPMENT, S = SIGNAL, M = MISCELANEOUS

Click here for Kld/Inj (Form 6180.55a) definitions

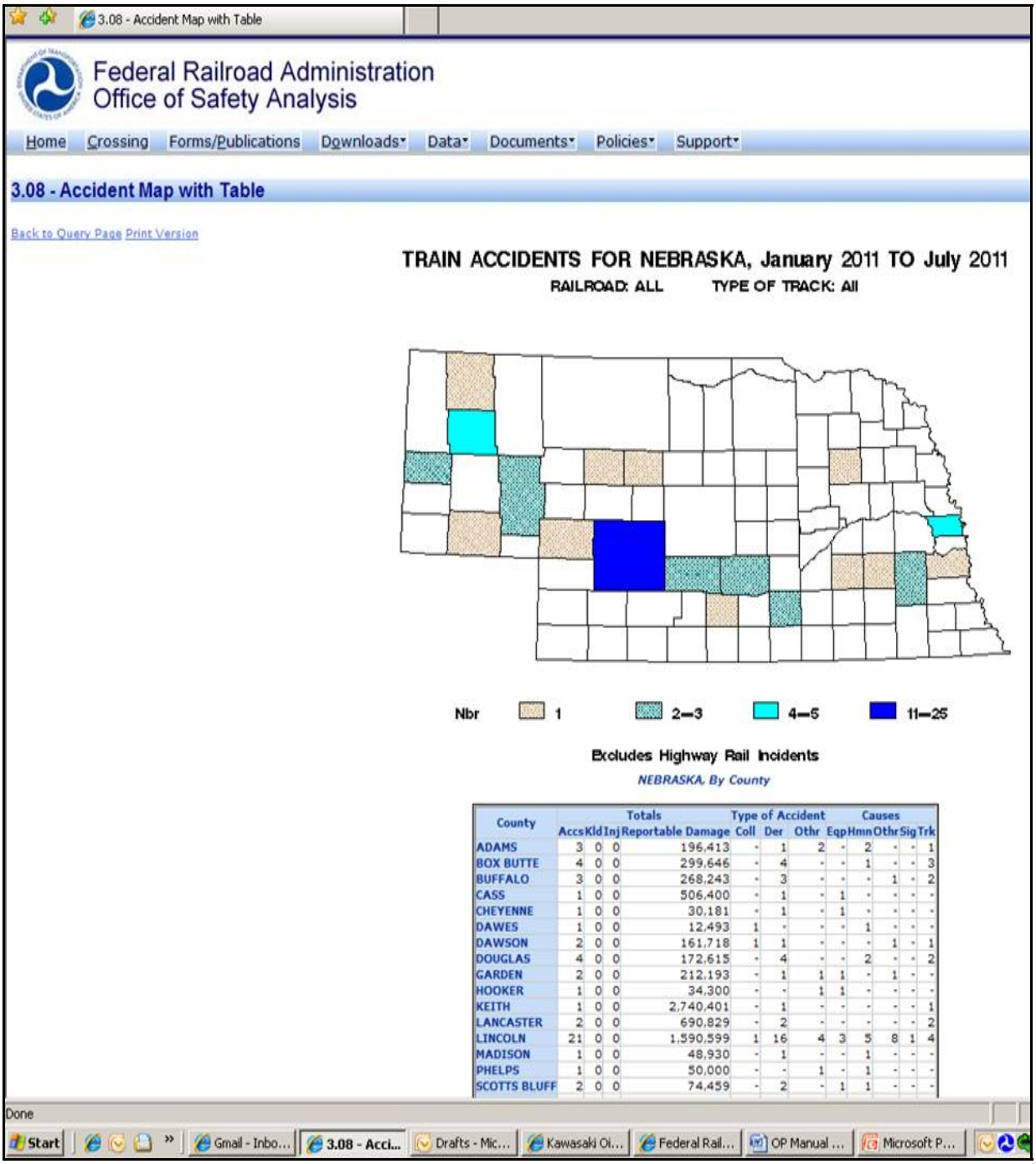
Selections: Railroad - All
State - NEBRASKA County - All
Region 6
Human Factor / All Accident Types
All Track Classes / All Track Types
All Accidents
Hazmat Options - None
Passenger Trains Only - No
Damage Amounts - All
Report Sort Sequence - Date
Date Selected - Jan through Jul, 2011

Acc Rpt Nbr	RR	Report Number	Kld/Inj	Mo	Day	ST	County	Type Track	Trk Maint	Type Acc	Pri Cause	Cont Cause	Equip Damage	Track Damage	Kld	Inj	RR Equip	Spd Mph	Locos Der	Cars Der
1	UP	0111NP004	55A	01	02	NE	LINCOLN	Yard	UP	Der	H303		117	21,478	0	0	FREIGHT TRAIN	005	0	1
2	UP	0111NP013	55A	01	06	NE	LINCOLN	Yard	UP	Der	H602		300	53,667	0	0	LIGHT LOCO(S)	007	3	0
3	UP	0111NP025	55A	01	15	NE	SCOTTS BLUFF	Siding	UP	Der	H307		19,398	1,892	0	0	FREIGHT TRAIN	008	0	2
4	UP	0211NP013	55A	02	11	NE	LINCOLN	Yard	UP	Der	H307		18,393	76,025	0	0	YARD/SWITCHING	004	0	2
5	BNSF	PR031110	55A	03	09	NE	DAWES	Main	BNSF	Coll	H601		6,585	0	0	0	FREIGHT TRAIN	000	0	0
5	BNSF	PR031110	55A	03	09	NE	DAWES	Main	BNSF	Coll	H601		5,908	0	0	0	LIGHT LOCO(S)	009	0	0
6	UP	0311CB006	55A	03	14	NE	DOUGLAS	Yard	UP	Der	H207		36,198	87	0	0	FREIGHT TRAIN	004	1	0
7	NCRC	OP032611	55A	03	26	NE	MADISON	Main	NCRC	Der	H704	H999	25,730	23,200	0	0	FREIGHT TRAIN	001	0	3
8	UP	0411NP014	55A	04	20	NE	LINCOLN	Yard	UP	Der	H307		25,669	69,467	0	0	FREIGHT TRAIN	005	0	3
9	BNSF	PR041110	55A	04	25	NE	BOX BUTTE	Yard	BNSF	Der	H017		9,200	1,800	0	0	LIGHT LOCO(S)	005	1	0
10	BNSF	NE0511101	55A	05	10	NE	DOUGLAS	Yard	BNSF	Der	H503		44,200	55,430	0	0	YARD/SWITCHING	008	0	4
11	UP	0511NP016	55A	05	22	NE	LINCOLN	Yard	UP	Coll	H307		8,822	0	0	0	YARD/SWITCHING	002	0	0
11	UP	0511NP016	55A	05	22	NE	LINCOLN	Yard	UP	Coll	H307		100	500	0	0	LIGHT LOCO(S)	004	1	0
12	BNSF	NE0611113	55A	06	24	NE	ADAMS	Yard	BNSF	Oth	H302		13,000	0	0	0	CUT OF CARS	000	0	0
12	BNSF	NE0611113	55A	06	24	NE	ADAMS	Yard	BNSF	Oth	H302		600	0	0	0	YARD/SWITCHING	004	0	0
13	BNSF	NE0711113	55A	07	07	NE	PHELPS	Industry	XCPI	Oth	H303		50,000	0	0	0	MAINTENANCE CAR	000	0	0
13	BNSF	NE0711113	55A	07	07	NE	PHELPS	Industry	XCPI	Oth	H303		0	0	0	0	YARD/SWITCHING	005	0	0
14	UP	0711ES010	55A	07	13	NE	ADAMS	Main	UP	Oth	H402		35,000	0	0	0	NOT RPD OR N/A	000	0	0
14	UP	0711ES010	55A	07	13	NE	ADAMS	Main	UP	Oth	H402		10,000	0	0	0	NOT RPD OR N/A	015	0	0

3.08 Report – The accident Map with Table will provide the inspector a quick view of the counties.

Example 3.08 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step.



County	Totals				Type of Accident				Causes			
	Accs	Kld	Inj	Reportable Damage	Coll	Der	Othr	Eqp	Hmn	Othr	Sig	Trk
ADAMS	3	0	0	196,413	-	1	2	-	2	-	-	1
BOX BUTTE	4	0	0	299,646	-	4	-	-	1	-	-	3
BUFFALO	3	0	0	268,243	-	3	-	-	-	1	-	2
CASS	1	0	0	506,400	-	1	-	1	-	-	-	-
CHEYENNE	1	0	0	30,181	-	1	-	1	-	-	-	-
DAWES	1	0	0	12,493	1	-	-	-	1	-	-	-
DAWSON	2	0	0	161,718	1	1	-	-	-	1	-	1
DOUGLAS	4	0	0	172,615	-	4	-	-	2	-	-	2
GARDEN	2	0	0	212,193	-	1	1	1	-	1	-	-
HOOKER	1	0	0	34,300	-	-	1	1	-	-	-	-
KEITH	1	0	0	2,740,401	-	1	-	-	-	-	-	1
LANCASTER	2	0	0	690,829	-	2	-	-	-	-	-	2
LINCOLN	21	0	0	1,590,599	1	16	4	3	5	8	1	4
MADISON	1	0	0	48,930	-	1	-	-	1	-	-	-
PHELPS	1	0	0	50,000	-	-	1	-	1	-	-	-
SCOTTS BLUFF	2	0	0	74,459	-	2	-	1	1	-	-	-

Gathering Injury Data for Charting.

2.04 Report – The Employee on Duty Casualty Report (2.04 Report) is the starting point for analysis related to employee injury data and provides an overall view of employee injuries that have occurred during the designated timeframe. Similar to the process associated with accidents, once an area of concern is identified, a more in-depth analysis can take place using the 4.05 Report.

4.05 Report – Casualty by State, Railroad or Type Report (4.05 Report), data can be refined to focus on specific areas of concern. The report presents summary information that can be helpful during injury data analysis.

Example 4.05 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step.

Federal Railroad Administration
Office of Safety Analysis

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4.05 - Casualties By State, Railroad or Type

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TA=Type Accident/Incident: 1 = Train Accident (form 54), 2 = Highway-rail (from 57), 3 = Other (form 55a)

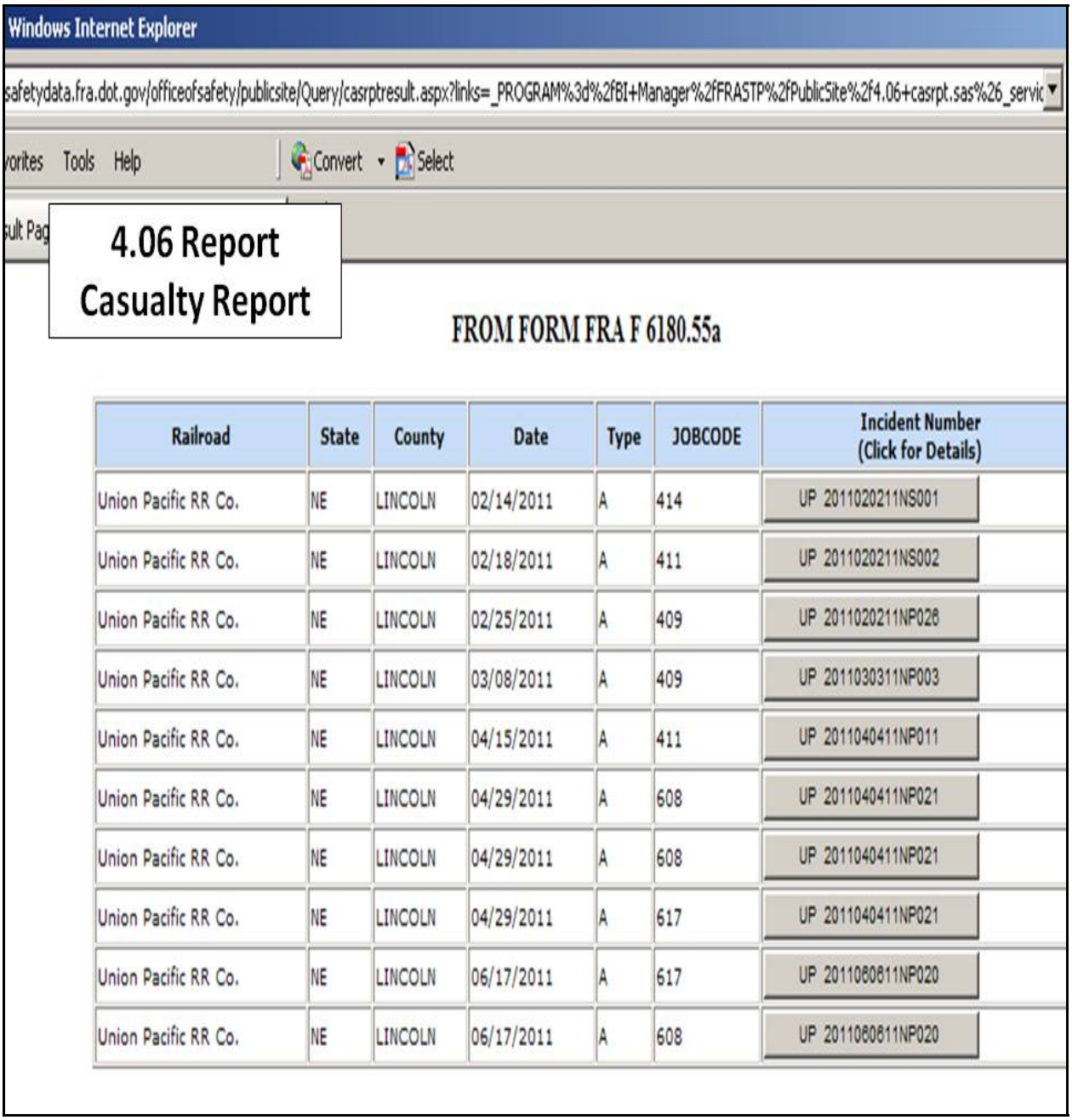
Selections: Railroad - All Railroads
State - NEBRASKA County - All Counties
Region 6
All Job Types / All Locations / All Casualties
Type of Person - All
January through July, 2011
Report Sort Sequence - Date

Obs	RR	Month	Day	TA	Incident Number	Type Person	Condition	Event	St	County	Age
1	BNSF	February	04	3	PR0211003	RR Emp on duty	Sprain/strain, shoulder	Missed handhold, grabiron, step, etc.	NE	GRANT	52
2	BNSF	February	09	3	PR0211006	RR Emp on duty	Sprain/strain, knee	Stepped on object	NE	BOX BUTTE	59
3	ATK	February	24	3	1118934	RR Emp on duty	Sprain/strain, knee	Bodily function/sudden movement, e.g.,sneezing,twi	NE	LANCASTER	63
4	ATK	February	25	3	1118972	RR Emp on duty	Sprain/strain, ankle	Slipped,fell,stumbled,etc. due to irregular surfac	NE	LANCASTER	58
5	UP	April	29	3	0411NP021	RR Emp on duty	Sprain/strain, multiple	Collision/impact - auto, truck, bus, van, etc.	NE	LINCOLN	46
6	UP	April	29	3	0411NP021	RR Emp on duty	Sprain/strain, multiple	Collision/impact - auto, truck, bus, van, etc.	NE	LINCOLN	44
7	UP	April	29	3	0411NP021	RR Emp on duty	Sprain/strain, multiple	Collision/impact - auto, truck, bus, van, etc.	NE	LINCOLN	53
8	UP	June	17	3	0611NP020	RR Emp on duty	Bruise/contusion, multiple	Collision/impact - auto, truck, bus, van, etc.	NE	LINCOLN	56
9	UP	June	17	3	0611NP020	RR Emp on duty	Bruise/contusion, multiple	Collision/impact - auto, truck, bus, van, etc.	NE	LINCOLN	39
10	BNSF	June	19	3	PR0611002	RR Emp on duty	Sprain/strain, shoulder	Overexertion	NE	BOX BUTTE	58
11	BNSF	June	21	3	NE0611011	RR Emp on duty	Sprain/strain, ankle	Sudden, unexpected movement, other	NE	CLAY	36
12	UP	June	25	3	0611CB007	RR Emp on duty	Sprain/strain, knee	On track equipment, other incidents	NE	DAWSON	53
13	BNSF	June	26	3	PR0611008	RR Emp on duty	Bruise/contusion, knee	Slipped, fell, stumbled, other	NE	CUSTER	59
14	BNSF	July	01	3	PR0711001	RR Emp on duty	Sprain/strain, knee	Stepped on object	NE	BOX BUTTE	39
15	BNSF	July	08	3	PR0711002	RR Emp on duty	Bruise/contusion, knee	Lost balance	NE	BOX BUTTE	34
16	NKCR	July	18	3	20110001	RR Emp on duty	Heat/sun stroke	Other (describe in narrative)	NE	PHELPS	51

4.06 Report – The Casualty Detail Report (4.06 Report) allows the review of specific railroad injury and illness forms (FRA Form 6180.55a). The Form .55a provides detailed information on a reported casualty and may provide additional narrative information that is helpful during the analysis of data.

Example 4.06 Report.

Author's note: There is no intent that the reader be able to read the table shown below. The table is merely an example of what inspectors receive when they perform the queries specified in this step. .



Railroad	State	County	Date	Type	JOBCODE	Incident Number (Click for Details)
Union Pacific RR Co.	NE	LINCOLN	02/14/2011	A	414	UP 2011020211NS001
Union Pacific RR Co.	NE	LINCOLN	02/18/2011	A	411	UP 2011020211NS002
Union Pacific RR Co.	NE	LINCOLN	02/25/2011	A	409	UP 2011020211NP028
Union Pacific RR Co.	NE	LINCOLN	03/08/2011	A	409	UP 2011030311NP003
Union Pacific RR Co.	NE	LINCOLN	04/15/2011	A	411	UP 2011040411NP011
Union Pacific RR Co.	NE	LINCOLN	04/29/2011	A	608	UP 2011040411NP021
Union Pacific RR Co.	NE	LINCOLN	04/29/2011	A	608	UP 2011040411NP021
Union Pacific RR Co.	NE	LINCOLN	04/29/2011	A	617	UP 2011040411NP021
Union Pacific RR Co.	NE	LINCOLN	06/17/2011	A	617	UP 2011060611NP020
Union Pacific RR Co.	NE	LINCOLN	06/17/2011	A	608	UP 2011060611NP020

Guidance – Accountable Reports.

FRA does not have a databank for these reports. Field inspectors should acquire as many of the Accountable Reports directly from the railroad as feasible.

1. Initial Rail Equipment Accident/Incident Record (FRA Form 6180.97)
2. Railroad Employee Injury and/or Illness Record (FRA Form 6180.98) whenever possible.

Guidance for Accountable Reports – § 225.3 Applicability.

The recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through (g) does not apply to:

(1) Railroads that operate or own track on the general railroad system of transportation that have **15 or fewer employees covered by the hours of service law** (49 U.S.C. 21101-21107) and
(2) Railroads that **operate or own track exclusively off the general system**.

NOTE: For Accountable Reports inspectors should reference all of Part 225—Railroad Accidents/Incidents: Reports Classification, and Investigations.

Step One Example: Charting Accidents. Include Accountable Accident Reports.

NOTE: Blank charting forms can be found at the end of this chapter.

NEBR Railroad Example

Date 2011	Day	Time	Cause	Cost	Location	Report-able Yes/No	Notes
1/7	Thurs	0300	H312	$1,650	Den Yard: 541.1	No	Inexperienced Crew
1/9	Sat	0850	H318	$250	Den Yard: 541.2	No	Fatigue
1/17	Sun	0730	H312	$700	Den Yard: 541.1	No	
1/18	Mon	1400	H307	$3,500	Den Yard: 2.0	No	Ops Testing Focus
1/20	Wed	0130	H318	$2,900	Den Yard: 541.2	No	
2/8	Mon	1030	H997	$600	Pueblo: 232	No	
2/10	Wed	0230	H704	**$12,700**	Den Ind: 537	**YES**	
2/13	Sat	1044	H307	$861	Den Yard: 541.2	No	Trainman Trainee involved
2/16	Tue	1000	H312	$4,800	Den Yard: 540.9	No	
2/18	Thurs	1330	H312	$700	Den Yard: 541.0	No	
2/20	Sat	2245	H305	$1,900	Den Yard: 541.2	No	
2/21	Sun	2130	H312	$400	Den Yard: 540.9	No	
3/5	Fri	0630	H318	$1,100	Den Yard: 539.9	No	
3/8	Mon	2230	H702	**$28,400**	Walsenburg: 171.6	**YES**	Changed Reporting Codes
3/19	Fri	0330	H503	**$30,416**	Pueblo: 119.2	**YES**	Region Assigned
3/28	Sun	1800	H399	$0	Den Ind: 537.3	No	
4/5	Mon	1000	H305	$550	Den Yard: 540.9	No	
4/7	Wed	2130	H307	$490	Siding track 87.6	No	
4/17	Sat	2200	H307	**$19,900**	Den Yard: 541.1	**YES**	Part 219 Failure
5/2	Sun	1035	H018	**$21,879**	Den Yard: 540.3	**YES**	HQ Assigned
5/9	Sun	0030	H312	$2,000	Den Yard: 540.8	No	
5/10	Mon	1822	H312	$400	Den Yard: 541.2	No	

Step One Example: Charting Injuries. Include Injury Accountable Reports

NOTE: Blank charting forms can be found at the end of this chapter.

NEBR Railroad Example.

Date	Day	Time	Injury	Job	Location	Report-able Yes/No	Notes
1/22	Thurs	0300	Back	Cond	Hobson Yard	No	Lifting grip from van
1/19	Sat	0850	Fatality	Engr	Pan Sub MP 10	**YES**	Collision
2/01	Sun	0730	Bee Sting	YdM	Hobson Yard	No	Parking Lot
3/12	Mon	1400	Ankle	Swman	Havelock Yard	No	Snow Packed Area
5/23	Wed	0130	Head wound	Engr	Cres Sub MP 33	No	Exiting Locomotive

NOTE: Inspectors should ensure that those injuries and accidents determined to be reportable to the FRA were reported correctly on the FRA Safety Data Web site.

FIP Step 2: The OP Field Inspector Charting Onsite Inspections.

Charting the FRA onsite inspections should be completed so that it can be compared to the other steps in the FIP. Charting of the inspections using the correct activity code and source code is essential to the FIP. FRA frequently filters inspection data based on source codes and activity codes to create specialized summary reports. Narrative sections of inspection reports should clearly articulate and present information related to the onsite inspection.

Step 2 Example: Charting Onsite FRA Inspections.
In this example the inspector has listed the FRA and non-FRA Deficiencies found during a six month period, February thru July, on the NEB Railroad at Blackshirt, NE.

***NOTE**: Blank charting forms can be found at the end of this chapter.*

Defects	Viols	CFR/ROR	Insp Report #	Description/day/time	Day of Week Time of Day	Location
1		ROR	19	Dismounted off of moving equipment	Sun 1645 – Feb 6	Cargill
1	1	218.23	55	Blue signal, no light displayed at night	Tues 0930 – Feb 22	Hob Yard
1		218.25	102	Blue signal, not visible, too dirty	Tues 1015 – March 8	Fueling Pit
4		218.27	113	Switches not locked blue signal	Tues 1105 – March 8	Fueling Pit
1	1	218.29b3	124	Speed of 5 mph not posted or provided in locomotive shop facility	Tues 1215 – March 8	Mech Shop
2		218.29	124	Derail not locked when not in use	Tues 2205 – March 8	N Yard
1		218.99	124	Blind shove	Wed 0400 – June 29	East Yd
1		218.101	203	Cars left in foul	Wed 0415 – June 29	East Yd
12		218.103	208	Fail to check switch points	Wed 0500 – June 29	10 Track
5	1	218.55	234	Tampering	Thurs 0600 – July 7	M Track
3	3	220	234	Car count not provided	Thurs 0900 – July 7	East Yd
5		222	255	Improper whistle at public grade crossing	Thurs 1500 – July 7	MP 101
18	16	232.103	266	Train, car and locomotive securement	Thurs 1630 – July 7	MP 115
2		RSR 2.3	276	Step on cut lever	Mon 1000 – July 18	East Yd
3		RSR 5.7	276	Improperly riding car/locomotive	Mon 1030 – July 18	East Yd
8		RSR 100.5	276	Too close around equipment	Wed 1230 – July 20	12 Track
8		RSR 304.5	277	Fail to have protection when between equipment - SOFA	Wed 1345 - July 20	18 Track
2		ROR 21.9	277	Fail to properly void track warrants	Wed 2300 – July 20	Yd Office
2		ROR 234.8	277	No headlight in direction of movement	Thurs 1330 – July 21	Hump

FIP Step 3: The OP Field Inspector Charting Joint Testing Sessions (Activity Code 217T).

Inspectors will monitor operational testing sessions with railroad managers (see OP Manual Chapter 19). The results of these testing sessions should be charted so that the data can be used in the final steps of the FIP.

Step 3 Example: Charting 217T Activity.

Railroad NEB: Operations testing performed when accompanied by an FRA inspector in a 6-month period. (Activity Code 217T)

NOTE: *Blank charting forms can be found at the end of this chapter.*

Railroad Ops Test #	Description	Total Tests (217T)	Railroad manager's recorded failures when accompanied by an FRA inspector.
22	Radio Communication	7	2
29	Unattended Locomotive	18	3
30	Unattended Train	45	0
31	Cars Set Out Unattended	24	0
33	Shoving Cars	27	4
34	Operating Switches and Derails	17	5
35	Working Between Equipment	25	0
37	Riding, Off/On Equipment	20	0
	Totals	**183**	**14**

The Operational Testing above involved Trainmaster Tom Osborn, who recorded the fewest number of failures, Trainmaster Rozier, who recorded the highest number of failures, and Road Foreman Ndarnuking Suh, who recorded an average number of failures in a 1-year period.

FIP Step 4: The OP Field Inspector Analyzing the Charts in Steps 1-3.

Proper charting in the previous steps will enable the inspector to professionally analyze the data for trends and root causes. These charts, along with the inspector's analysis, will be used to support their findings when discussing relevant events with railroad managers, the regional OP specialist, and/or the OP State manager.

Inspectors will be expected to provide FRA and State managers the charting in the previous steps, along with any analysis of the charting, when requested. The FIP process will simplify analysis and make efforts more effective, as well as inspectors more professional.

FIP Step 5: The OP Field Inspector Determining the Size and Scope of the Operational Testing Data to Be Reviewed.

When an OP field inspector has identified noncompliance, root causes, or accident trends, by utilizing FIP Steps 1-4, the inspector will use that "***documented***" data to determine the size and scope of any operational testing records to be requested from the railroad and/or reviewed.

Once the size and scope of the operational testing data has been sufficiently reduced to only those issues relevant to the findings in FIP Steps 1-4, the OP field inspector will request guidance from their regional and/or managers as to how to obtain and review relevant operational testing data. Some railroads will provide this information to the FRA in a hard copy format, and other railroads will provide this information to the FRA in an excel format.

NOTE: Regulatory issues identified in an OP field inspector's inspection of any operational testing data that is not relevant to any "***documented***" FIP charting may be important, but it is not part of the FIP. The FIP requires the operational testing data analyzed to be of a limited size, of a narrow scope, and with clear "***documented***" purpose, before it can be affective.

> *Inspectors should reference Chapter 19, 217P Inspection's Data Analysis and Normalization, to complete this step. The operational testing data analysis is explained in that chapter.*

FIP Step 6: The OP Field Inspector Reviewing Enforcement Options.

This step will require a review of all enforcement options regarding any issues identified, and "***documented***", by the FIP. The previous steps will provide that documentation, as well as the required supporting evidence, required for effective FRA enforcement.

FIP Step 7: The OP Field Inspector Follow-up.

Inspectors should use the Inspection Report's Reinspection Source Code to follow to completion FIP Steps 1-7. Although charting of these efforts is not mandated, it is strongly suggested so that OP field inspectors are provided tangible measurements of their successes.

FIP Conclusion – OP Field Inspector.

Responsibility regarding the technical aspects of the FIP lies at the OP field inspector level. Regional OP specialists, OP State managers, and OP field inspectors should make their territorial FIP analysis and charting a priority so that real time information can be provided to our FRA senior managers when requested. If the field inspector's FIP is performed properly it will enable senior FRA managers to address systemic issues that are the root cause of many human factor accidents and injuries in the railroad industry.

Examples of using the FIP

Example One

Noncompliance observed

A field OP inspector observed an engineer dismounting equipment improperly.

- The inspector documented the noncompliance on an inspection report as a non-FRA deficiency.
- The inspector's FIP charts indicate that there are five injuries involving dismounting equipment for that railroad in her area. Of those five injuries, three were reported to the FRA and two were recorded as Accountable Injuries. The inspector provided that information (Activity Code 225R) to the railroad on an inspection report.
- The inspector's charts indicate a manager recorded a failure for dismounting equipment during a joint operational testing session three months earlier. (Activity Code 217T).
- The inspector's charts indicate that she has recorded five previous non-FRA defects regarding dismounting equipment.

Using the Ops Testing Data to support the inspector's analysis

After discussing the situation with her regional OP specialist and/or State manager to determine the scope of an operational testing analysis (Activity Code 217P) the inspector makes a formal request to the railroad for the Operational Testing data for 6 months regarding the Operations Tests that correlate to her documented concerns.

- The inspector's analysis of this operational testing data documented that there are minimal tests conducted by the railroad managers to address the high number of injuries connected to dismounting equipment. The analysis also indicates that mangers have found only five failures regarding these tests.

Quarterly Review and/or the railroad updating their Operational Testing Program

- The field OP inspector has discussed this analysis with her regional OP specialist, OP State manager, and the railroad's Superintendent, which was documented on an inspection report (Activity Code LTO).

- The FRA made it clear that there is a regulatory requirement that the railroad address the injuries through rules compliance. The Superintendent then agreed to make adjustments to their Operational Testing Program.

Follow-up using the Re-inspection Source Code

- The inspector follows up on the situation on a regular basis until the injury rate for improper dismounting equipment drops to an acceptable level.
- The inspector documents this follow up on an inspection report using the Reinspection Source Code.

Example Two

Noncompliance observed

A field OP inspector observed Locomotive NEBR 1243 leaving track 10 stop to line a misaligned switch on the lead. The crew failed to stop in the clear on a trailing point movement.

- The inspector intervened and interviewed the crew who acknowledged that they did not know they were violating a Federal regulation.
- The inspector documented the noncompliance on an inspection report as a Federal deficiency (Activity Code 218O).
- The inspector's FIP charts indicate that over the past two years there have been seven accidents reported, three reportable and four accountable, that that have been recorded for equipment in the foul.
- Two of those accidents were quite serious and included injuries.
- The inspector provides that information (activity code 225R) to the railroad on an inspection report.
- The 217T chart indicated that the inspector has not been on a joint testing session with the managers regarding equipment in the foul.

As a result of the crew's allegation that they were unaware that they were violating Federal regulations the inspector conducted interviews of the managers at this location.

- The interviews with the railroad managers also acknowledged that they were unaware of the Federal regulation regarding equipment in the foul (Activity Code LTO).
- The situation elevated when the system rules compliance managers also indicated a misunderstanding of the Federal regulations.

Using the Ops Testing Data to support the inspector's analysis

After discussing the situation with his regional OP specialist and/or OP State manager the inspector made a formal request to the railroad for 6 months of operational testing data regarding the specific rules that correlate to equipment in the foul.

- The operational testing data documented that the railroad had adequately increased the amount of operational tests to address this situation (Activity Code 217P).
- The inspector's analysis of his charts documented a high number of noncompliance in this area regarding this issue, but the analysis of the operational testing data documented very few operational testing failures regarding the same issue.
- Due to the managers and employees interviewed acknowledging that they did not understand the Federal requirements of equipment in the foul, the inspector concluded that the root cause of this noncompliance was likely that the managers were not conducting the operational tests correctly. In addition, the inspector suspects that the managers were not trained to perform the operational tests correctly.
- The railroad employees systemic misunderstanding of the Federal regulations regarding equipment in the foul led the inspector to perform a comprehensive review of the railroad's operating rules in affect that involved equipment in the foul (Activity Code RULE and 218O).
- The review of the operational rules documented conflicting railroad rules in effect, which the inspector documented on an inspection report.

Follow-up using the Re-inspection Source Code

- The inspector follows up on the situation on a regular basis until the compliance for equipment in the foul is at an acceptable level.
- The inspector documents this follow up on an inspection report using the Reinspection Source Code.

Example Three

A noticeable spike in accidents found in the inspector's charts

The inspector's FIP charts document a high number of reportable accidents involving switches in his territory, which includes multiple railroads.

- The inspector increased the field inspections of crews using switches.
- The inspector closely scrutinizes the accountable and reportable accidents involving switches (Activity Code 225R), looking for patterns involving time of day, day of week, inexperienced crews, the type of switches, the type of cars, etc.
- The inspector's charts documented that all of the accidents happened in yards and involved yard switches.
- The inspector increases the amount of joint operational testing (Activity Code 217T) regarding switches in the yards and takes that opportunity to discuss Federal expectations regarding switches with crews and managers (Activity Code LTO).

Using the Ops Testing Data to support the inspector's analysis

After discussing the situation with his regional OP specialist and/or OP State manager the inspector made a formal request to the railroads for 6 months of operational testing data regarding the specific rules that correlate to switches.

- The operational testing data documented that the railroad had adequately increased the amount of operational tests to address this situation (Activity Code 217P).
- The inspector's analysis of his charts and the railroad's operational testing data documented compliance in this area regarding switches.
- The inspector performed a comprehensive review of the railroad's operating rules in affect that involved switches. (Activity Code RULE and 218O).

Reviewing the Quarterly Review for the railroad updating their Operational Testing Program

The inspector has documented that the railroad has updated their operational testing programs to accommodate the necessary testing for switches.

Identifying the root cause

The inspector attended safety meetings and operational testing sessions to discuss the high number of accidents involving switches in his territory with the railroad employees involved.

- The railroads and FRA documented high levels of compliance regarding switches.
- It was documented that the same switch type was involved in all of the accidents (45 degree yard switch handles).
- The railroad managers and FRA requested the assistance of the FRA Track Inspectors to assist in determining if the switch type could be the root cause of this spike in accidents.
- It was documented that the switch worked properly.
- It was determined by all parties that the likely root cause was that switchman were deceived by the sound of the switch being latched when it was not.
- The solution was to equip each of these switches with 45 degree handles with hooks.
- The FRA and the railroad managers made tentative plans to increase observations of crews to ensure compliance with the railroad rules to use the hooks when required.

Follow-up using the Re-inspection Source Code

- The inspector follows up on the situation on a regular basis until the accident rate involving switches drops to an acceptable level.
- The inspector documents this follow up on an inspection report using the Reinspection Source Code.

FIP Guidance for FRA and State Managers

The FIP purpose:
The purpose of the focused inspection process is to reduce human factor-caused train accidents, and train yard and engine (TY&E) employee injuries through the analysis of FRA data gathered by Office of Safety Assurance and Compliance. This data is used to determine human factors and other accident/incident trends on specific railroads and in specific States and counties. The data is further used to analyze the type and kind of accident/incident, the type of track, and its location. The process of finding commonalities in these trends assists in determining where FRA

inspectors should best use their resources. This process also assists Office of Safety Assurance and Compliance in making determinations regarding regulatory compliance, as well as rules compliance on railroads throughout the Nation. A key component of this project is the continued HQ effort to monitor the inspection program to ensure effective implementation of the focused inspection process.

Addressing the leading human factor causes of accidents is one of the top action items in FRA's National Rail Safety Action Plan (NRSAP). In light of recent negative trends on some railroads regarding human factor-caused accidents and incidents, FRA has used, and will continue to use, this process to develop and support Safety Compliance Agreements (SCA) with railroads to reverse this trend. This project will make full use of the newly developed "Dashboard" to facilitate the effective accomplishment of the following objectives:

- Target the most frequent, highest-risk causes of accidents.
- Focus FRA's oversight and inspection resources.
- Accelerate research efforts that have the potential to mitigate the largest risks.
- Allow railroads to develop and implement remedial action to address and correct safety issues.

Regional and State Managers Responsibilities

The objective of the Focused Inspection Process (FIP) is to provide a tool that will assist inspectors in identifying root causes so that FRA can direct resources on correcting bona fide concerns. This is accomplished by ensuring that the railroad managers in an inspector's territory are enforcing Federal regulations and railroad operating rules that have been identified as the root causes of accidents, injuries, and/or noncompliance. An OP inspector's overall success and impact on safety can be directly linked to the railroad manager's enforcement of Federal regulations and railroad operating rules.

The FIP establishes the basic framework for the OP field inspector's comprehensive knowledge of his/her territory. It will also assist the OP field inspector in building quality relationships with our railroad safety partners by keeping OP field inspectors abreast of the current safety issues in their territory using tangible supporting evidence of their safety concerns. The FIP may not fit all situations encountered at the implementation levels of the process, but issues related to scope analysis (timeframe, geographical area, types of incidents, etc.) can be identified by this process.

FRA regional managers, working through the proper protocol, should ensure that the State OP field inspectors, as well as Federal OP field inspectors, are performing the FIP requirements. This way the entire agency's resources, as well as the State's resources, can be directed toward the identified areas to maximize our inspection activity.

To ensure that our agency has the most current and updated information available, our partners, the OP State inspectors, will be expected to assist in these efforts. State Managers are required to ensure that the State OP inspectors under their charge perform this charting in the format agreed upon by the Federal regional OP specialist. These charts, along with the State inspector's analysis of those charts, should be presented to the Federal regional OP specialist at least once per quarter.

Simply stated, this process will accomplish FRA's mission to focus our resources on activities that will reduce identified human factor accident risks by ensuring the railroads are enforcing their own operating rules.

Overall Approach

Within the Focused Inspection Process there are various levels of oversight and responsibility. We have divided these responsibilities into three categories:

1. Headquarters OP Specialists
2. Regional OP Specialists/OP State Managers
3. OP field inspectors

The following is a brief summary of the expectations of the Headquarters OP Specialist and the Regional OP Specialists/OP State Managers.

Overview of the Headquarters Operating Practices Specialists
The FRA HQ OP Specialist will provide support and resources to the field when trends are accurately identified. They will also assist in obtaining operational testing data once the scope of the operational testing data has been defined. The FRA HQ OP Specialist will also coordinate multiregional efforts if the identified trends are found to include more than one FRA region.

Overview of the Regional OP Specialists/OP State Managers
The regional OP specialists and the OP State managers will review the OP field inspector's required charting and analysis when presented with issues identified by the FIP. Once an OP field inspector has properly documented an FIP concern the regional OP specialists, along with the OP State manager when practical, will provide the field inspector guidance. This guidance could include additional resources or team inspections.

NOTE: Regional OP specialists and OP State managers should insist that all efforts related to the Focused Inspection Process are documented on a 96 report if applicable.

FIP Steps for Regional OP Specialists/OP State Managers

For the FIP to succeed, the regional OP specialists must be consistent in their level of data analysis. The primary role of the OP regional specialist is to conduct a basic analysis of the charting and analysis presented to them by the OP field inspectors in their charge. This includes State OP inspectors as well as Federal OP inspectors.

Step 1 – Regional OP Specialists/OP State Managers Collect Accident/Incident Data
As the OP field inspector provides the regional OP specialist and the OP State manager the required FIP charting for each territory in the region, the managers can use it as a macro-level view of trends occurring throughout the region. From this FIP analysis the State and Federal managers will be able to provide guidance to OP field inspectors on the precise scope of the railroad's operational testing data that should be reviewed.

Step 2 – Regional OP Specialists/OP State Managers Data Evaluation
An important part of the FIP is the regional OP specialists and OP State manager's evaluation of the FIP charting performed by the OP field inspectors in their charge. The managers should use the FIP to develop guidance provided to the OP field inspectors.

When an FIP issue is correctly identified by the OP field inspector the regional OP specialist and the OP State managers should clearly define expectations and guidance to OP field inspectors in their charge (i.e., "increase inspection activity at the Lincoln, Nebraska t Yard related to relevant Federal regulations or railroad operating rules").

NOTE: Regulatory issues identified in an OP field inspector's inspection of any operational testing data that is not relevant to any "***documented***" FIP charting may be important, but it is not part of the FIP. The FIP requires the operational testing data analyzed to be of a limited size, of a narrow scope, and with clear "***documented***" purpose, before it can be affective.

Step 3 – Regional OP Specialists/OP State Managers Redirecting Resources
As noted, there are different resources available to the regional OP specialists and the OP State managers that can be used to support an inspector's FIP issues. In some cases, a single inspector can complete follow-up inspections, alleviating problems. However, in other instances, areas may warrant redirecting applicable resources to correct established areas of concern, and team inspections may be warranted.

Team Inspections
The key to team inspections is the quality of the inspectors involved. There are different levels of experience within the inspector ranks of FRA, and team inspections are an excellent opportunity for additional training and education of inspectors. Team efforts should have a well-developed sense of purpose prior to the actual safety inspections, to include knowledge of operating rules, knowledge of operating testing programs, knowledge of the territories charting data, and knowledge of the railroad's ability to meet goals and achieve quality tests.

Step 4 – Regional OP Specialists/OP State Managers Follow-up
Regional OP specialists and OP State managers should be engaged in close supervision of the OP field inspector's persistence in following an FIP concern to compliance.

The following is an example of a Regional OP Specialists/OP State Managers review of the OP field inspectors charting.

1. **REVIEW OF DATA:** Accident charts provided by the OP field inspector clearly indicate that railroad NEBR, Jan. – June, in Cook County, Nebraska, had an increase of H306 accidents (shoving – absence of man) of 200 percent.
2. **EVALUATION:** Inspection activity charts provided by the OP field inspector clearly indicate that the FRA inspection activity at this location should be increased by using additional State inspectors or a team inspection approach.
3. **GUIDANCE:** Request the OP field inspector increase inspection activity in BNSF Cook County yards that are related to the H306 accidents, to include the days of the week and

hours the charted accidents are occurring. Also, request the OP field inspector schedule and assign team members to a Team Inspection in Cook County.

4. **FOLLOW-UP:** Have the inspector routinely report his/her findings and provide feedback. This includes documenting the follow-up using the Reinspection Source Code on his/her inspection report.

Job Aid – Chart Part 225 Accidents

Date 2011	Day	Time	Cause	Cost	Location	Report -able Yes/No	Notes

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Job Aid – Chart Part 225 Injuries

Date	Day	Time	Injury	Job	Location	Report-able Yes/No	Notes

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Job Aid – Chart Inspection Activity

Defects	Viols	CFR/ROR	Insp Report #	Description/day/time	Day of Week Time of Day	Location

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Job Aid – Chart 217T Inspections

Railroad Ops Test #	Description	Total Tests	Railroad Failures (217T)	FRA exceptions during the 217T

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CHAPTER 19
OPERATING PRACTICES INSPECTION PRINCIPLES AND GUIDANCE

FRA Geometry Cars and OP Inspectors

OP inspectors are generally not involved in the operations of FRA ATIP cars. When the movement of these cars will require the involvement of any OP inspector that inspector will be governed by the instructions from their regional managers, and the instructions found on the FRA website noted below:

http://atip.fra.dot.gov/index.htm

Switching Operations Fatality Analysis (SOFA) Reference for Inspections

In 1998, the high number of railroad operating employee fatalities that had been occurring each year for some time prompted formation of an impartial working group to study the problem. This working group is referred to as the SOFA Working Group (SWG). Its members include representatives from FRA, the American Short Line and Regional Railroad Association (ASLRRA), the Association of American Railroads (AAR), the Brotherhood of Locomotive Engineers and Trainmen (BLET), the United Transportation Union (UTU), and the Department of Transportation's Volpe National Transportation Systems Center (VNTSC). The SWG has issued recommendations that all members agreed would reduce the injuries and fatalities in railroad operations.

The SWG used an accident database to reveal trends or patterns that appeared to be causing the fatalities, and as a result, issued five recommendations (listed below) that if followed would reduce the railroad fatalities each year.

The SWG then developed 11 more classifications they refer to as Special Switching Hazards (SSH) (listed below). These SSH classifications recognize that some fatalities involve elements from both SSH and SOFA recommendations.

SOFA Recommendations

1. Secure equipment before action is taken (Some railroads refer to this as red zone, set and centered, etc.).
2. Protect employees against moving equipment (two or more crews working in the same area or track must take precautions).
3. Discuss safety at the beginning of a job or when the project changes (job briefings).
4. Communicate before action is taken (communicate properly, including car counts, etc.).
5. Mentor less-experienced employees to perform service safely.

SOFA Special Switching Hazards

Senior FRA managers have indicated that SSHs are a high priority. Inspectors should be focused on these at all times when on railroad property.

1. Close Clearance
2. Struck by Mainline Trains
3. Employee Tripping, Slipping, Falling
4. Free Rolling Railcars
5. Unsecured Cars
6. Equipment
7. Struck by Motor Vehicle or Loading Device
8. Unexpected Movement of Railcars
9. Environment
10. Drugs and Alcohol
11. Miscellaneous

96 Reports – Recording SOFA Observations on Inspection Reports

See also Chapter 3 of this manual.
The requirement to record SOFA Recommendations in the speed column has been discontinued. All deficiencies should be recorded on the inspection report by clearly explaining the deficiencies in the narrative without referencing the SOFA Recommendations.

Joint Operational Testing Inspections (Activity Code 217T)

Each inspector is expected to have an ample amount of inspections regarding operational testing (217T), reviewing operational testing programs and data (217P), and Part 225. This data must be routinely normalized and analyzed to prevent and address increases in accidents and injuries in an inspector's territory.

Pre- and Post-Planning
When planning a 217T inspection with a railroad official or a group of railroad officials, it is a good practice to arrange an operational testing session (217T) well in advance, and with the cooperation of the railroad officials. Directing railroad managers exactly where, when, and on what rule to perform operational testing is not a meaningful way to provide oversight or build cooperative relationships. FRA inspectors should respect the fact that railroad managers are also considered professionals, thus we can provide guidance, suggestions, and requests, but OP inspectors must be cognizant that railroad managers have duties in addition to operational testing with FRA. Consequently, OP inspectors should not normally expect railroad managers to immediately stop what they are doing to accompany an FRA inspector on an operational testing session as requested by the OP inspector.

Preparing for a Testing Session Using Activity Code 217P (Pre- and Post-217T Inspections)
Prior to a 217T operational testing inspection, FRA requires OP inspectors to conduct an inspection or review of the operational testing data using Activity Code 217P (pre-217T). FRA managers will be reviewing inspection reports to determine if field inspectors are following these standards prior to recording 217T inspections.

Equally as important as the pre-217T inspection is the post-217T inspection report, again using the Activity Code 217P. This can be recorded on the same inspection report as the 217T, or performed a few days after the 217T operational testing session. The post-217P inspection MUST document an inspection of the railroad manager(s) recording the testing that occurred during the 217T operational testing session. Recording the post-217T inspection using activity code 217P is essential to FRA's mission; railroad operational tests must be recorded accurately so that the data we analyze is not skewed.

Conducting the 217T Testing Session

Inspectors shall not actively participate in the operational testing of railroad employees in any manner, regardless of whether railroad managers are present. Inspectors accompany railroad managers to determine whether they are conducting operational tests in compliance with their own railroad's operational testing program on file with FRA. Inspectors should remember that it is the responsibility of the railroad to determine if employees are complying with the rules through appropriate surveillance and performance tests, and FRA inspectors are charged with monitoring the railroad manager's oversight responsibilities. FRA does not conduct any operational tests.

It is important that railroad managers perform operational tests in accordance with their railroad's operational testing program on file with FRA. The tests must be performed without the assistance of the FRA inspector. The inspector is required to review the qualification and training records of any railroad manager who fails to perform operational tests correctly. Inspectors should consider recommending civil penalties if railroad managers do not comply with their railroad's operational testing program. Inspectors should strongly consider recommending an individual liability enforcement action if railroad officers knowingly falsify operational testing records.

Prior to accompanying the manager on an operational testing session, the OP inspector should prepare by doing the following:

1. Reviewing the railroad's current accident/incidents (reportable and non-reportable), including their locations and causes.
2. Reviewing the railroad's current operational testing program on file with FRA.
3. Discussing with the railroad managers FRA's "Safe Harbor" Policy (noted herein).
4. Record on an inspection report the specific data (217P Activity) reviewed prior to accompanying the manager on an operational test (217T Activity Code). Reviewing in detail the operational testing data for at least the previous 3-month period.
5. Reviewing previous FRA inspections regarding that territory and/or railroad.

6. Narrowing the scope of the observations by identifying the railroad manager's strengths and weaknesses, and perhaps requesting testing in areas regarding the areas of the inspector's concerns.

At the conclusion of an operational testing session with railroad managers, the field inspector will determine whether the railroad manager conducted the tests in accordance with the railroad's written program, and document his or her findings on the report. The inspection report should include the following:

1. A reference to the debriefing at the end of the operational testing session. This debriefing will include the exact and detailed operational tests performed and their identifying numbers to be recorded in the operational testing records;
2. A review of the railroad manager's recorded operational tests (Activity Code 217P) in which the inspector had observed the railroad manager performing. This can be done on the current inspection report or on a reinspection report completed at a later date, which should include the proper file numbers referencing the original inspection report; and
3. Any observations made by the inspector that are not included in the operational testing session. The observations should be clearly identified and the proper activity code included.

NOTE: If two or more railroads are monitored during the testing session, a separate inspection report must be completed for each railroad manager or railroad employee involved.

217 T – Job Briefings Regarding Safe Harbor – Inspector Responsibilities

Safe Harbor Guidance

Prior to an FRA-accompanied operational testing session, the FRA inspector should brief the railroad managers involved regarding FRA's Safe Harbor Policy. That briefing should then be documented on the inspection report.

The Safe Harbor Policy requires that any noncompliance with railroad operating/safety rules or any Federal regulations is **NOT** to be recorded on the inspection reports except as a "*comment to the railroad*". This comment must indicate that the railroad mangers properly handled the incident in accordance with their own program.

Inspectors and railroad managers are expected to conduct reinspections if noncompliance is found during an operational testing session. Inspectors must include on their reinspection report the proper file number that contains, at a minimum, the Inspector ID and previous inspection report numbers.

Application or Applicability of the Safe Harbor Policy During a 217T Inspection

Activity code 217T is used by OP inspectors when they accompany a railroad manager who is performing operational tests and inspections pursuant to a program maintained under 49 CFR Section 217.9, Program of operational tests and inspections; recordkeeping (program). The only

purpose of a 217T inspection is to determine whether the railroad manager is correctly implementing the railroad's operational testing program (i.e., whether the operational tests are properly performed and whether the results, including all railroad operating/safety rules and Federal defects observed that are either related to or incidental to performing the test, are identified and properly recorded by the testing railroad manager).

Considering the purpose of a 217T inspection, it is counterproductive to file violations when noncompliance with Federal regulations is observed during a 217T inspection activity, **provided** the railroad manager has properly performed the test/observation, recognizes employee noncompliance, and follows the procedures contained in the railroad's operational testing program to correct and record the deficiency. By the same token, noncompliance with railroad operating/safety rules and Federal regulations is **not** to be recorded by inspectors as defects on an inspection report, but should be recorded as "*comments to the railroad*" on the inspection report, **provided** that the railroad manager properly set up the test/observation, recognized the employee noncompliance, and followed the procedures contained in the railroad's operational testing program. Hence, a "safe harbor" is provided to the railroad manager and to the railroad itself.

To summarize, the Safe Harbor principle applies **only** to a 217T inspection activity and **only** when the railroad manager properly sets up the test/observation, recognizes the employee noncompliance, and follows the procedures contained in the railroad's operational testing program to correct and record the deficiency. If those criteria are not fulfilled during a 217T inspection activity, then the inspector should follow the normal procedures to record defects and, when appropriate, recommend civil penalties.

Additionally, the inspector has an obligation to review a copy of the railroad manager's records after the operational test results have been entered into the railroad's electronic recordkeeping system. If the inspector determines that the railroad manager failed to properly record all of the deficiencies taken, the inspector must complete an inspection report indicating that failure(s). That inspection report must record the manager's failure to comply with the railroad's operational testing program for each of the testing records that were improperly entered or that the manager failed to enter.

Examples of Application of the Safe Harbor Policy

Example 1: An inspector is riding in a vehicle with a railroad manager performing an operational testing session when the inspector sees a railroad employee standing on a rail, but the manager does not see it.

> **Actions to be taken:** The inspector and the railroad manager intervene as required by FRA's Intervention Policy (FRA General Manual), and discuss the rules noncompliance with the employee. The FRA inspector must record this as a non-FRA defect and in the narrative note that this was observed by the inspector (Activity Code 217O), and that the railroad manager did not make this observation during the testing session.

Example 2: An inspector is riding in a vehicle with a railroad manager during an operational testing session and observes an employee failing to properly protect a shoving movement. When the inspector brings the noncompliance to the attention of the railroad manager, the manager does nothing about it. The inspector insists to be allowed to intervene regarding the unsafe act.

> **Actions to be taken:** The inspector should record the unsafe act as a defect or violation. The inspector should also record a defect or violation for the manager not following the railroad's operational testing program when he or she ignored the noncompliance by refusing to intervene in the unsafe act.

Suggested 217T Inspection Report Regarding the Safe Harbor Policy:

Description: Comment to Railroad/Company **[217T Activity Code]**
After a job briefing that included FRA's Safe Harbor Policy, FRA's policy prohibiting inspectors from assisting in any operational test, and a discussion on the location and types of tests to be included in this session, managers conducted the following operational test: at location Tango they conducted operational test 11B on the crew operating Locomotive NEBR 3022 at 12:45 p.m. The crew, and managers testing the crew, acted in accordance with the railroad's operational testing program currently on file with FRA. The managers and employees I observed performed very well.

Description: Non-FRA Defect **[217O/217T Activity Codes while accompanying a railroad manager on a operational testing session.]**
Exception noted. During an operational testing session, I observed an employee standing on the rail at the north end of Track 6 located in Boone Yard, at 3:00 p.m. Manager Jones and I immediately intervened to address the noncompliance. The testing officers accompanying me did not see the noncompliance, and consequently will not record the observation in their operational testing records. FRA notes that the railroad managers did correctly intervene when I brought the noncompliance to their attention.

Description: Comment to Railroad/Company **[217T Activity Code]**
I accompanied RR officials A. Smith, Division Trainmaster; B. Smith, Terminal Manager; D. Smith, Road Foreman; M. Smith, Road Foreman; and G. Smith, Road Foreman; on a joint testing session while performing tests & inspections pursuant to a program maintained under 49 CFR Part 217 on the XYZZ Centerville Subdivision between Centerville and Springfield. The testing session started at 8 a.m. and ended at 1 p.m. The XYZZ-FRA team conducted a job briefing at the beginning and end of the testing session. The XYZZ-FRA team observed XYZZ train stop for Test 1233 Block Signals—Stop & Proceed and then stop for Test 1234 Stop for Banner-Trains. The XYZZ-FRA team observed XYZZ train stop for Test 1235 Block Signals-Stop & Proceed. I observed the XYZZ testing team record a test failure on XYZZ train XX for not whistling at Centerville Rd. (USDOT 123456X) near Centerville at milepost 5.2 in accordance with RR test number 1236: Whistle Signal/Grade Crossing.

Signal Shunting Precautions While Observing 217T - Operational Testing Sessions

It is not uncommon for FRA OP inspectors to accompany railroad managers who shunt signals as part of the operational tests and inspections required by 49 CFR Part 217. The information set forth below is to make inspectors aware of what can happen when shunting various types of signal systems. FRA OP inspectors should familiarize themselves with this information, and must ask railroad managers if they have been qualified by the railroad to shunt a signal system. If inspectors are in doubt, the testing managers should be made aware of the concerns, and inspectors should end their observations of the operational testing methods and advise the appropriate higher-level railroad operating manager.

There are at least 50 different signal circuit designs in use across the country today; some old, some new, some a mix of both. Depending on the circumstances, certain testing could be viewed as interference and might be a violation of FRA regulations. Section 236.4 prohibits interference with a signal system in testing or otherwise, unless measures are taken to assure the safety of train movements. Placing a shunt down and dumping a signal in the face of a train is interference which, if performed by a railroad employee, subjects the railroad to monetary penalties and the employee to individual liability. The type of design of the signal system needs to dictate which shunting procedures are used. (Handling the issue case by case with local signal personnel is the best approach.) Signal systems are not designed to “drop” or “fly” a train into them. That is exactly what the employee is attempting to do when he or she shunts a track circuit.

Operational Testing Inspection Checklist

The inspector should:

- Review all of the data relevant as required prior to the 217T session.
- Ensure that all 217T sessions begin with a briefing regarding the FRA Safe Harbor Policy, and note this on the inspection report of the briefing.
- Ensure the railroad manager(s) include in their preparations for operational testing a proper safety briefing that includes the FRA inspector.
- Ensure that the railroad manager(s) understand that the inspector is prohibited from being involved in the operational test itself. The inspector is there to only monitor the test. The inspector’s purpose is to verify that the tests are done in accordance with the railroad’s own program, and to determine whether the tests are performed in accordance with Federal guidelines and railroad operating rules.
- Ask the railroad managers involved if they are trained in the operational testing about to be performed. If inspectors have any reason to doubt their qualifications, the railroad manager’s training records should be reviewed.
- Conclude all 217T sessions with a debriefing regarding exactly what will be recorded in the railroad’s operational testing records, including which tests were conducted and any failures that occurred. This briefing and a short description of its contents should be

included on the inspection report and include exactly what tests will be recorded by the railroad manager(s).

- Accompany all 217T inspections with a prior 217P inspection report that includes a review of the operational testing program, operational testing data, and non-FRA-reportable as well as FRA-reportable accidents/injures. The inspector should reference the previous inspection in the file number of the current inspection report.
- Include in all 217T inspections a review of the operational testing records that indicate whether the operational tests conducted in the presence of the FRA inspector were recorded properly. If this inspection is performed on a later date, the inspector should include the 217T inspection report number in the inspection report's File Number box.

217P Inspection's Data Analysis and Normalization

Inspectors should also reference Chapter 18.

217P Guidance

Almost any review of operational testing data should only be attempted only after reviewing the Focused Inspection Process (FIP) charting found in Chapter 18 of this manual. After a complete analysis of the FIP data an inspector can more accurately narrow the size and scope of the operational testing records reviewed. A broad review of a railroad's operational testing records without narrowing the scope of the review will likely have limited, and unreliable, conclusions. In addition, limiting the size and scope of the 217P inspection will bring credibility and documentation to the inspector's analysis.

Reviewing operational testing is not an exact science. Consequently, a 217P analysis should have limited influence when considering violations, or when recording deficiencies, unless strongly supported by the charting noted above. 217P analysis is **BEST** used to identify root causes, and to assist in gaining compliance and reducing accidents/injuries.

Analyzing operational data is the foundation of all FRA OP inspections and can be linked to almost any bona fide effort to bring a railroad into compliance. Almost any successful effort to significantly reduce the number of accidents or incidents in an inspector's territory will include using the railroad's own operational testing.

Normalizing and Collecting Data Gathered during Focused Inspections

Normalization is the act of adjusting the accuracy of dissimilar measurements by imposing attributes that are common. For example, FRA normalizes accident data by imposing a 1,000,000 train-mile standard across the railroad industry, and injury data by imposing a 200,000 man-hour standard.

Normalization becomes a significant issue if the inspector is trying to compare railroad data to FRA data. Defect ratios and other measurements are collected and charted differently. The best way to overcome this obstacle is to normalize the differences in how the data is recorded and

collected. This will give the inspector a common ground from which to establish professional communications with railroad managers.

Example 1: Tracking 217P Data
This inspector has tracked the railroad's operational testing results for a six month period. In these two locations the majority of the accidents, injuries, and FRA defects were documented at night, or on a weekend.

Big Red Subdivision

Operational Tests Total	7,694	Adjusted for TYE Tests Only	5,028
Operational Tests at Night	27%	Adjusted for TYE Tests Only	30%
Operational Tests on Weekends	19%	Adjusted for TYE Tests Only	25.8%
Operational Tests Failure Rate	3.5%	Adjusted for TYE Tests only	4.6%

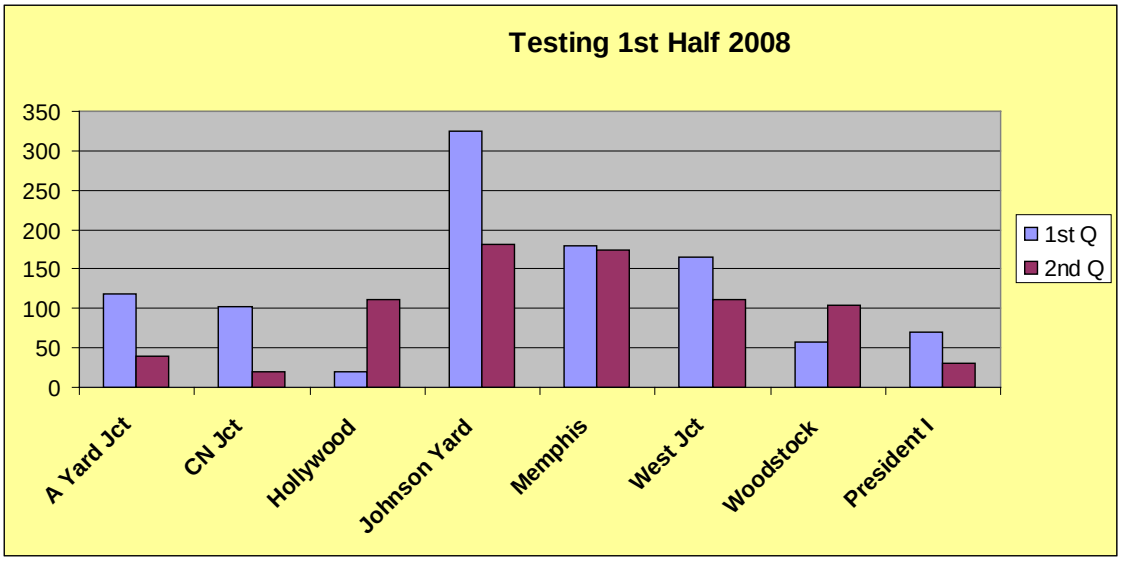
Panhandle Subdivision

Operational Tests Total	1,631	Adjusted for TY&E Employees Only	669
Operational Tests at Night	7.6%	Adjusted for TY&E Employees Only	15.3%
Operational Tests on Sunday	0.56%	Adjusted for TY&E Employees Only	1.3%
Operational Tests on Weekends	6.1%	Adjusted for TY&E Employees Only	12.2%
Operational Tests Failure Rate	3.1%	Adjusted for TY&E Employees Only	3.7%

Examples of findings:

- Limited number of tests appear to be performed at night or on weekends.
- Nine crews were tested on Operational Test 207 (shoving movements) and zero crews were tested on Sunday. Shoving movements were the highest HF accident cause at these locations, and 75% of the incidents happened on Sunday.
- One priority "Z" train crew was tested. Two "Z" trains were involved in accountable incidents.
- On May 11, 20XX, there were simultaneously recorded tests on Efficiency Tests 201 and 207.

Example 2: Tracking 217P Data
As displayed in the following chart, railroad managers conducted 1,018 tests in the 1st quarter of 2008 and 774 tests in the 2nd quarter of 2008. Thus, testing was reduced by 24 percent in the second quarter when compared to the first quarter. There were two additional injuries in the second quarter, and three additional human factor-caused accidents in the second quarter.



Using operational testing to obtain compliance

Whenever an inspector has identified a trend or noncompliance in his/her territory, typically documented with data from the FIP, the inspector should ensure that the railroad is using operational testing to improve compliance, or to address identified accident trends.

Example of using operational testing to identify root causes and obtain compliance

An OP field inspector has found serious noncompliance regarding railroad employees leaving equipment in the foul prior to lining the switch. The FRA inspector has prioritized analyzing and charting the FIP data to determine the root cause.

After reviewing the FIP charting that led to a comprehensive review of specific operational testing records directed at improving compliance regarding equipment in the foul the inspector has revealed the following:

1. The managers are unaware that the operational tests they are conducting are ineffective in obtaining compliance with equipment in the foul.
2. The location has four reportable accidents recorded in the last 18 months that show a cause code for equipment in the foul.
3. FRA inspections indicate noncompliance is a current issue.
4. A high number of Accountable Reports include equipment in the foul.
5. The number of operational tests regarding equipment in the foul is extremely high, but compliance is low. This indicates that there is a problem with the manager's operational testing techniques.
6. Interviews with the managers during testing sessions have revealed that railroad managers did not understand the testing requirements, or the operating rule, regarding equipment in the foul.

7. Interviews with the railroad crews revealed that they did not understand the operating rules or Federal regulations regarding equipment left standing in the foul.
8. The operational tests regarding equipment in the foul did not correlate with the times, locations, or the day of week, the recorded accidents occurred that involved equipment in the foul.
9. Several operational testing failures did not have any follow up testing conducted by managers. .

The railroad has only slightly amended their operational testing program to address the trends regarding equipment in the foul.

Guidance – Violations regarding 217P

A violation report for operational testing records must include the railroad's official operational testing records. Inspectors should request that the railroad's designated representative provide the **official** records when recording noncompliance.

Onboard Train Inspections

Train riding inspections should be conducted in a manner that will not be disruptive to the operations. The primary purpose of an FRA inspector's onboard train inspection is to evaluate compliance with Federal safety standards and railroad operating rules by railroad employees.

Avoid Disruption of Operations

Railroads have expressed concern that an FRA inspector's presence in the cab distracts the train crew operating the locomotive. OP believes this is a genuine and sincere concern, and inspectors should be cognizant of this when onboard a train. Any conversation with the train crew while onboard a train should be minimal. FRA inspectors should refrain from saying or doing anything that might distract the crew from their duties. FRA does not intend for its inspectors to offer criticisms, ask questions, or offer advice to the crews who are performing their duties.

If a crewmember does violate (or is about to violate) a Federal regulation, it is the inspector's responsibility to inform the crewmember of the requirements of the Federal regulation in a manner that is, above all, safe and professional. Safety is the first and foremost concern.

Advance Notice of Onboard Train Inspections

FRA inspectors are not required to provide advance notice of their intent to conduct an onboard train inspection. FRA will not condone the railroad setting any preconditions to the agency's ability and responsibility to perform onboard inspections. Nonetheless, an FRA inspector may provide the railroad prior notice of his or her intent to ride trains if the inspector feels it will be appropriate or beneficial.

If an inspector decides to provide the railroad advance notice of his or her intent to ride a train because the railroad has a policy that a railroad manager will accompany an inspector during an onboard train inspection, FRA would consider this as a courtesy to the railroad, but it is not mandatory for our inspectors.

Preparation for Onboard Train Inspections
Considerations for selecting a train to ride:

- Look for a high number of recently promoted engineers or train service employees.
- Look for a recent increase in business or change of operations.
- Look for major track maintenance projects, heavy grade operations, or other unusual operating conditions.
- Try to vary the types of trains you ride. Work trains and locals have more interaction with dispatchers, and the train crews on those trains are typically more active than train crews on through freight trains.
- There will be more opportunities to make SOFA and SSH observations riding yard trains, remote control locomotives, local freight, or industry switchers.

Conducting the Onboard Train Inspection

- Introduce yourself to the train crewmembers upon your arrival. Identify yourself with either your credentials or with a business card.
- Inform the crew that you will be monitoring radio communications for purposes of radio rules compliance.
- Check with the crew to ensure you have all of the safety equipment you will need to accompany them on a train ride.
- Explain to the crew that you will not be calling out signals, and explain to them why. (See next section.)
- Ensure that you are involved in any job safety briefings that could affect you.
- Check the locomotive engineer's certificate. Make sure the engineer is qualified on the territory to be operated over.
- Per part 220, Railroad Communication, make sure the conductor and engineer each have a written copy of any mandatory directives.
- Request a copy of the mandatory directives. However, there is no Federal requirement that the railroad provide you with a copy.
- Check crewmembers for possession of the required operating rule books, safety rules, air brake and train handling rules, and current applicable timetables for their territory (some may operate over joint trackage rights territory).
- If the crewmembers are required to know the latest General Order or to have the General Orders in their possession or to know the Safety Rule of the Day, check for compliance with these railroad requirements.
- Check daily locomotive inspection records for compliance.
- Observe the crew for rules compliance of all railroad operating and safety rules and Federal laws and regulations, including the use of required personal safety equipment.
- Inspect locomotive safety devices for evidence of tampering.

- Make observations on whether a crewmember makes the required speed indicator test as soon as possible after departure by means of speed test sections or equivalent procedures.

At the End of the Trip

1. Discuss the things that went well and compliment the crew on their professionalism.
2. Discuss with the crew any deficiencies and/or violations noted.
3. Inform the crew of exactly what will be in your inspection report regarding their behavior and identify the manager who will receive a copy of that report.
4. Complete your inspection report.

Calling Signals While Performing Onboard Train Rides

Inspectors are forbidden to call signals out to the crewmembers. The FRA inspector's role is that of an observer, and the inspector should never participate in activities construed to be duties of crewmembers, i.e., operating the locomotive, operating switches, or calling signals.

During the safety job briefing held prior to the onboard train ride, the inspector should explain this policy to the crew. FRA will continue to expect the train crew to comply with their operating rules regardless of FRA's presence. The inspector should explain the purpose of the inspection is to monitor compliance and not to participate as a member of the crew or subject themselves to the crew's operating decisions.

Recording Train Rides on a 96 Report

These activities include when an OP inspector is riding on any type of track geometry equipment.

Inspectors should be governed by the suggestions in the current Train Riding Check List and record all of those activities listed when applicable.

Recording Data Found During Onboard Train Rides (217R, 217X, 217L)

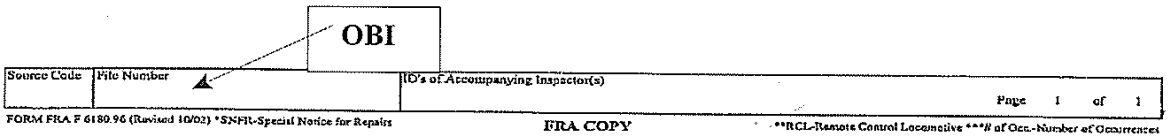
The following procedures are intended to allow the FRA Office of Railroad Safety to analyze and quantify noncompliance with Federal regulations, RORs, and Railroad Safety Rules (RSR) observed and recorded during freight train onboard inspections (217R), remote control locomotive operations (217L), and passenger train onboard inspections (217X).

Procedures

Inspectors conducting onboard inspections must include the following additional information in the Train#/Site box of the F6180.96 inspection report line item.

After entering the applicable onboard inspection activity code (217R, 217L, or 217X) in the inspection report header, record, in the usual manner, line item defects observed during the onboard inspection covered by activity codes such as 218O, 220, 240, 222O, RWP, etc. In addition, line item defects observed during the onboard inspection must be identified by placing the appropriate onboard activity code, 217R, 217L, or 217X, in the Train#/Site block for that line item.

Onboard inspection reports that cover an inspector's designated "day of train riding per pay period" must include the letters onboard inspections (OBI) in the file number box at the bottom of the F6180.96 inspection report. The file number is only on the FRA copy of the inspection report.



Train Ride Checklists

The Train Ride Checklist listed below, or similar checklist, may be used during train riding activities. The information contained on the form can be a useful tool in completing the inspection report at the end of each train ride or crew change. The Train Ride Checklist contains essential information to include on the inspection report. See examples on the pages that follow.

217R – 217X- 217L - *ON-BOARD INSPECTION CHECKLIST*

Date		Railroad	From	Engines		
Time	Start	Train	To	Loads/Empties/Tons		
	End	Tons per operative Brake TPOB – 232	Train Length	232 - Train Profile	Yes	No

	CONDUCTOR	ENGINEER	BRAKEMAN	OTHER	OTHER
Name					
On Duty Time					
228/211 Hrs Off Duty					

Certificate	ENGINEER'S NAME	EXPIRES	CHECK RIDE DATE	EFF TEST DATE
240				

CHECK OFF THE FOLLOWING-USE COMMENT SECTION FOR EXCEPTIONS

	OK	EXCEPTION		OK	EXCEPTION
218O - Job Briefing			**217O** - GOs/TTs/Rulebooks		
218T - Tampering			Personal Safety Equipment		
218Y - Yard Limits			Equipment Restrictions		
MREC - Daily Locomotive Inspection and Air Brake Test Information			Proper Headlight Display		
Rule(s) of the Day			Calling Signals		
Warrants/Bulletins Checked			**RWP** - Roadway Worker Protection		
Authority Limits			Inspecting Passing Trains		
Hazmat Placement/Paperwork			**217E** - Cell phones off		
232O or **232T** - Proper Air Test(s)			**232X** - Secured Equip when required		
222 - Proper Whistle/Bell Use			**232X – Secured Equip. when required**		
232E - Marker/ETD					

TEMPORARY SPEED RESTRICTIONS				220 - RADIO COMPLIANCE
MPH	MP FROM	MP TO		

Unusual Conditions En Route and Comments
Inspector's Name:

Immediately after boarding the train FRA inspectors are required to have a safety briefing with the train crew that includes informing the train crew that FRA inspectors are forbidden to call signals out to the crewmembers. The FRA inspector's role is that of an observer, and the inspector should never participate in activities construed to be duties of crewmembers, i.e., operating the locomotive, operating switches, or calling signals. FRA Inspectors should not be considered part of the crew.

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217X – PASSENGER TRAIN RIDING INSPECTION CHECKLIST

Date		Railroad	Train/Job #	Eng. No(s).
Time	Start	From	Special Cars	# Cars
	End	To	Yard or Road	

CREW MEMBERS	ENGINEER	CONDUCTOR	REAR BRAKEMAN	TC	OTHER
Name					
On Duty Time					
Hrs Off Duty – 228/211					

ENGINEER CERTIFICATION INFORMATION

ENGINEER NAME	CERT. EXPIRES	CLASS OF SERVICE	ANN. EVAL. DATE	COMMENTS

TRIP INFORMATION

PRE-TRIP	OK	EXCEPTION	EN ROUTE	OK	EXCEPTION
Personal Electronic Device – 217E			Flashlight Immed. Available – 239		
Rulebook-TT-SSI-GO-ABTH – 217O			Restricted Speed – 217O/240		
PPE – RSR			Equip. Not Left Fouling – 218O		
Job Briefing – 218O			Protecting Shoves – 218O		
Loco. Safety Devices – 218T			Engine Horn: RWP - 214		
Rule of the Day – ROR			Walking to/from Equipment – RSR		
Bulletins Checked – ROR			Radio Compliance – 220		
Equip. Restrictions – ROR			Engine Horn: Grade Crossings – 222		
Daily Loco. Insp. – MREC			Proper Headlight Display – ROR		
Class I Brake Test – 238T			Calling Signals - ROR		
Class IA Brake Test – 238T			POST TRIP		
Class II Brake Test – 238T			Secure Equip. when Required – 238		
Running Brake Test – 238T			Debrief crew		

Mandatory Directives Received En Route ROR/240/220					Temporary Speed Restrictions 240				Roadway Worker Issues RWP		
NO.	FROM	TO	READ BACK	F/C TIME	FROM	TO	MPH	OK Y/N	AT	EIC	OK Y/N

USE BACK PAGE FOR COMMENTS

INSPECTOR NAME: _____

Immediately after boarding the train FRA inspectors are required to have a safety briefing with the train crew that includes informing the train crew that FRA inspectors are forbidden to call signals out to the crewmembers. The FRA inspector's role is that of an observer, and the inspector should never participate in activities construed to be duties of crewmembers, i.e., operating the locomotive, operating switches, or calling signals. FRA Inspectors should not be considered part of the crew.

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Dispatcher Inspections

These are the main items that distinguish a 1-day inspection from a multi-day 217D dispatcher audit. The latter is intended to be an approximately 2-day audit at a small regional office by a single OP inspector, and not a dispatcher team audit.

How far the inspector gets down the list depends on the size and scope of the operation. The scope of the dispatcher desk inspections should include night shifts and weekend shifts so that the inspector observes less-experienced dispatchers who have less seniority and usually will be found working these off-hour shifts. Dispatcher inspections should be planned to account for the size of the railroad operation.

First Day – Conduct a Dispatcher Desk Observation
Sit with at least one dispatcher on the day, afternoon, or night shift, for about 1–4 hours and perform the following observations:

- Monitor radio conversation for compliance with rules.
- Check for proper blocking applied to Centralized Traffic Control (CTC) and Track Warrant Control (TWC) computer screens when track and time authority is applied.
- Check the electronic train sheet or paper train sheets.
- Check the track warrants and bulletins, noting whether they are issued and voided properly.
- ONLY when there is a break in the action, discuss any current dispatcher issues.
- If practical, set up an interview with specific dispatchers to discuss current issues related to the operation.

Second Day – Perform a Part 217P Inspection of the Dispatcher Operational Testing Records

- Check the Part 217 operations testing records for compliance with the carrier's Part 217 plan.
- Check to ensure the Part 217 records compare favorably with what you viewed the previous day.
- Check the dispatcher training records for compliance with Parts 217 and 239, if applicable.

Regional Inspection Points (RIP)

Inspectors are required to maintain the proper records regarding RIPs. This information should, at a minimum, consist of the following:

1. The number of railroad managers in the inspector's territory.
2. The number of railroad road crews operating in the inspector's territory.
3. The number of railroad dispatchers operating in the inspector's territory.

4. The number of railroad yard crews operating in the inspector's territory.

Hazardous Materials Inspections

Before using any of the following information on how to properly record an inspection for train consist information using the hazardous materials codes, the inspector should make sure that the regional specialists are aware that OP inspectors are using these activity codes. The inspector should be governed by his or her region's instructions. Make sure that hazmat inspections are recorded as required in the inspector's region. The information provided herein is presented to assist you in understanding, and are *not instructions*. However, it may benefit those who are conducting a large number of train rides.

Onboard Train Inspections and Hazardous Materials

The inspector should ask to see the train consist paperwork and look at the descriptions on the train consist to see if they are accurate and complete. Sometimes the crew has an extra copy. If the opportunity presents itself, drive the length of the train, and check to see if the list is accurate. While looking at the train, check for train placement violations.

On the 96 report, there will be three numbered items for each train inspected.

1. Train consist hazmat descriptions (§ 174.26(b)). Each description will be a unit count.
2. Consist accuracy, including missing cars, extra cars, etc. (§ 174.26(a)). Each train is a unit count.
3. Train placement inspection (§ 174.85(d)). Each train is a unit count.

If, for some reason, the inspector cannot walk or drive the length of the train, he or she can only take credit for inspection of descriptions and train placement, but would not be able to check for consist accuracy. If an inspector finds a train placement defect or violation or a hazmat car in the train that is not on the list, a picture to accompany the deficiency is preferred.

Recording Hazardous Materials Inspections on a 96 Report

- **RRO** (Railroad Operations) is a locator. If you put any hazmat on your 96 report, first enter RRO with one unit.

- **Activity Code 172C** is the hazmat shipping description on that same consist. Each hazardous material in the train must have a proper description, an example being "Liquefied Petroleum Gas, Class 2.1, UN 1075." Usually, there is one description for each tank car. In an intermodal train, however, there could be many hazmat descriptions for each container.

- **Activity Code 174B** (§ 174.26(a)) is a train consist inspection. An inspector gets one unit count for each train consist inspected. If one car shown on the list is actually missing from the train, all hazmat cars shown on the list from that point to the rear of the train are

off by one and in violation. This may involve 50 hazmat cars, but there is usually only one exception or violation for a defective consist.

- **Activity Code TPLH** (§ 174.85) is in-train placement of hazmat cars. Generally, each loaded placarded tank car must be at least six deep in the train behind the locomotives or ahead of the occupied caboose. Generally, each residue placarded tank car must be no closer than second behind the locomotives or ahead of the occupied caboose.

There are some very important exceptions to this regulation that inspectors must be aware of. Train placement regulations do not apply to tank cars (loaded or residue) containing a combustible liquid, a Class 9 liquid, or a Class 6.1 Packing Group III liquid. If a combustible placarded tank car is in a train located next to the locomotive, this is perfectly legal. If a Class 6.1 tank car is in a train, the inspector should look at the shipping description on the train consist to see if it is a Group III. If it is a Class 6.1 Packing Group I or II, it is subject to all train placement regulations. If it is a Class 6.1 Packing Group III, it is not subject to any of the train placement regulations.

Another very important exception to TPLH is when the length of the train will not permit the loaded placarded tank car to be buried six deep. Then it must be placed in the middle of the train, but in the case of a very short train, the loaded placarded tank car must never be closer than second car in the train. If there is an ethanol train consisting of 50 loaded flammable placarded tank cars, only one buffer car would be needed between the locomotives and the first ethanol tank car. All 50 tank cars are considered to be in the middle of the train.

Emergency Orders

Section 20104 of 49 U.S.C. gives the Secretary of Transportation the authority to issue rail safety emergency orders without providing prior notice and an opportunity for comment. The Secretary has delegated this authority to the Administrator of FRA. In particular, when the Administrator decides, on the basis of testing, inspection, investigation, or research under the rail safety laws, that an unsafe condition or practice, or combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Administrator may order restrictions and prohibitions necessary to abate the situation. If the emergency order involves unsafe track conditions, the procedures of 49 CFR 216.21-216216.27 should be consulted. Emergency orders are published in the Federal Register and provide an effective date and time and list the parties subject to the order. An emergency order must describe what causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. Emergency orders are subject to review administratively (see procedures at 49 CFR §§ 211.47, 211.71-211.77) and by the appropriate U.S. Court of Appeals (see 49 U.S.C. §§ 20104(b) and 20114(c)).

Also, note that under 49 U.S.C. § 20104(c), an employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an emergency order may file a lawsuit in U.S. district court to compel FRA to issue an emergency order.

Once an emergency order is issued and if it is still in effect, field inspections by the discipline or disciplines assigned to enforce the emergency order become a priority. Regional managers will create an enforcement plan for an emergency order and issue specific instructions to field inspectors responsible for enforcement of the emergency order. If an emergency order is rescinded, notice of this fact is usually published in the Federal Register. See, e.g., 75 Fed. Reg. 59580 (Sept. 27, 2010), rescinding Emergency Order No. 26 effective March 28, 2011.

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CHAPTER 20
REPORTS OF INTERVIEW, STATEMENTS OF WITNESSES, AND DIGITAL FILES

Overview

This section regarding evidence, such as an FRA Report of Interview and an FRA Statement of Witness, should be considered an addendum to the guidance found in FRA's General Manual, general technical bulletins, and other guidance documents.

OP inspectors often rely upon statements from employees, witnesses, and passengers, as a basis for their enforcement actions. Other disciplines are able to prove elements of a violation with direction observations (firsthand knowledge).

It is always preferable to use Statements of Witnesses rather than Reports of Interview to document a violation. If records are sufficient to prove the violation, then it is permissible to use a Report of Interview in lieu of a Statement of Witness as ancillary data to explain the circumstances. Historically, this has been the case in violation reports citing violation of the hours of service laws, where the required hours of duty records have been prepared in complete detail, with all entries correct. If there are incorrect entries, or if the entries conflict with the facts of the violation, then a Statement of Witness or Report of Interview must be used to substantiate the reasons that the record is incorrect.

Interviewing is the process of communicating with at least one other person for the purpose of securing information. Interviewing requires the inspector to be a good listener. Inspectors should plan the questions they are going to ask and refer to them during the interview, but avoid reading them directly from their notes. Feel free to expand beyond the questions you have prepared. Inspectors should also prepare for the interview by familiarizing themselves with any files or documents involved.

Firsthand Knowledge – Guidance

"Firsthand knowledge" is knowledge of something that the inspector personally witnessed. If an inspector does not have firsthand knowledge of an element of a violation, the element must be supported by someone else's firsthand knowledge contained in other evidence (e.g., a Report of Interview, Statement of Witness, or other supporting document).

Reports of Interview

Inspectors should not summarize information regarding an event they do not have firsthand knowledge about without providing a Report of Interview or Statement of Witness.

A Report of Interview may be used only if:

1. It contains a statement by a railroad manager.
2. The statement contained in the Report of Interview is substantiated by additional evidence.

3. The Report of Interview is validated in accordance with FRA policy.

Validating a Report of Interview

Public law (specifically, 49 U.S.C. 20109(i)) prohibits FRA from disclosing the identity of an employee of a railroad who has reported a railroad safety or security violation, including a violation of a hazardous materials law, regulation, or order, without the written consent of that employee. Consequently, when a Report of Interview is used, inspectors must ensure that the inspection report, violation report, and any attachments—including the Report of Interview—do not contain language that was provided confidentially to FRA. Inspectors should validate that the person interviewed agrees that the information in the Report of Interview may be provided to the public, including the railroad affected. This can be done by asking the person interviewed to validate the accuracy in the Report of Interview, documenting that validation, and providing the time, date of interview, and the full name, title, and mailing address of the person who was interviewed.

Situations where employees refuse to validate a Report of Interview should be discussed with the FRA regional managers so that other methods can be explored that will also validate the Report of Interview.

In order to protect the identity of the person providing FRA sensitive information, it is common that the Report of Interview will be removed from any report unless it has been validated in accordance with FRA policy.

Checklist for a Report of Interview

1. Advise the person that the interview is voluntary.
2. Advise the person that a report of their interview will be attached to a public report and perhaps submitted to the railroad or company.
3. Request that the person interviewed validate the report prior to its submission.
4. Provide the time, date, and full name, title, and mailing address of the person who validated the information in the Report of Interview.

Example 1

REPORT OF INTERVIEW

Name: Railroad Employee Johnny

Address: 24913 Railroad Way

City: Manhattan **State:** NY **Zip:** 99999

Phone (optional): 000-907-4000

Occupation: Conductor

Date of Interview: March 30, 2009

Place of Interview: X Yard Office in Manhattan

Others Present: None

Interviewed By: OP Inspector Name Me

Mr. Johnny was interviewed on Friday, March 30, 2009, at the NEBR Yard Office. The purpose of this interview was to ascertain Mr. Johnny's firsthand knowledge of the conditions aboard Train 810 on March 8, 2009. At the time of the incident under investigation, Mr. Johnny was working as the conductor of NEBR Train 810. Mr. Johnny began his railroading career in 1978 as a bridge and building employee for NEBR. In 1991, he transferred to train service and was promoted to conductor in 1999.

Mr. Johnny stated he was working his regular assignment on March 8, 2009. He said that just prior to departing Lincoln, he was informed that Train 808 had been canceled and the crew from that train would join his crew at the 199th Street - Land Park Station.

Mr. Johnny said that with the addition of Train 808's crew, there were five train service employees aboard Train 810. He said he assigned crewmembers throughout the train in an effort to closely monitor the loading of passengers. Mr. Johnny said that as the train filled up, he contacted Trainmaster Turner Gill and informed her of the heavy passenger volume. Mr. Johnny said he was told by Trainmaster Gill to do the best he could to accommodate the passengers. When the train departed Ravenna Station, Mr. Johnny said the first two coaches were standing room only. He said people were standing close together but "were not packed in like sardines."

Mr. Johnny said during Train 810's trip, he and the other crewmembers informed and encouraged passengers to wait for the next train. He said a few passengers exited the train; however, passengers continued to board at every station. Mr. Johnny said that by the time they reached Nowbrew Station, he was unable to walk through the passenger cars. At that point, he

instructed the other crewmembers to close the train's doors individually to avoid catching someone in the door as it closed.

Mr. Johnny said he counted the number of passengers when the train arrived at Alliance Union Station. He said he couldn't remember the exact number but he thought there were between 1,000 and 2,000 passengers. He said about six to eight people commented to him that the train was overcrowded and they felt it was a safety hazard.

Mr. Johnny said he was not aware of any railroad or company safety rule, standard operating procedure, or written instruction that provides guidance to train crews when an overcrowding situation occurs.

Mr. Johnny was informed of the contents of this report at 1104 on [insert date] by my reading the Report of Interview to him. Mr. Johnny agreed to its contents.

Mr. Johnny's contact information:

Universe Railroad
1234 Main Street
North Plate, NE 99999
Phone (optional): 000-000-0000

Example 2

REPORT OF INTERVIEW

Name:	Railroad Employee Johnny		
Address:	24913 Railroad Way		
City:	North Platte	**State:** NE	**Zip:** 99999
Phone (optional):	000-907-4000		
Occupation:	Conductor		
Date of Interview:	March 29, 2009		
Place of Interview:	Dog Yard Office in North Platte, Nebraska		
Others Present:	None		
Interviewed By:	OP Inspector Name Me		

Mr. Johnny was interviewed on Thursday, March 29, 2009, at the Dog Yard. The purpose of this interview was to ascertain Mr. Johnny's firsthand knowledge of the alleged exceeding of the hours of service while assigned to Train 810 on March 8, 2009. At the time of the incident, Mr. Johnny was working as the conductor of NEBR Train 810. Mr. Johnny began his railroading career in 1978 as a bridge and building employee for NEBR. In 1991, he transferred to train service and was promoted to conductor in 1999.

Mr. Johnny stated he was working his regular assignment on March 8, 2009. He said that just prior to stopping the train at Lincoln, he was informed by the dispatcher that Train 808 would proceed past his train and that his crew should exceed the hours of service and proceed off the main track and into the siding at milepost 56 to allow Train 808 to proceed.

Mr. Johnny said that he proceeded to exceed the hours of service by 45 minutes by moving his train into the siding and securing it as instructed by Dispatcher Eric Crouch.

Mr. Johnny was informed of the contents of this report at 1104 on [insert date] by my reading the Report of Interview to him. Mr. Johnny agreed to its contents.

Mr. Johnny's contact information:

Universe Railroad
1234 Main Street
North Plate, NE 99999
Phone (optional): 000-000-0000

Statements of Witnesses

To ensure that FRA complies with the public law that prohibits agency officials from disclosing the identity of railroad employees who have reported railroad safety violations without their written consent, the FRA Statement of Witness is used. See the blank form at the end of this chapter. The Statement of Witness will validate that the individual has knowledge that the information that he or she provided to the inspector is likely to become public information.

A Statement of Witness also has the potential to perjure the individual signing the Statement of Witness by perhaps holding them accountable for any false information provided to FRA in a signed Statement of Witness.

Checklist for a Statement of Witness

1. Statements of Witnesses are not required to be verbatim. Inspectors should capture the information by closely paralleling the language used by the person being interviewed, but it does not necessarily have to be documented word for word.

2. When preparing the report, remember that it should be clear to the reader, which requires proper sentence structure. Make sure all of the pertinent information is included in the narrative of the Statement of Witness, (e.g., dates, train identification numbers or symbols, titles, locations, car numbers, names, clarifications, jargon, and slang).

3. Ensure the accuracy of the information regarding dates, train symbols, titles, equipment, and/or slang.

4. Statements of Witnesses must contain the time, date, and full name, title, and mailing address of the person who was interviewed so that they may be contacted by FRA, if required.

Responses to the Statement of Witness

Inspectors should always provide the railroad with an opportunity to respond to the Statement of Witness, and always include that response in the violation report.

If the Statement of Witness is an accusation, it will likely be necessary to provide FRA's Office of Chief Counsel with the railroad or individual's response to the accusation or incident. Do not merely provide a witness report without the railroad or individuals involved providing their side of the incident. This can be a Report of Interview or another Statement of Witness.

Inspector's Notes

FRA's Office of Chief Counsel has found that inspectors' notes or an audit team's closeout documents can be extremely useful when reviewing and settling violations. Often, these documents detail an inspector's investigation and findings, and provide additional insight into the violation. However, these documents should not be attached to the violation reports as

evidence. Rather, the documents should be uploaded and attached to FRA's copy of the violation reports only.

On-the-Job Training (OJT)

The FRA Railroad Safety Technical Training Standards Division (TTSD) is charged with developing the standards of the OP OJT Manual. The standards found in this manual require current inspectors to observe newly hired OP inspectors performing the OJT tasks and record those tasks completed. The newly hired inspector must then provide the validation of those completed tasks to the TTSD so that they can be recorded.

The OJT requires newly hired inspectors, and the inspectors providing the training, to follow the tasks, conditions, and standards in the OP OJT Manual.

The duties (tasks), conditions, and standards, identified in the OJT Manual should be strictly followed regarding the training of newly hired OP inspectors. The duty identified in the OJT Manual also provides the training inspector the specific minimum number of demonstrations that the newly hired OP inspector will require prior to attempting to perform the duty on their own without the aid of the inspector who demonstrated the duty.

Newly Hired OP Inspectors in OJT

Newly hired OP inspectors, whether State or Federal, will not be allowed to perform any inspections on their own without first completing the OJT program. When the OJT program has been completed, the newly hired inspector will be provided a formal memo from their respective Regional Administrator.

Newly hired OP inspectors, under specific conditions, can be authorized to perform inspections on their own prior to completing the OJT program. These inspections will require specific instructions from their regional OP specialist charged with the OJT scheduling, and in addition, the completed tasks regarding the inspections authorized to be performed on their own must be recorded as "completed" by FRA OP headquarters staff.

Newly hired inspectors are required to provide TTSD a validation form for each task completed. In addition, the newly hired inspector is required to contact the TTSD at least once a week, regardless of if any tasks are completed, until the OJT program is completed. This will also include reviewing the newly hired inspector's records on file to ensure accuracy and consistency.

The inspector providing the field training for OJT

The inspector providing the newly hired OP inspector training must provide the guidance necessary as required in the OP OJT Manual. This includes adhering to the conditions of each task (duty) prior to requiring the newly hired inspector to perform the task to the standards noted in each task.

Providing Presentations at Union Meetings

FRA will track data regarding the agency's OP inspectors attending railroad union meetings. OP inspectors should file a presentation form similar to the sample provided on the next page, and provide the completed form to their FRA regional headquarters office.

FRA OP inspectors should not normally complete an inspection report for attending any union meeting. Inspection reports regarding attending union meetings should be cleared through the regional OP specialist prior to providing the railroad a copy of the inspection report.

FEDERAL RAILROAD ADMINISTRATION-TRAINING PRESENTATION REPORT

Report No.	Instructor Name	ID No.	Region

Course Number	Course Title

Course Dates From			Course Dates To			Total Hours
Month	Day	Year	Month	Day	Year	

ATTENDANCE RECORD (ENTER NUMBER OF ATTENDEES)

Federal	State	RR Industry	Hazmat Industry	Community	Public

Training Recipient-Name of Organization

Location of Training-Facility

City-GSA Code	State-GSA Code

Other Instructor(s) Name(s)

Notes: Submit list of attendees (Names & Titles) of Federal/State/Industry Personnel. If available, attach list of other organizations. Only one form shall be used for each defined Operation Lifesaver "contact."

Course Title	Course Number	Operation Lifesaver Information			
Accident Investigation	00340	Contact Person:			
Track Standards	00343	Phone:			
Equipment Standards	00346	Address:			
Locomotive Inspection	00349				
Emergency Response	00352	Equipment & Supplies Used:			
Hazardous Materials	00355				
Operating Practices	00358				
Noise Standards	00361				
Operation Lifesaver	00364				
Signal & Train Control	00367	Place a check mark under your grade level.	1	2	3

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Digital Files

Electronic Violation Packages

FRA is migrating toward the use of electronic violation packages. Please reference the FRA General Manual for further guidance.

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FEDERAL RAILROAD ADMINISTRATION
STATEMENT OF WITNESS

Statement of_____ Page __ of

I,_____, make the following voluntary statement to _____, who has identified himself/herself to me as a representative of the Federal Railroad Administration (FRA). No threats or promises have been made to induce me to give this statement. **I understand that my employer, or counsel for my employer, will receive a copy of this entire statement if FRA takes enforcement action against my employer related to the facts stated here. I understand that a copy of this statement will be provided to any person (whether an individual, corporation, or other entity) whose violation of the Federal railroad safety laws may be proven, in whole or in part, by this statement, or to that person's counsel, or to both, when and if enforcement action is taken based in whole or in part on this statement.** I further understand that such enforcement actions may include the following: the assessment of a civil penalty for a violation of the railroad safety laws; the issuance of a warning letter; the issuance of an emergency safety order; the initiation of a compliance order proceeding; the seeking of an injunction; or the initiation of a disqualification proceeding to remove an individual who is unfit to perform safety-sensitive service in the railroad industry from such service for a specified period of time. If it subsequently becomes necessary for FRA to support its enforcement action in an administrative hearing or in court, I will testify to the facts set forth below in that hearing or lawsuit.

I understand that 49 U.S.C. § 20109(a) (as amended by Public Law No. 110-432, effective October 16, 2008) provides that--

[a] railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee's lawful, good faith act done, or perceived by the employer to have been done or about to be done--

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by–

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or

(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board;

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with railroad transportation; or

(7) to accurately report hours on duty pursuant to chapter 211.

FEDERAL RAILROAD ADMINISTRATION
STATEMENT OF WITNESS

Statement of_____ Page __ of

I also understand that if I am within the protections of 49 U.S.C. § 20109(a) I may file a complaint with the Secretary of Labor for any discharge, discipline, or other discrimination in violation of the above provisions following the procedures in 49 U.S.C. § 20109(d).

[INSERT THE WITNESS STATEMENT HERE.]

I have read the statement above, and it is all true and correct to the best of my knowledge and belief, **and I consent to the use of the statement in any related enforcement proceeding.**

Signed: _____ Job Title:

Address:

Time and Date:

Signed in the presence of:

_____,
(Signature)

_____,
(Name)

_____,
(Title)

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Chapter 21: Part 243, Training, Qualification, and Oversight for Safety-Related Railroad Employees

PENDING

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Appendix A – OP & Multiple Discipline Code Table of Definitions
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Activity	Discipline	Definition	Comments
174B	H, O	**General Operating Requirements** – The purpose of this inspection is to review a train crew's documentation for each railcar containing hazardous material, including any changes in placement of the car. The inspection should include determining compliance with the basic hazardous materials shipping paper descriptions as required in § 174.26. Record one unit for each train consist inspected, and one subunit for each inspection of the basic shipping paper description of each car containing hazardous materials. **Note 1:** Inspectors must use activity code TPLH to record inspections associated with train placement requirements. **Note 2:** Inspectors must use this code instead of Activity Code 172C when inspecting shipping papers specific to a particular train.	Hazmat Papers
215D	H, O, S, T	**Freight Car Mechanical Inspection –** The purpose of this inspection is for any inspector **other than an MPE inspector** to determine compliance with Part 215, including Appendix D. The inspection includes those performed by an FRA inspector or when an FRA inspector observes railroad employees performing this inspection. MPE inspectors should reference Activity Code 215. Record one unit for each freight car inspected or observed inspected for compliance with Part 215. For articulated cars, count each platform as one unit. **Note 1:** HM and OP inspectors should use this Activity Code HM for ALL of their Part 215 inspections. **Note 2:** Properly stenciled maintenance-of-way equipment is exempt from Section 215.305(b).	Other than MPE - Safety Inspection
217C	O	**Rules Class** – The purpose of this inspection is to review railroad training to determine whether the railroad is following the training program they have on record. Record one unit for each day or partial day reviewing training material, and when monitoring a training class record one subunit for each railroad employee in attendance. This activity also includes reviewing printed study material, simulators, or reviewing a rules training program via a railroad's computer-based training program (CBT). This Activity Code includes, but is not limited to, attending training for Parts 217, 218, 220, 240, and 242. It does not include attending training regarding Part 239.	
217D	O	**Dispatchers/Operators –** The purpose of this inspection is to determine compliance with railroad operating rules and Federal regulations for dispatchers or control operators. Record one unit for each day of monitoring a dispatcher or control operator's compliance, and one subunit for each individual dispatcher or control operator monitored. This Activity Code will be used to record all related railroad operating rules and non-FRA defects observed while conducting a 217D inspection.	
217E	ALL	**Emergency Order –** The purpose of this inspection is to determine compliance with a current Emergency Order. Record each unit and subunit as directed by the unique instructions issued by FRA HQ regarding each specific Emergency Order. Inspectors must thoroughly explain the inspection in the inspection report's narrative.	Emergency orders
217L	O	**Remote Control Operations –** The purpose of this inspection is to monitor remote control operations when accompanying a remote control operator. Record one unit for each remote control locomotive (RCL) crew the inspector is in close proximity to for at least 30 minutes, and one subunit for each RCL crewmember monitored. This Activity Code will be used to record all related railroad operating rules and non-FRA defects observed while conducting a 217L inspection.	RCO Ride

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Activity	Discipline	Definition	Comments
217O	ALL	**Other Operations Observations –** The purpose of this inspection is to observe railroad employees of any craft performing duties regarding railroad operating rules (ROR), and railroad safety rules (RSR). It will include all related RORs, RSRs, railroad bulletins, and any written railroad policy not otherwise covered in Federal regulations. Noncompliance will be recorded as a non-FRA defect under this activity code. Record one unit for an entire yard or equivalent facility monitored, and one subunit for each crewmember, yardmaster, contractor, track employee, mechanical employee, signal maintainer, etc, that the inspector continually observed a sufficient amount of time to determine compliance or noncompliance. **Note:** Unlike noncompliance with Federal regulations, it is FRA policy that inspectors provide information recorded under this activity code regarding noncompliance of an ROR/RSR **without identifying the noncompliant employee by name** in the Federal inspection report. See the General Manual for a further explanation. **Example 1:** An FRA Track Inspector observes a 20-person section gang working for approximately 45 minutes when the inspector observes a track employee sitting on the rail. The FRA inspector intervenes by addressing the employee's noncompliance with an RSR, and then discusses the noncompliance with the employee's supervisor. The inspection report will include the recording of one occurrence of a non-FRA defect for a track employee's failure to comply with the specific RSR that prohibits employees from sitting on a rail. The inspector will record the inspection as one unit and **20** subunits **Example 2:** An FRA MPE Inspector observes four persons working on a railroad car with proper Blue Signal Protection for approximately 10 minutes when the inspector observes one of the workers perform a task while not wearing the required protective equipment. The FRA inspector intervenes by addressing the employee's noncompliance with a RSR by discussing it with the employee's supervisor. The inspection report will include the recording of a non-FRA defect for a car shop employee's failure to comply with the specific RSR that prohibits performing the task without the proper protective equipment. The inspector will record the inspection as one unit and **four** subunits. **Example 3:** An FRA OP Inspector observes a three-person switch crew, and a two-person train crew, in Husker Yard performing switching operations. One of the crewmembers violates a railroad safety rule by dismounting moving equipment. The FRA inspector intervenes by addressing the employee's noncompliance by discussing it with the employee's supervisor. The inspection report will include the recording of a non-FRA defect for the crewmember's failure to comply with the specific safety rule that prohibits dismounting moving equipment. The inspector will record the inspection as one unit and **five** subunits.	217O
217P	O	**Programs & Records** – The purpose of this inspection is to review operations testing programs and records (§ 217.9). Record one unit for each day or partial day of inspection.	
217Q	O	**Annual, Quarterly, and Six-Month Oversight Reviews** – The purpose of this inspection is to inspect operations testing reviews as required in §217.9(e). Each inspector involved in the oversight will record one unit for each day or partial day of inspection. **Note:** The inspector must provide all reports detailing the inspection(s) to each regional OP specialist that has assigned inspectors to the territory reviewed.	NEW – Quarterly Ops Test review

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Activity	Discipline	Definition	Comments
217R	O	**Freight Train/Switch Engine Riding –** The purpose of this inspection is to monitor railroad operations while riding in the cab of a controlling locomotive in freight service. Record one unit for each separate onboard monitoring session lasting at least 30 minutes, and one subunit for each person in the cab other than FRA inspectors. This Activity Code applies whenever an inspector rides a freight train, locomotives, or a yard switch engine, except for RCL operations. This Activity Code will be used to record all related railroad operating rules and non-FRA defects observed while conducting the 217R inspection. **Note 1:** Inspectors should be governed by the suggestions in the current Train Riding Check List and record all of those activities listed when applicable. **Note 2**: It also includes an OP Inspector riding on any type of track geometry equipment.	
217T	O	**OP Testing Sessions –** The purpose of this inspection is to accompany railroad manager(s) performing operation tests and determine each manager's compliance with their own railroad operation testing program (§ 217.9) on record. Record one unit for each day or partial day of this activity, and one subunit for each manager involved, even when operational testing is conducted at several locations on the railroad. This activity code will be used to record all related railroad operating rules and non-FRA defects observed while conducting a 217T inspection. A separate inspection report should be written for each activity code 217T. Any activity codes other than 217T should be recorded on a separate inspection report. **Note 1:** The narrative of the inspection report should include those mandatory items discussed in the FRA pre-job briefing and the FRA post-job briefing with managers, including FRA's current safe harbor policy. **Note 2:** If two or more railroads are monitored during the testing session a separate inspection report must be completed for each railroad manager or employee involved.	
217X	O	**Passenger or Commuter Train Riding –** The purpose of this inspection is to monitor railroad operations while riding in the cab of a controlling locomotive of a passenger train, a passenger switch engine, or commuter train. Record one unit for each separate onboard monitoring session lasting at least 30 minutes, and one subunit for each train or engine service employee assigned to the train. This Activity Code will be used to record all related railroad operating rules and non-FRA defects observed while conducting a 217X inspection. **Note:** Inspectors should be governed by the suggestions in the current Train Riding Check List and record all of those activities listed when applicable.	Passenger Train Ride **in the Cab**
217Z	O	**Passenger or Commuter Train Riding –** The purpose of this inspection is to monitor railroad operations while riding anywhere other than the cab of a controlling locomotive of a passenger train. Record one unit for each separate onboard monitoring session lasting at least 30 minutes, and one subunit for each train or engine service employee assigned to the train. This Activity Code will be used to record all related railroad operating rules and non-FRA defects observed while conducting a 217Z inspection.	Passenger Train Ride **NOT in the Cab**
218H	O	**Hump Yard Protection** – The purpose of this inspection is to determine the protection of train service employees during hump operations in accordance with § 218.39. Record one unit for each hump operation inspected, and one subunit for each employee observed being provided protection.	

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218M	M, O	**Blue Signal Protection on Main or Other than Main Track –** The purpose of this inspection is to determine if the protection provided railroad employees requiring Blue Signal Protection in accordance with §§ 218.25, 218.27, and 218.30. Record one unit for each track that requires Blue Signal Protection. If the track requiring Blue Signal Protection has more than one train or cut of cars requiring protection record one unit for the entire track. Regarding inspecting compliance with Blue Signal regulations involving a remotely controlled switch. Record one unit for all associated recordkeeping requirements at that location, and one subunit for each track associated with those records. **Note 1:** Except for stub tracks, both ends of the track must be inspected for compliance with the Blue Signal regulations. **Note 2:** There is a drop-down FRA observation code inspectors may use in lieu of writing a comment when there are not any exceptions noted.	Blue Signal outside Mech or car shop
218O	ALL	**Part 218, Subpart F –** The purpose of this inspection is to determine a railroad's compliance with Part 218, Subpart F, including the requirement for a railroad to have complying railroad operating rules as indicated in the regulation. Record one unit for each day, or partial day, spent reviewing relevant railroad rules or for each yard or equivalent facility monitored. Record one subunit for each crewmember, yardmaster, contractor, track employee, mechanical employee, signal maintainer, etc, that the inspector continually observed a sufficient amount of time to determine compliance or noncompliance. **Note 1:** The RISPC program will require inspectors to record at least ONE subunit even when there are not any employees observed. **Note 2:** It is FRA policy that inspectors provide information regarding incidents recorded under this activity code as noncompliance of a Federal regulation. It will include **identifying the noncompliant individual by name** in the inspection report. See the General Manual for a further explanation. **Example 1**: An FRA Track Inspector observes a 12-person section gang working for approximately 45 minutes when the inspector observes a track employee throwing a switch with equipment in the foul of the switch. The FRA inspector intervenes by addressing the employee's noncompliance with Part 218, Subpart F, and then discusses the noncompliance with the employee's supervisor. The inspection report will include the recording of the noncompliance for the track employee's failure to comply with Part 218, Subpart F, and the name of the employee in noncompliance. The inspector will record the inspection as one unit and **12 subunits**. **Example 2:** An FRA MPE Inspector observes six persons switching railcars in a car shop for approximately 10 minutes when the inspector observes one of the workers fail to properly protect a shoving movement. The FRA inspector intervenes by addressing the employee's noncompliance with Part 218, Subpart F, and then discusses the noncompliance with the employee's supervisor. The inspection report will include the recording of the noncompliance for the car shop employee's failure to comply with the Part 218 Subpart F, and the name of the employee in noncompliance. The inspector will record the inspection as one unit and **six subunits**. **Example 3**: An inspector reviews the railroad rules to determine if they are in compliance with the requirements set forth regarding railroad equipment in the foul and operating switches. The inspection report will include the recording of one unit for this inspection and will also reference the precise railroad rule(s), or lack thereof, in the inspection report's narrative. In order to record this event properly, the RISPC program will require the inpector to record **one subunit** even though there were not any employees observed. **Example 4:** An FRA OP Inspector quickly determines that a railroad car in the foul is in noncompliance. The inspector also determines that there are not any employees anywhere in the area. The inspection report will include the recording of one unit for this inspection. In order to record this event properly, the RISPC program will require the inspector to record **one subunit** even though there were not any employees observed.	218O

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218S	M, O	**Blue Signal Protection Locomotive or Car Shops** - The purpose of this inspection is to determine compliance with regulations requiring Blue Signal protection in a locomotive servicing track area, a car shop repair track area, or a track that has been designated as a repair track or expedite track. Record one unit for each area inspected. If § 218.29(c), *Alternative methods of protection,* applied in a car shop repair track area or a locomotive servicing track area, one unit is recorded for the entire area, regardless of the number of tracks in the area or the number of cars or locomotives on those tracks. **Note 1:** Except for stub tracks, both ends of the track, or each entrance to the area must be inspected for compliance with the regulation. Workers must be on, under, or between equipment, inspecting, testing repairing, or servicing before recording a unit for this activity. **Note 2:** There is a drop-down FRA observation code inspectors may use in lieu of writing a comment when there are not any exceptions noted.	Blue Signal inside mech or car shop.
218T	O	**Tampering -** The purpose of this inspection is to determine compliance with regulations prohibiting rendering a safety device incapable of proper and effective action, or to materially impair the functioning of a safety device. Record one unit for each locomotive inspected for evidence of tampering with a safety device, except as provided in §218.61. **Note:** Safety devices found tampered with on equipment that is not being operated should be reported to the railroad's managers immediately.	
218U	O	**Utility Employee –** The purpose of this inspection is to determine the railroad's compliance with §218.22. Record one unit for each observation of a railroad utility person for compliance of one of the following: • The employee must be engaged in or connected with train movements, including performing inspection duties associated with the train. • The utility employees involved must be monitored attaching or releasing from a train crew as specified in §218.22.	
218Y	O	**Yard Limits –** The purpose of this inspection is to determine a railroad's compliance with §218.35. Record one unit for each inspection of a specific location where yard limits is located. The inspection must include comparing the location of the yard limit sign to the description in the ROR, timetable, or railroad bulletin.	
219	O	**Control of Alcohol and Drugs** – The purpose of this inspection is to determine compliance with Part 219. Record one unit for each day or partial day of inspection, and one subunit for each record reviewed. The count includes all records associated with Part 40 and Part 219. **Note 1:** This does not include observation of railroad employees for Rule G. OP Inspectors do not record observation of railroad employees for former Rule G compliance. **Note 2**: When inspecting operation testing records to determine railroad activity regarding former Rule G compliance, Activity Code "219" will not be used. All such inspection activity is to be shown under Activity Code "217P."	
220	O	**Radio Standards –** The purpose of this inspection is to monitor railroads for the compliance of radio standards and procedures, Part 220 Subparts A and B. Record one unit for an entire yard or equivalent facility monitored a sufficient amount of time to determine compliance or noncompliance. **Note**: This inspection does not include inspections regarding compliance with §220 Subpart C – Electronic Devices	
220C	O	**Electronic Devices -** The purpose of this inspection is to monitor railroads for the compliance with Federal regulations regarding the use of electronic devices, Part 220 Subpart C. Record one unit for an entire yard or equivalent facility inspected and one subunit for each employee inspected for compliance.	
222O	O	**Use of Loco Horns** (OP) - The purpose of this inspection is to determine compliance with a train crew's responsibility to whistle, or not to whistle, at a federally regulated railroad highway crossing at grade. Record one unit for each grade crossing monitored for compliance, and one subunit for each train observed traversing the grade crossing. **Note:** The DOT grade crossing number and the lead locomotive initials and number must be included on the inspection report.	

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221	M, O	**Rear End Markers** – The purpose of this inspection is to monitor compliance with Part 221. This activity code **should not be used** when inspecting an End of Train (EOT) device under Part 232. Record one unit for each train, locomotive (including DPU's) or caboose inspected for compliance. The inspection of each rear end marking device in rooms or locations where rear end marking devices are stored and/or recharged and maintained is one unit. Each rear end marker ID must be recorded in the line item along with the appropriate observation. Individual marking devices that are not attached to trains or in storage areas not subject to service are not recorded as a unit. **Note:** There is a drop-down FRA observation code inspectors may use in lieu of writing a comment when there are not any exceptions noted.	221
225C	O	**Internal Control Plans –** The purpose of this inspection is to review a railroad's internal control plan (ICP) or implementation of the ICP. Record one unit for each ICP reviewed.	
225P	O	**Injuries Posted –** The purpose of this inspection is to determine the railroad's compliance with §225.25 (h). Record one unit for each location inspected for compliance.	NEW AC
225R	O	**Accident/Incident Reporting** – The purpose of this inspection is to review accident and injury reporting compliance. Record one unit for each day or partial day of inspection, and one subunit for each record reviewed. The activity code covers examination of injury and derailment logs, report forms, documents relating to non-reported incidents, medical records, interviewing employees, and any other accident or injury related activity. **Note 1:** This code covers cross-referencing F6180.54 (rail equipment) and F6180.57 (highway-rail grade crossing) reports to determine proper reporting on F6180.55 and .55a reports. The narrative should clearly explain the depth of the inspection. **Note 2:** This activity code also covers a review of (accountable) F6180.97 and F6180.98 records. **Note 3:** Inspections regarding the posting of injuries under §225.25 (h) should be recorded under Activity Code 225P.	
227N	IH	**Occupational Noise Exposure** - The purpose of this inspection is to determine compliance with Part 227 regarding occupational noise exposure in the **locomotive cab**. It will include audiometric test records, employee noise exposure monitoring plan and monitoring records, cab noise monitoring records, postings of monitoring results, training plans and records, or interviewing persons regarding noise exposure. Record one unit for each day or partial day of an inspection and one subunit for each Part 227 record reviewed. **Note:** This activity may only be claimed when accompanied by a member of the Industrial Hygiene staff.	Used when accompanying **Industrial Hygienist.**
228	O, S	**Hours of Service Records Inspection –** The purpose of this inspection is to determine if Hours of Service (HOS) records are in compliance with Part 228. Record one unit for each day or partial day of inspection, and one subunit for each HOS record reviewed. This activity code includes any examination of HOS logs, HOS report forms, HOS documents, interviewing employees regarding HOS, and any other HOS records review activity. This activity code is not used to document an employee exceeding the HOS. **Note:** Reports ***taking exception to*** an employee exceeding the hours of service should **not** be recorded under this Activity Code, please reference the proper Activity Code associated with the employee's type of work or discipline. Example: Activity Code 228P, 211, or HSL.	

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228P	O	**Hours of Service** – The purpose of this inspection is to record excessive service by **employees in passenger train service only**. Record one unit for each covered service person that exceeded the Hours of Service in passenger train service only. DO NOT use this Activity Code for Part 228 Hours of Duty Recordkeeping, as it has its own Activity Code (228). **Note:** When using this activity code the inspector must have a companion 228 activity code. The companion Activity Code 228 inspection report must be referenced in the narrative of the 228P line item. If there is a discrepancy between the hours of service record (Activity Code 228) and the alleged exceeding of the hours of service (activity code 228P) it must be explained in the report. If additional 228 defects are found during a subsequent inspection for the same case of excess service (railroad's excess service report, for example), the initial inspection report number must be referenced.	Excess HOS by Passenger Service
229X	H, O	**Locomotive Inspection in Operations –** The purpose of this inspection is for any inspector, other **than an MP&E inspector**, to determine a railroad's compliance with Part 229. Record one unit for any locomotive inspected. The inspection may include, but is not limited to, the locomotive daily inspection, any passageway tripping hazards, cab sanitation, cab lighting, speed indicator check, etc.	Locomotive Defects by **OTHER than MPE inspector**
232E	M, O	**End of Train Device** – The purpose of this inspection is to inspect an End of Train (EOT) device for compliance of §232. The inspection must include verifying that the information on the calibration sticker is legible, and that it contains the date, name of person, and location of the last calibration. This activity also includes comparing the quantitative values between the front and rear unit, and the ability of the rear unit to effect an emergency application in response to an emergency application initiated from the front unit. Record one unit for each EOT inspected or observed for compliance. **Note:** This Activity Code will be used when citing defects on the Head End Device (HED) associated with the End of Train device (EOT).	232E
232O	H, O, S, T	**Freight Train Brake Test Observation –** The purpose of this inspection is for any inspector, **other than an MP&E inspector,** to determine compliance with Part 232 not covered in activity code 232E or 232X. It includes any airbrake test required by Part 232. Airbrake test inspections should include in the narrative of the inspection report if the inspector was observing or accompanying a railroad employee or contractor employee performing the airbrake test. Record one unit for each observation or inspection, and one subunit for each railcar involved.	Airbrake Tests by **other than MPE inspector**
232X	M, O	**Securement of Locomotive and Cars** – The purpose of this inspection is to determine if railroad equipment is in compliance with §232.103 (n). Record units as follows: 1. Record one unit for an inspection of unattended equipment that consists of a single locomotive or locomotive consist, either attached to cars or not. This inspection includes determining compliance with the requirements for throttle position, status of the reverse lever, position of the generator field switch, status of the independent brakes, position of the isolation switch, handbrake, and position of the automatic brake valve. 2. Record one unit for an inspection of unattended equipment **NOT** attached to locomotives that are required to be secured under this regulation. This unit includes inspections for bottled air. . **Note 1:** If a train is separated to avoid blocking any type of crossing it should have each section of the equipment recorded as a separate unit. **Note 2**: The inspection report that records a defect or recommended violation identified should clearly state the number of handbrakes found to be applied, the number of handbrakes required to be applied, and the current operating rule in place that indicates the precise number of handbrakes required to be applied. **Note 3**: This inspection also includes an inspector reviewing railroad rules for compliance of this part. **Example:** If 30 unattended railcars are found on a track that is required to have seven hand brakes applied but the inspection reveals that only has one handbrake is applied, it will be recorded as one unit with one occurrence for the failure to have the other six handbrakes applied.	232X

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238O	H,O, S, T	**Passenger Equipment Inspection (Partial)** – The purpose of this inspection is for any inspector, **other than an MP&E inspector**, to determine compliance with Part 238 that is not covered in activity codes 232X or 238T. Record one unit for each inspection and a subunit for each passenger car inspected.	Passenger Equip by **OTHER THAN MPE INSPECTOR**
238T	M, O	**Passenger Train Brake Test Observation –** The purpose of this inspection is to document an observation of a passenger train airbrake test, excluding tourist equipment. Record one unit for each entire brake test observed for compliance with §238, and one subunit for each railroad record associated with the Class I airbrake test. **Note:** There is a drop-down FRA observation code inspectors may use in lieu of writing a comment when there are not any exceptions noted.	238T
238X	M, O	**Passenger Equipment Securement –** The purpose of this inspection is to determine if passenger or commuter equipment is properly secured (excluding tourist equipment). Record one unit for each train, whether or not a locomotive is attached.	238X
239	O	**Passenger Train Emergency Preparedness –** The purpose of this inspection is to record any inspection activity regarding a railroad's Emergency Preparedness Plan. Record one unit for each day, or partial day, of inspection, and one subunit for each train. The inspection typically involves a review of the Emergency Preparedness Plan, and may include observing a passenger train emergency simulation.	
240	O	**Locomotive Engineer Certification Records –** The purpose of this inspection is to determine the railroad's compliance with Part 240, except for §240.223 Criteria for the certificate. Inspectors will record one unit for each day or partial day of inspection, and one subunit for each engineer record inspected. **Note:** Do not use this Activity Code when reviewing an engineer certificate as required in§240.223 Criteria for the certificate. (See Activity Code CERT).	**USE CERT WHEN REVIEW CERTIFICATIONS**
241	O	**U.S. Locational Requirement for Dispatching of U.S. Rail Operations -** The purpose of this inspection is to determine compliance with Part 241. Record one unit for each day or partial day of inspection.	
242	O	**Conductor Certification Records –** The purpose of this inspection is to determine the railroad's compliance with Part 242, except for Criteria for the certificate. Inspectors will record one unit for each day or partial day of inspection, and one subunit for each conductor record inspected. **Note:** Do not use this Activity Code when reviewing a conductor certificate. (See Activity Code CERT).	**USE CERT WHEN REVIEW CERTIFICATIONS**
BWS	S,T	**Bridge Worker Safety –** An inspection concerning Part 214 Subpart B, Bridge Worker Safety Standards. Record one unit for each bridge gang or work group, and one subunit for each member of the gang or work group.	New activity code
CERT	O	**Locomotive Engineer or Conductor Certificate Inspection –** The purpose of this inspection is to determine the compliance of an engineer or conductor certificate**.** Record one unit for each day or partial day of inspection, and one subunit for each engineer or conductor certificate inspected. **Note 1:** Only Title 49 Part 240.223 defects/violations arising from the inspection of a certificate are permitted with this code.	

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CPR	O	**Certification Program Review** – The purpose of this inspection is to record a completed audit of a railroad's Part 240 or Part 242 program. The team leader will record one unit ONLY on the date the audit is completed, and one subunit for each engineer or conductor record reviewed during the entire audit even if it was over several days. When submitting this code, the team leader is verifying that he/she conducted the audit in accordance with the prescribed Locomotive Engineer Audit Protocol document. **Note 1:** For audits on smaller railroad operations all relevant criteria in the Certification of Locomotive Engineers Audit Protocol document must be completed before the team leader records this Activity Code on an inspection report. A lone inspector conducting an audit will be considered a team leader. **Example 1:** An audit of 500 engineer records on a Class I railroad by five OP field inspectors over five days will result in the team leader recording one unit for Activity Code CPR, and 500 subunits for the engineer records reviewed, on the last day of the audit ONLY. All other inspection reports for that day and pervious days will record inspection activity using the Activity Code 240. **Example 2**: An audit of 20 engineer records on a small railroad operation by two OP field inspectors over two days will result in only one of the inspectors recording Activity Code CPR on the last day of the audit ONLY if all relevant criteria in the Certification of Locomotive Engineers Audit Protocol document were met. The Activity Code CPR would include 20 subunits for the 20 engineer records reviewed over the two days of the inspection. **Note 2**: Inspections that include Part 240 or Part 242 elements that DO NOT meet the criteria for Activity Code CPR should be recorded under Activity Code 240 or 242 respectively. **Example:** During a complaint investigation an inspector reviews a single Part 240 record regarding the monitoring ride of an engineer. This should be recorded using Activity Code 240, not Activity Code CPR.	240 Audits on small Railroads
HSL	O	**Hours of Service** - The purpose of this inspection is to record excessive service by **employees in freight train service or dispatching service**. Record one unit for each covered service person that exceeded the Hours of Service. DO NOT use this Activity Code for Part 228 Hours of Duty Recordkeeping, as it has its own Activity Code (228). DO NOT use this Activity Code for passenger service employees, as it has its own Activity Code (228P). This Activity Code also includes freight train employees exceeding the monthly total of hours worked, monthly total for excessive applicable limbo time hours, and the six and seven day consecutive work day requirements. **Note:** When using this Activity Code the inspector must have a companion 228 Activity Code. The companion Activity Code 228 inspection report must be referenced in the narrative of the HSL line item. If there is a discrepancy between the hours of service record (Activity Code 228) and the alleged exceeding of the hours of service (Activity Code HSL) it must be explained in the report. If additional 228 defects are found during a subsequent inspection for the same case of excess service (railroad's excess service report, for example), the initial inspection report number must be referenced.	New Activity Code

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Activity	Discipline	Definition	Comments
LTO	O	**Life Tips OP –** The purpose of this inspection is to record interacting with railroad or contractor employees regarding Federal regulations or railroad safety. Record one unit for each employee interaction and one subunit for each person in attendance. When using this Activity Code the inspector must write a brief description (two sentences or so) in the "Comments" section of the F6180.96 report. **Example 1:** You attend a safety meeting to discuss railroad safety issues (Part 217, Part 218 Subpart F, and etc.). This meeting consisted of one yardmaster and four crewmembers. Record this activity as one unit and five subunits under LTO. **Example 2:** You have active involvement in a job safety briefing with four crewmembers and an additional five roadway workers. Your involvement may include FRA regulations regarding personal or operational safety (Parts 214, 218, etc.) Record this activity as one unit and nine subunits under LTO for each of the crewmembers and roadway workers present. **Example 3:** You have active involvement in a discussion with five railroad workers regarding an FRA Safety or Emergency Advisory and/or SOFA Recommendations. Record this activity as one unit and five subunits under Activity Code LTO . **Note 1:** This Activity Code does not include an FRA inspector debriefing a railroad representative(s) in connection with an FRA inspection report (F6180.96). **Note 2:** This Activity Code does not include attending a labor organization's meeting. (Reference the OP Manual for guidance)	New Activity Code This is a Risk Reduction Initiative
RADX	H, O, T	**Radar Speed Monitoring –** The purpose of this inspection is to monitor and/or accurately validate the speed of trains and railroad equipment for compliance with Federal regulations and/or railroad operating rules. Record one unit for each speed monitoring session and one subunit for each locomotive, train, or railroad equipment on the rail monitored. Non-compliance with railroad operating rules should be recorded under Activity Code 217O. **Note 1:** When entering this code, the inspector must indicate the initials and number of the lead locomotive, or a locomotive within the consist, in the Train # / Site Field. This Field permits the entry of 15 characters. Each train or piece of equipment monitored will require a new line item. **Note 2:** FRA and participating state employees must not perform radar monitoring sessions unless they received a certificate of qualification from an FRA employee who holds a current certificate as a stationary radar trainer. See Chapter 3 of the General Manual for a complete discussion of FRA policy.	RADAR GUNS

Appendix A – OP & Multiple Discipline Code Table of Definitions
Revised February 21, 2012

Activity	Discipline	Definition	Comments
RULE	ALL	**Rulebook Review -** The purpose of this inspection is to record an inspector's review or formal discussion with a railroad manager, regarding railroad rules that will determine if they accurately correlate with current FRA regulations. Record one unit for each day, or partial day, spent reviewing a railroad rule(s) for compliance with Federal regulations. Record a subunit for each CFR section involved. Only comments should be recorded under this activity code. Any defects should be recorded under the proper corresponding activity code. **Note:** Inspections regarding reviewing railroad rules to ensure compliance regarding §232.103 (n) and Part 218 Subpart F should not be recorded under this activity code. Inspectors should reference Activity Code 232X and 218O respectively for those railroad rule inspections. **Example 1:** An inspection of NEBR railroad's rulebook determined that railroad rules regarding signal systems (Part 234 and Part 236) comply with Federal regulations. Record one unit and two subunits. **Example 2:** An inspection that included discussions with railroad managers regarding NEBR railroad's rulebook and bulletins determined that the railroad's rules regarding Part 217 and Part 220 Subpart C, correlated with FRA regulations. Record one unit and two subunits.	RULE
RWP	O, S, T	**Roadway Worker Protection** – The purpose of this inspection is to determine compliance with Part 214 Subpart C, Roadway Worker Protection (RWP). Record one unit for an individual worker or group of employees (with a roadway worker in charge) at a specific location. This will include attending a job briefing with a group of RWP employees. Record each train required to provide an audible warning signal as a separate unit, and each employee requiring RWP as a subunit. **Note:** When performing multi-point inspection work with the same employee (or group of employees), record only one unit for determining compliance, and one subunit for each employee of the workgroup per day. **Example 1:** When observing or inspecting a large production crew, record a separate unit for each different location where an employee (or group of employees) is monitored for compliance. E.g. large projects may have multiple teams or workgroups at various locations along the right of way, record each worker, team or workgroup at each different location as a separate unit. **Example 2:** You observe an RWP crew consisting of <u>one</u> employee-in-charge and <u>20</u> track employees together at a single location. Record one unit for the location and <u>21</u> subunits for the entire RWP work group.	
TPLH	H, M, O	**In-Train Placement of Placarded Rail Cars, Transport Vehicles, and Freight Containers -** The purpose of this activity is to determine compliance with positioning in-train of placarded cars, §§174.84 and 174.85. Record one unit for each train inspected.	

INSERT CHAPTER TAB HERE

Appendix B – Status of Previous Operating Practices Technical Bulletins

Effective with the release of this manual, the status is as follows for all previous Operating Practices Technical Bulletins:

TB No.	Title/ Subject	Status	Disposition
OP 09-03	Recommendations of Civil Penalties: Failure to Report Highway-Rail Grade Crossing Accidents/Incidents	Incorporated into OP Compliance Manual Chapter 11	**OP 09-03 Deleted**
OP 09-02	Safety Guidance on Title 49 Code of Federal Regulations Part 240: Qualification and Certification of Locomotive Engineers	Incorporated into OP Compliance Manual Chapter 16	**OP 09-02 Deleted**
OP 09-01	Train Riding Defects	Incorporated into OP Compliance Manual Chapter 19	**OP 09-01 Deleted**
OP 05-01	Hours of Service Interpretation - Yardmaster Duties	Pulled for revision	**HOS Division**
OP 04-30	Hours of Service Interpretation - Awaiting Deadhead Transportation	Pulled for revision	**HOS Division**
OP 04-29	Temporarily withdrawn for modification as a result of the RSIA 2008 amendments to the Federal hours of service law.	Pulled for revision	**HOS Division**
OP 04-28	Temporarily withdrawn for modification as a result of the RSIA 2008 amendments to the Federal hours of service law.	Pulled for revision	**HOS Division**

Appendix B – Status of Previous Operating Practices Technical Bulletins

TB No.	Title/ Subject	Status	Disposition
OP 04-27	Temporarily withdrawn for modification as a result of the RSIA 2008 amendments to the Federal hours of service law.	Pulled for revision	**HOS Division**
OP 04-26	Coverage of Inside Hostlers and their Helpers Under the Hours of Service Act	Pulled for revision	**HOS Division**
OP 04-25	Inspection of Camp Cars; Clean, Safe, and Sanitary	Outdated guidance - Subject transferred to IH Division	**OP 04-25 Deleted**
OP 04-24	Deadhead Transportation to a Point of Final Release; Hours of Service Interpretations	Pulled for revision	**HOS Division**
OP 04-23	Part 219 - Monitored Urine Collections	Revised guidance in Part 40.69 effective 10/1/2010	**OP 04-23 Deleted**
OP 04-22	49 CFR Part 220, Railroad Communications - Section 220.27(c), Short Identification	Incorporated into OP Compliance Manual Chapter 8	**OP 04-22 Deleted**
OP 04-21	49 CFR Part 240: I. Territorial Qualifications; II. Class 3 Railroad Training Requirements; III. Responsibilities in Joint Operations	Incorporated into OP Compliance Manual Chapter 16	**OP-04-21 Deleted**

Appendix B – Status of Previous Operating Practices Technical Bulletins

TB No.	Title/ Subject	Status	Disposition
OP 04-20	Part 218.37 - Flag Protection • Circumstances Permitting Relief of Rear-End Flag Protection • One Train Following Another at Restricted Speed • Use of Radio Communication between Trains to Afford Relief of Rear-End Flag Protection in Non-Signaled Territory	Incorporated into OP Compliance Manual Chapter 5	**OP 04-20 Deleted**
OP 04-19	Part 220 - Railroad Communications - Letter of Interpretation Covering: • Accessibility of Radios for Roadway Workers • Definition of Control Center • Definition of Working Radio • Radio and Wireless Communication Coverage • Explanation of the term Switching Operations • Clarification of Communications Redundancy	Incorporated into OP Compliance Manual Chapter 8	**OP 04-19 Deleted**
OP 04-18	Items of Clarification in Final Rule on Passenger Train Emergency Preparedness; Title 49, Code of Federal Regulations, Parts 223 and 239	Incorporated into OP Compliance Manual Chapter 15	**OP 04-18 Deleted**
OP 04-17	Commingled Service: Attending Railroad Investigations or Hearings	Pulled for revision	**HOS Division**
OP 04-16	Technical Resolution Committee: Part 240 - Wrecking Operations; Multiple Decertification Events During Same Duty Tour	Incorporated into OP Compliance Manual Chapter 16	**OP 04-16 Deleted**
OP 04-15	Technical Resolution Committee: Centralization of Records	Incorporated into OP Compliance Manual Chapter 2	**OP 04-15 Deleted**
OP 04-14	Technical Resolution Committee: Engineer Certification - Definition of Main Track; Designated Supervisors of Locomotive Engineers (DSLEs)	Def of Main Track - Revised per Part 240 Final Rule Dec 23, 2009. DSLE info incorporated into OP Compliance Manual Chapter 16	**OP 04-14 Deleted**

Appendix B – Status of Previous Operating Practices Technical Bulletins

TB No.	Title/ Subject	Status	Disposition
OP 04-13	Part 240 - Annual Operational Monitoring and Operational Rules Compliance Testing of Engineers	Superseded by 240.303 - Final Rule Dec 23, 2009	**OP 04-13 Deleted**
OP 04-12	Single Person Crews	Incorporated into OP Compliance Manual Chapter 5	**OP-04-12 Deleted**
OP 04-11	Torpedoes/Rear End Flag Protection	Final Rule 217-218, 2/13/2008, eliminated torpedoes from CFR (Re: Register Vol. 73, No. 30, p 8463)	**OP 04-11 Deleted**
OP 04-10	Authority of Local Police to Administer Alcohol and Drug Tests to Rail Employees After Train Accidents	Guidance in D&A Interpretive Guidance Manual 9/2006, p. 18	**OP 04-10 Deleted**
OP 04-09	Certification Signature Requirements on the Chain of Custody Drug Testing Forms, 49 CFR 219	Revised Guidance in Part 40.73, effective 10/1/2010	**OP 04-09 Deleted**
OP 04-08	Requirement for Certified Engineers at the Controls of Moving Locomotives or Trains	Incorporated into OP Compliance Manual Chapter 16	**OP 04-08 Deleted**
OP 04-07	Movement Within Yard Limits--Signaled Territory	Incorporated into OP Compliance Manual Chapter 5	**OP 04-07 Deleted**

Appendix B – Status of Previous Operating Practices Technical Bulletins

TB No.	Title/ Subject	Status	Disposition
OP 04-06	Yard Limit Designation	Incorporated into OP Compliance Manual Chapter 5	**OP 04-06 Deleted**
OP 04-05	Inside Hostler Helpers; Hours of Service Implications	Deleted – Redundant with existing guidance	**OP 04-05 Deleted**
OP 04-04	Commingled Service Provisions; Hours of Service Interpretations	Pulled for revision	**HOS Division**
OP 04-03	Suitable Food and Lodging at Designated Terminals; Hours of Service Act Interpretation	Pulled for revision	**HOS Division**
OP 04-02	Deadheading Following Urine Collections; Hours of Service Implications	Guidance in D&A Interpretive Guidance Manual 9/2006, p. 41	**OP-04-02 Deleted**
OP 04-01	Instructions for Operation of FRA Track Geometry Vehicle T-2000	Operational instructions for ATIP cars found in Enclosure A for each individual car - Forms on ATIP Website	**OP 04-01 Deleted**