Chapter 8

Table of Contents

General Interpretive Guidelines

The following interpretive guidance is intended to be general in nature and does not replace the rule or statute language. The rule "applications" augment the rules for clarification purposes. The applications contained herein may not be all inclusive and they address only those sections of the regulations where written formal interpretive guidance has been provided. For a more detailed discussion on specific subject matter, refer to the regulation, training reference guides, OP technical bulletins and agency letters of interpretation.

Part 217 – Railroad Operating Rules

Purpose: Through the requirements of this part, the 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.

Note: An inspector may not write a violation against a railroad for non-compliance with its operating rules.

217.7 - Operating rules; filing and recordkeeping

Application: This regulation does not actually require a railroad to have operating rules, timetables, or timetable special instructions. If a railroad has an operating rulebook and timetable, Part 217 contains the requirements to determine the employee's knowledge, application, and compliance with those rules. However, at a minimum, a railroad must have the following:

A "blue signal protection of worker rule," including provisions for utility employees where applicable, per 218.11 which states, "The operating rules prescribed in this part (part 218) ...shall be subject to the provisions of part 217 of this chapter, Railroad Operating Rules: Filing, Testing, and Instruction;"

A "yard limit rule" per 218.35 which states, "After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements..." (If a railroad has yard limits);

A "flag protection rule" per 218.37 which states, "After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements..." (if a railroad's operating methodologies are such that they continue to have a requirement for flag protection);

"Radio rules," per 220.21 which states, "After August 1, 1977, the operating rules of each railroad with respect to radio communications shall conform with the requirements of this part..." (if a railroad uses radios);

A "hump yard rule" per 218.39 which states, "After June 30, 1984, each railroad that operates a remote control hump yard facility must have in effect an operating rule that adopts the following..." (if a railroad has a hump yard);

An "alcohol and drug use prohibition rule" per the requirements of 219.101 and 219.102.

217.9 - Program of operational tests and inspections; recordkeeping

Application: If a railroad does not have operating rules and timetables, it is not required to conduct the tests, inspections, or instructions referred to in 217.9 and 217.11, or to have the types of programs

referred to in those sections. However, if a railroad has yard limits, uses blue signal protection, uses radios, uses flag protection, etc., as identified above, it must conduct tests, inspections, and instructions on those operating rules.

217.11 - Program of instruction on operating rules; recordkeeping; electronic recordkeeping

Application: While the regulation requires railroads to instruct employees on the operating rules, it does not require a periodic written examination of the operating rules. However, in lieu of an examination, the railroad must describe its method for determining that each employee understands the operating rules.

Part 218 – Blue Signal Protection of Workers

Subpart A – General

Purpose: This subpart prescribes minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require 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.

218.3 - Application

Application: At a minimum, a railroad that participates in interchange with another railroad is considered to be part of the general railroad system of transportation for purposes of this part.

218.5 - Definitions

Application - Definition: Blue Signal: A weak blue light or a lighted or unlighted device, which is obviously inadequate in size cannot be considered to be clearly distinguishable and therefore, would not comply. A damaged or mutilated blue light or non-lighted blue signal or one that was badly deteriorated (i.e., covered with oil) could not be considered to be in compliance. The effectiveness of the blue signal is dependent upon the fact that the device is clearly distinguishable to the observer. Therefore, compliance must be evaluated with this essential aim in mind.

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, but that it is readily visible to the employee SEATED at the controls of that locomotive. 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 all comply. If it is an unlighted device displayed in a lighted cab at night, it must be attached to the controls to comply.

Application - Definition: Car Shop Repair Track Area: This includes those heavy repair tracks within the area which are located within buildings as well as tracks outside buildings where total erecting or rebuilding of rolling equipment occurs.

Application - Definition: Effective locking Device: The locking device must be of substantial construction which can be locked and unlocked only by the class, craft, or group of workers performing work on rolling equipment. A rail clamp or switch point blocking device capable of immobilizing the switch points would

comply only if it could be effectively padlocked. Train and yard crews should not be able to unlock switches or derails protecting workers.

The use of a standard operating department switch lock is not authorized, except when train and yard crews would be establishing protection for themselves in accordance with the regulation. When train or yard crews would need to use a standard switch lock for the purposes of providing blue signal protection, the visible blue signal displayed at or near the locked switch or at the locked derail would indicate to other operating employees why the lock was applied.

Application - Definition*:* Group of Workers: A group could be made up of a number of workers drawn from a number of diverse crafts. The cohesive ingredients involved if they are to be considered as a "group of workers" for the purposes of this part are: 1) they are assigned to work together as a unit under a common authority, such as a roundhouse or car shop foreman; and 2) members of the group are in communication with each other while the work is being done.

Application - Definition: Locomotive: Based upon the definition for purposes of this regulation, a MU car would be a locomotive but a Control-Cab of a suburban push-pull passenger train operation would not be unless a locomotive were attached to it and the controls were cut-in on the control-cab. A non-MU control cab locomotive is a controlling locomotive only if its controls are set up to control the locomotive actually providing tractive power, and it controls the movement of the train.

Application - Definition: Locomotive Servicing Track Area: This includes tracks known as the "back shops" and tracks within the area which are located inside of buildings where major overhauling or rebuilding of locomotive occurs.

Application - Definition: Main Track: The definition of main track has been used in railroad operating rule books for many years and should have a common meaning throughout the industry to the extent that there should be no mistaking it from tracks commonly known by such other terms, such as "yard tracks" or "sidings" in judging compliance with this regulation. Therefore, anything that is not a main track becomes other than main track.

Application - Definition: Switch Providing Access: If the protected equipment is standing on the switch of a crossover so as to block other equipment movements from entering the protected track through the crossover, the switch need not be locked and a blue signal need not be displayed at the switch. However, once the switch becomes exposed so as to permit other equipment to enter the protected track and couple to the protected cars, it becomes a switch providing access.

Application - Definition: Worker: In defining worker, FRA sought to forestall the transfer of work, referred to in the regulation, to trainmen for the purpose of evading requirements of the regulation. Train and yard crewmembers are excluded from the requirements of this regulation when performing work on rolling equipment they are called to operate. This exclusion is based on the rationale that, as an assigned crew, they would have control over the movement of any rolling equipment on which they are working.

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. The same would be true for non-railroad employees involved in the loading, unloading, or securing of automobiles on such equipment.

The definition of worker does not include contractors; however, if contractors (such as Pacific Fruit Express personnel who maintain refrigeration units on boxcars) are performing this type of work that requires them to be on, under, or between rolling equipment, the inspector should ask the railroad what protection is being afforded the contractors.

Subpart B – Blue Signal Protection of Workers

Application: Hazardous Position: The rationale in developing the language of this section was that generally, the type of work, rather than the craft designation, requires an employee to go on, under, or between rolling equipment. In so doing, the employee would position himself in close proximity to the rolling equipment where he would be vulnerable to the possibility of serious personal injury if an unexpected movement of the equipment were to occur. However, in identifying those work activities and positions in relation to railroad rolling stock in such broad terms, it was inevitable that they would encompass a number of specific jobs, which did not expose the worker to injury. Therefore, it is not solely the work being done (inspection, testing, repairing, or servicing) but where the employee is positioned in relation to the equipment (being on, under, or between) that would place the employee in a hazardous position.

Application: Activities Not Requiring Blue Signals: Many times non-hazardous work will be combined with work that is hazardous, and blue signals will be required. However, there may be times when certain non-hazardous work can be isolated in such a manner that blue signal protection would not be required. As an example, equipment inspections that can be made by an employee from a position on the ground alongside the equipment do not represent a hazardous situation. Testing of an air brake system, when purely visual in nature, which requires an employee to board a caboose to read the air pressure gauge, or to observe the position of an air brake piston while standing on the ground beside the caboose, is another example of a non-hazardous situation.

Certain servicing activities can be carried out without exposure to injury. Examples of such activities would be bleeding of the air brake system on cars, oiling journal boxes on cars, fueling or adding water to locomotives (without use of ladders), applying/removing standby electric lines, mechanized track maintenance operations, passenger coach interior cleaning (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 soil holding tanks (without going under the equipment), and supplying passenger cars with water and locomotives with fuel by attaching a hose to an exterior outlet. Similarly, certain supplying activities, such as supplying locomotives and cabooses with ice, water, fusees, stationery and paper toweling can be carried out without exposure to injury. These and similar activities, when effectively confined to the specific non-hazardous work function, and when not combined with work which poses an obvious hazard, would not require blue signal protection. Replacement of a radio or monitor on a locomotive by a worker is a judgment call that will have to be made by the inspector.

It should also be noted that the blue signal regulation does not cover derailment situations. Assuring protection for workers involved in such operations is the responsibility of the railroad in accordance with its own operating rules. Requiring blue signals under these circumstances would unreasonably hamper re-railing operations. Unlike routine operations, all involved in this type of work are aware of the special conditions that exist, and expect workers to be in the area.

Application: Activities Requiring Blue Signals: There are certain activities that definitely call for the display of blue signals. Examples of such activities are breaking or making air hose connections, connecting or disconnecting electric control cables between equipment (note: the fact that the exposure is diminished, as is the case when coupling irons are used to couple air hoses, does not alter the fact that the worker's position does expose him 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, electric pantograph inspections (unless made outside the danger zone without being on, under or between), repairs beneath the car to blower motors or steam regulators, initial terminal air brake tests when workers are required to go on, under, or between rolling equipment, activities requiring the use of a ladder, electrical repairs which involve an employee positioning himself partially or wholly within the confines of an electrical cabinet, inspections of undercarriage carried out in a pit, inspecting, testing, repairing, replacing, or servicing an EOT, inspecting, testing, repairing, replacing or servicing a rear marker (except non-train crewmembers may use alternate protection in 221.16 (b) to activate switch or cover photoelectric cell to ensure it is in proper operating condition), closing or repairing a hopper car door,

sanding (including sanding devices where employee stands on the locomotive running board and fills the sandbox without getting on top of the locomotive; using a gooseneck type filler pipe to open the sandbox). Note: FRA has written, "When a hostler and a laborer (or equivalent employee) are engaged together in sanding or refueling a locomotive consist in a locomotive servicing area on a track which is properly protected by a display of blue signals, and when visual contact is maintained between these two employees, the display of a blue signal at the controlling locomotive will not be required."

All these and similar activities cause the worker to position himself in such a way that he is vulnerable to personal injury. In the event a worker has to position himself between the rails at the end of a car, as when changing a knuckle or air hose, blue signal protection would be required. It is the function being performed, rather than the craft of the employee that determines the protective provisions of the rule.

Application: Train and Yard Crew Exclusion: Train and yard crewmembers are excluded from the requirements of this regulation when performing work on rolling equipment they are called to operate. This exclusion is based on the rationale that, as an assigned crew, they would have control over the movement of any rolling equipment on which they are working.

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 standing train/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 be utilized to 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 prescribed by railroad rules and special instructions.

How are train and yard crews protected from other trains or equipment they are not in charge of?

This protection is provided by a railroad's operating rules requiring an understanding of movements to be made between crews working on the same track to avoid injury or damage. In addition, in classification yards, railroads have operating provisions that require remotely controlled switches to be lined against movement into a track that another train crew is working in. These provisions have proved successful in providing protection to train crews from other movements.

Can a switch crew remove or replace a rear-end marker on a train without blue signal protection?

Yes. A hypothetical situation: A caboose less train stopped at a terminal and the outbound crew has taken over control of the train from the inbound crew. Before the train can depart, the rear car must be removed. A switch engine is directed to make the move. The switch crew removes the rear-end marking device, uncouples the rear car and reapplies the marker to the train. Train and yard crews continue to be excluded when doing such work in conjunction with rolling equipment they are handling or will handle, as an operating crew. However, if just one member of the switch crew walked over and removed the rear-end marker, blue signal protection would be required because he was not operating as a crew with his assigned engine crew in control of the switch engine.

Yard crews have traditionally been assigned to switch cars in the process of making up trains, lacing up air hoses on cuts of cars being assembled into a train, etc. The yard crews are exempt from blue signal protection because that is the yard movement they have been called to operate. The yard crew does not have to actually operate the train when it departs the yard to be excluded from the blue signal provisions.

FRA has a long-standing interpretation (1977) which allows a hostler and a laborer (or equivalent employee) to engage together in sanding or refueling a locomotive consist in a locomotive service area on a track which is properly protected by a display of blue signals. In these instances, the display of a

blue signal at the controlling locomotive is not required when visual contact is maintained between these two employees.

In the utility employee final rule, FRA stated that it considers the work that was normally performed by train and yard crews under the craft boundaries which existed at the time that the first blue signal regulation was adopted in 1970 to be work excluded from blue signal protection. Generally, train or yard crewmembers were permitted to work on, under, or between railroad rolling equipment without blue signal protection in order to set or release handbrakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail car couplers for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and positioning retaining valves; and, permit a locomotive engineer to conduct daily visual inspections of the locomotive consist for which he or she was called to operate. Additionally, train or yard crews may inspect, test, install, remove or replace a rear-end marking device or end-of-train device without blue signal protection on their equipment. (Note: This does not include "repairing" a rear marker or EOT. Changing a battery is considered a repair.) FRA has long held the belief that any other inspections, tests, services or repairs would be conducted under blue signal protection, even when performed by train or yard service employees. For example, a train or yard crew may not change a knuckle or drawbar without blue signal protection. However, the train or yard crew could change a knuckle using the emergency provisions of the regulation. Normally, "workers" would be expected to perform such work in a train yard.

Further, FRA's March 10, 1994, response to the AAR petition for reconsideration, states: "In section 218.22 (c)(5), FRA intended to effectively preclude railroads from expanding the type of work performed by crews without blue signal protection. In order to accomplish this goal, FRA listed the jobs that a utility employee could perform within the exclusion. This list was intended to be inclusive of all jobs traditionally performed by crews. AAR's petition requests that FRA expand the list of activities on the theory that the original list was incomplete, preventing carriers from making full use of utility employees. FRA disagrees…FRA will not, therefore, amend the list and is denying this portion of the AAR's petition." This language is also included in the preamble to FRA's response to petitions for reconsideration, dated March 1, 1995.

Of course if a train or yard crewmember were assigned tasks such as replacing brake shoes, blue signal protection would be required because he becomes a worker under the rule. A worker is not excluded from the blue signal requirements simply because his name appears on a trainman roster. The nature of the work performed is the determining factor.

218.22 - Utility Employee

On August 16, 1993, FRA published safety standards for utility employees working as temporary members of train and yard crews. The rule allows utility crew members to be excluded from the blue signal protection requirements of Part 218 while working as a temporary member of a train or yard crew.

Application: Assignment of Utility Employees: FRA limits the assignment of the utility employee to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crewmember to one train for an entire tour of duty, that employee may NOT, while awaiting departure from the yard, be temporarily assigned to a second train crew.

Employees of a yard assignment may not be temporarily assigned as utility employees to a train crew. Of course, a yard crew could add or remove cars, including rear markers or EOTs from a road train, without blue signals. Typically, the yard engine foreman is required to notify the road engineer of his intent, and there is an understanding of moves to be made by both involved engineers and crews. The yard engine foreman normally directs all activities when engaged in handling the common equipment. Could a member of an inbound train crew at a crew change point, whose assignment to the train is essentially

completed, then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course that hours of service limitations are not exceeded)? Yes, this situation is addressed in the preamble to the final rule.

The regulations state that a utility employee is a "railroad employee assigned as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew..." There are no restrictions as to class or craft of an employee who may be assigned as a utility employee. The rule applies to all employees on a functional basis, not on class and craft basis. A utility employee may also be attached to a hostler since a hostler is included in the definition of train or yard employee.

Could an officer or manager of the railroad assign himself as a utility employee and perform duties without blue signal protection?

Yes, there are no restrictions as to class or craft of employee who may be assigned as a utility employee. The rule applies to all employees on a functional basis. Assignments of an officer or manager are not prohibited; however, there is an expectation that employees subject to assignment as utility employees will be properly trained on applicable operating rules, and will be in compliance with Federal pre-employment and random drug testing prior to being assigned. Note: The inclusion of railroad employees in a random drug pool is not automatic, based solely on an irregular or occasional performance of covered service. Rather, FRA looks to how frequently covered service is actually performed. FRA would review the particular circumstances in each situation on a case-by-case basis. For instance, an employee called to perform covered service one or two times within a 3-month period would likely not be included in a random pool. On the other hand, an employee called to perform covered service 10 to 12 times in the same 3-month period should be included in a random pool.

Per the preamble to the Final Rule, utility employees are subject to the same program of instruction for train and yard crews. FRA expects railroads to amend their programs of instruction and efficiency test programs, if necessary, to ensure that utility employees are thoroughly trained in applicable operating rules.

The "commingled service" provision of the hours of service law would of course be applicable if the utility employee engaged in any other service for the railroad.

Application: After the Train Has Arrived: Although there is preamble language in the proposed rule that the locomotive must also be coupled to the rolling equipment on which the work is being performed by that crew, this proposal was not adopted in the final rule. Therefore, the locomotive does not have to be coupled to equipment that the train or yard crew (including utility employees) is working on. However, because the utility employee is attached after the train (one or more locomotives coupled with or without cars) has arrived, the assigned locomotive and crew must be in the vicinity of the work being performed. For example, a train or yard crewmember (including a utility employee) may not be coupling air hoses in a yard while the locomotive and remaining crew is switching cars in a different yard.

Application: Communication: Per the preamble to the final rule, "While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the designated crew member by a face-to-face discussion, telephone, radio, or other telecommunications.

Application: Examples in Appendix B to Part 218: The AAR petitioned FRA, arguing that the examples published in the Appendix should not include train and yard crews. FRA chose to include all operating employees, as well as utility employees, in the last four examples (Examples 5 - 8) to highlight the extent of the blue signal regulation. The examples contain no new requirements, but simply illustrate existing law.

218.23 - Blue Signal Display

Application: General: Basically, the use of a blue signal follows the traditional use incorporated by the railroad industry prior to the regulation. The regulation states that blue signals may only be removed by the same craft, or group that displayed them. It need not be the same individual, but just the same craft or group. If a particular worker were not part of a group as indicated by the regulation definition, then he would have to display his own blue signal. If a railroad chooses to adopt the policy of having different crafts or groups attach an individual disc to a common blue signal, and having the last worker removing his disc also remove the common blue signal, that practice would comply with the intent of the regulation.

If handbrakes or air brakes are released and the equipment moves, a violation has occurred (on a blue-flagged track).

A blue signal displayed at or near a manually operated switch providing access to the track must be displayed no farther into the track than the fouling (clearance) point of that entrance switch.

Application: Protecting Track Maintenance: Use of blue signals to protect mechanized track maintenance operations would be contrary to the intent of the regulation. Under railroad operating rules, flags of another color have been designated for this purpose, and those rules specify the exact manner in which they are to be displayed to provide protection to such operations.

Application: Displayed by Industries: The use of blue signals and derails by industries served by railroads as called for under the Department of Labor, Occupational Safety and Health Administration (OSHA), and Hazardous Materials regulations for the protection of industry employees involved in the loading and unloading of railroad cars, is not part of Subpart B - Blue Signal Protection of Workers; however, once a blue signal is displayed on tracks or on rolling equipment, regardless under what or whose authority that signal is displayed, railroad employees must respect the signal in compliance with the requirements of this regulation. Blue signals displayed by industry employees must not be removed by railroad employees.

Application: Displayed On Controlling Locomotive: When a signal is displayed on a controlling locomotive, it must be attached to that locomotive in such a manner that there is no doubt but that it is readily visible to an operator SEATED at the controls of that locomotive. The signal should be placed so that the operator does not have to look for it, such as a clamp hanging from the windowsill with the signal positioned low on the car body of the locomotive. In other words, the signal must be immediately visible to the operator without any effort on his part.

The blue signal is to be displayed at a location where it is readily visible to the enginemen or operator seated at the controls of the controlling locomotive. A blue signal attached to the controls of the controlling locomotive, or attached in the front or on the side of the enginemen or operator's view, would comply. If it is an unlighted device displayed at night, then it must be attached to the controls, and the cab must be lighted so the device is clearly distinguishable.

A blue signal used at night must be illuminated unless the cab of the locomotive is adequately lighted and the device is attached to the locomotive controls. A blue light with a weak battery or broken lens or a blue signal, which is obviously inadequate in size and cannot be clearly distinguishable, would not be in compliance with the requirements of the regulation. A badly deteriorated blue sign, or one, which is covered with oil, could not be considered to be in compliance. The effectiveness of the blue signal is dependent upon the device being clearly distinguishable to the operator in control of the movement of rolling equipment; therefore, compliance must be evaluated with this in mind.

218.24 - One-person crew

Background of One Person Crew Issue:

In the proposed rule, FRA invited comment on one-person crews, but no comments were received. In the preamble to the final rule, FRA expressed discomfort with one-member crews. It was stated that a lone engineer could not take advantage of the exclusion from blue signal protection unless joined by a utility employee to ensure that the locomotive cab was always occupied.

The AAR objected to this preamble statement, saying that our definition of train or yard crew (one or more railroad employees...) did not bar the use of one-person crews. FRA agreed and granted this portion of the AAR's request on March 1, 1994.

FRA therefore issued a new 218.24 as an amendment that required an engineer to comply with specific conditions. These requirements were nearly identical to operating rules of several railroads that currently use single-member crews.

FRA invited comment on the amendment before it took effect on May 15, 1995. On June 6, 1995, FRA published a Suspension of amendment to final rule, suspending the one- person crew amendment of 218.24, effective May 15. FRA also reopened the comment period on one-person crews until further notice.

One-Person Crews - FRA's Current Policy:

In the interim, until a revised rule is issued, FRA's 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 Part 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.

Note: Those duties in 218.22 (c)(5) are setting or releasing handbrakes; coupling or uncoupling air hoses and other electrical or mechanical connections; preparing rail cars for coupling; setting wheel blocks or wheel chains; conducting air brake tests to include cutting air brake components in or out and positioning retaining valves; and inspecting, testing, installing, removing, or replacing a rear-end marking device or end-of train device.

218.25 - Workers on a main track

Application: The blue signal displayed at each end of the rolling equipment may be attached to the ends of the equipment, or it may be displayed on the track ahead and behind the equipment as long as there is no doubt about the track and equipment to which it applies. Ends of the equipment usually refer to placement of a blue signal in the knuckle. The absence of a blue signal at any one of the required locations (ahead, behind, or on the controlling locomotive) means that the equipment is unprotected and other than the assigned train crew, employees may not work on, under, or between that equipment.

A railroad may not use a combination blue flag to suffice both for the front end of the controlling locomotive and the controlling locomotive.

Remotely controlled switches may not be used to provide blue signal protection on "main track." The remotely controlled switches section (218.30) references only 218.27 (other than main track).

Emergency Provisions - Main Track: The emergency provisions were intended to allow the railroad flexibility when a train is stopped on the main track under emergency circumstances. Under these conditions, the provision can be used when blue signals are not available, provided that the train and engine crew has full control over train movement. They were not intended to be used simply because the railroad neglected to maintain a sufficient supply of blue signals for normal use.

In any case, the measures taken must be effective to the extent that safety of the worker is assured. When a mechanical department employee is assigned to accompany a train between terminals to monitor the performance of equipment, or to accompany a dimensional load, he is considered the same as if he were a crewmember.

Note: The "emergency provisions" are for locations where no "blue signals" are available.

218.27 - Workers on track other than main track

Application: A blue signal displayed at or near a manually operated switch providing access to the track must be displayed no further into the track than the fouling point of that entrance switch. The absence of a blue signal, or an unlocked manually or remotely controlled switch, providing access to a track, means that the track is unprotected, and workers may not work on, under, or between equipment on that track.

Rolling equipment may not enter or depart a protected track. However, after all work activity has ceased and the workers have been notified to stand clear, and blue signal protection has been removed from the switch through which the equipment will move, rolling equipment may enter or depart a protected track. For example, in situations involving a single worker working a train under blue flag protection, road power could be added to the train by removing the blue flag on the head end only, thereby eliminating the need to walk to the rear to carry out the move. Similarly, if this single worker wished to allow a train to depart after he completed his work, he could remove the blue signals on the head end of that train and allow the train to pull away from the blue signal displayed behind the train to expedite their departure. However, after the train has departed from the yard track, the remaining blue signal protection must be immediately removed.

Application: Crossover Switches: When a crossover switch leads into the track on which protected equipment is standing, the switches at both ends of the crossover which connect directly to the protected track must be lined away from movement. The switch at the end of the crossover, which provides access to the connected track, must be locked and a blue signal must be displayed at that locked switch. However, if protected equipment is standing on the switch of such a crossover so as to block other equipment moves from entering the protected track through that crossover, the switch need not be locked, or blue signal displayed.

Application*:* Examples: If there is a single locomotive on one end of a yard track and a locomotive consist with 3 cars located on the other end of the yard track and workers are replacing brake shoes on the single locomotive, but no work is being performed on the other consist, the controlling locomotive on the locomotive consist with 3 cars has to be blue flagged.

In the event circumstances require making up of two trains on the same track, the question has arisen as to the method to be employed in display of blue signals for greatest versatility without reducing the view of any of the signals. FRA believes the trains cannot be blue flagged individually and be in compliance with the regulation. Rather, the track would have to be blue flagged in accordance with 218.23 (alternate protection - use of derails).

Should blue signal protection be required for a single car or a group of cars widely separated from another cut on the same track, the same thinking would apply as was expressed relative to attempting to separately blue flag two trains individually on the same track. Displaying the blue flags at other than the entrance switches to the track would mean the view of one or more flags would be reduced. The fact that

the cars are widely separated does not prevent a shove move, which would bring the two cuts together inadvertently.

In the preamble to the final rule, FRA rejected the suggestion of allowing work to be done on equipment without the use of blue signals by "taking the track out of service."

Application: Train On Both Main Track & Other Than Main Track: When workers are engaged in work on a train with the rear portion standing on a track other than main track, and the head end portion out on a main track, then the rear portion must be protected in accordance with 218.27 Workers on track other than a main track. However, the head end would be protected by a blue signal ahead of the locomotive and one attached to the controlling locomotive in accordance with 218.25 Workers on a main track.

Application: Emergency Provision: This provision is under alternate methods of protection in 218.29 (d). The "emergency provision" provides an alternate means of providing protection for workers, whenever a train is stopped under emergency circumstances and blue signals are not available, provided that the emergency occurs after the car department has completed work and has released the train and the assigned train and engine crew has assumed full control over the train's movement.

218.29 - Alternate methods of protection

Application: Section 218.29 provides a railroad with an alternate method of establishing blue signal protection for equipment occupying tracks in locomotive servicing and car shop repair track areas. A railroad may establish blue signal protection in accordance with 218.27 Workers on track other than main track, or in accordance with this section.

Basically, 218.27 requires blue signal protection be established for each track, while this section permits blue signal protection to be established for the area as a whole. It provides greater flexibility for movement of equipment within, as well as into and out of the area. This section also authorizes use of derails, under the restrictions set forth, to fulfill the requirements of a manually operated switch. For example, derails could be used in place of a manually operated switch when the railroad is using area protection in a car or locomotive shop, but could not be used in lieu of manual switches when using "other than main track" protection in a car or locomotive shop.

Use of this alternate protection affords an exception to 218.23, which states that when blue signals are displayed in accordance with 218.29 (c), other rolling equipment may not be placed on the same track so as to reduce or block the view of a blue signal, and that the equipment may not be moved.

Application: Locomotive Servicing Track Area: The 5 mph speed restriction may be conveyed by a physical sign or by a written bulletin or timetable instruction. If the speed within the area is more than 5 mph, the derail must be placed 150 feet from the end of the equipment to be protected.

Notification of the workers may be either verbal, through physical contact, or through the use of an effective audible alarm system with which all employees are thoroughly familiar.

Turntables and transfer tables providing access to tracks where employees could be injured by sudden movement of rolling equipment would have to have blue signal protection established.

A supervisor could remove the blue signal displayed if it is known that workers are not on, under, or between rolling equipment and are clear of the protected track. Occasionally, a worker has forgotten to remove the blue signal displayed when he has completed his assignment.

However, extreme caution should be taken to ensure that the blue signal displayed is not in fact required as defined in 218.23.

The person removing the blue signal protection need not be the same individual, just of the same craft or group. If a particular worker is not part of a group of workers, then he would have to display his own blue signal. If a railroad chooses to adopt the policy of having different crafts or groups attach an individual disc to a common blue signal and having the last worker removing his disc also remove the common blue signal, that practice would comply with the regulation.

Application: Controlling Locomotive: What blue signal protection must be provided when making up a locomotive consist in an engine facility or ready track? When the locomotive consist is coupled together a blue signal must be attached to each controlling locomotive at a location where it is readily visible to the engineman or operator seated at the controls of that locomotive. Trailing locomotives are not considered as controlling locomotives when multiple unit (MU) valves are placed in the trail position. Additionally, a worker setting the MU valve in the trail position should not be considered as working on the equipment. After the MU valves are placed in the trail position and the controlling locomotive is blue signal protected, the MU hoses, including the jumper cables may be connected. When required tests are completed the blue signal protection may be removed from the controlling locomotive.

How is a locomotive rendered a "non-controlling" locomotive?

The Independent Brake Selector - MU Control Valve is placed in the "Trail" position instead of in the "Lead/Dead" position; and the Pneumatic/Mechanical Automatic Brake Selector is placed in the "Out" position instead of in the "Pass" or "FRT" position.

If three locomotives are coupled together and work is being performed, if their control cables and MU hoses are connected so that all three respond to the control setting of one, (the lead unit), then that is the controlling unit, and the one that requires an attached blue signal.

If three locomotives are coupled together and work is being performed, if the locomotive control cables and MU hoses are not connected in such a manner that causes them to respond to the control settings of another, then the locomotive that the workers are on, requires the attached blue signal. In order to fully comply with these regulations, a blue signal should be attached to all locomotives that are capable of being used as a controlling unit before the locomotive control cables and MU cables are connected.

For a locomotive that has an electronic ICE Screen, on the Status screen, you may see one of three messages. They show the current air brake configuration. For the locomotive to be a non-controlling locomotive the message must read, "Trail" and the independent (locomotive) brake and the automatic brake must read "Cut-Out."

Scenario 1: Units number 1, 2, 3, and 4 are in a storage track coupled but not in MU, with a worker on unit 3. If each of these units is a controlling locomotive, then each locomotive must have a blue signal displayed.

Scenario 2: Units number 13, 14, and 15 on ready track coupled for MU consist with unit number 13 in control; worker on unit number 15. A blue signal must be displayed on unit number 13.

If five (5) locomotives are coupled, but no cables (jumper cables or MU hoses) are plugged in, which locomotives need a blue signal?

Each locomotive would be considered a controlling locomotive and must have a blue signal displayed if a worker was on, under, or between any of the 5 coupled locomotives. However, if the controlling locomotive has a blue signal attached at a location where it is readily visible to the engineman or operator seated at the control of the locomotive and the trailing locomotives have the MU valve in the Trail position and the jumper and MU cables are disconnected, exception should not be taken to a worker connecting the MU cables and hoses of the subject locomotives.

In addition, any locomotive that is capable of being used as a controlling locomotive also requires a blue signal when the following conditions apply:

1) When coupled to a locomotive that workers are on, under, or between; and

2) A coupled locomotive that may be moved from its own controls independently of the controls of the controlling locomotive (such as MU cars).

Application: Car Shop Repair Track Area: When equipment is inserted or withdrawn from the protected area, blue signal protection need only be removed from the entrance used to accommodate the move. During the time that the blue signal protection is removed, all work activity on the affected track or tracks would have to cease. Notification of workers may be either verbal, through physical contact with the workers, or audible through use of a general alarm system, which is familiar to all of the workers.

Application: Locked Derail: This section also authorizes the use of a locked derail to fulfill the requirements of a manually operated switch on any track, other than a main track, when placed at a minimum distance of 150 feet from the end of the protected equipment. If the speed is restricted to less than 5 miles per hour, this distance may be reduced to no less than 50 feet when used in locomotive servicing and car shop repair track areas. If a derail is used, it must be locked in a derailing position with an effective locking device and a blue signal must be displayed.

Application: Remotely-Controlled Switches/Derails in a Locomotive or Car Shop Area: If the person controlling the operation of a remotely-controlled switch or derail is a member of the same craft, there is no requirement to maintain a written record of the notifications. However, there must be a method for providing an "effective locking device" for the control panel, such as a locked cover over the panel or a locked room when the person operating the remotely-controlled switch or derail is absent from the work station.

218.30 - Remotely Controlled Switches

Application: Remotely-controlled switches may not be utilized to provide protection for workers on main track. The person in charge of the worker that provides notification to the operator may not be the trainmaster or yardmaster. The operator referred to in this section is the employee who has been delegated the responsibility for the proper and safe operation of the control board.

Note: Blue signals do not need to be displayed at the remotely-controlled switches.

Remotely-controlled derails controlled by an operator are considered to be the equivalent of remotely-controlled switches. See alternate protection in locomotive or car shop areas for an explanation of derails controlled by mechanical personnel.

When the term effective locking device is used in reference to a remotely controlled switch, it need not be a padlock, but may be a plug or key, which when properly inserted into the control panel of the installation serves to immobilize the switch control lever which is being secured to establish protection. The device used must be applied in such a manner that the control lever cannot be thrown for the route into the protected track without first removing the locking device that is applied. Traditionally, levers, buttons and other similar devices have been used to control these switches. Mechanical locking devices, e.g., pins, clamps, sleeves, buttons or toggles would then be applied to prevent accidental removal of the protection. Whatever type locking device is utilized to immobilize the switch lever or button, it must effectively prevent the lever or button from being moved. A written tag alone, attached to the lever or button, which does not prevent the lever or button from being manipulated, would not comply. Any remotely controlled switch that can be over-ridden in the field by use of a manual lever, without obtaining prior authority and taking that switch out of power, would have to be treated as a manual switch and be locked in the field. Dual control switches that cannot be secured in either mode so as to exercise absolute control of the switches' movement must be secured by some alternate effective method.

An inspection should be made of the written records the railroad is required to maintain. The written records should be inspected for their completeness. Such written records should be made at once and never from memory or memoranda. Automatic recording devices capable of fulfilling the requirements of the written record would have to be evaluated on an individual basis.

Check to see if the effective locking devices are being applied to remotely controlled switches.

Increasingly, computer keyboards are now being used in place of levers, buttons, etc., to operate remotely controlled switches. The safeguard against accidental movement of a protected switch may not be so obvious with these and applying a padlock, plug, or key would be impractical. The generally used method is for the computer program to require one or more extra entries with the keyboard before releasing the switch for movement. If only one additional step is required, evaluate whether this forces the operator to realize he is attempting to move a switch, which has had blue signal protection applied to it. If you have a question concerning sufficient protection being provided, ask the operator to describe what steps he must take. Can he provide and remove switch protection for each individual group of workers, or only for all employees at once. Remember, if more than one class, craft, or group of employees is working on rolling equipment, then each group will require separate protection. The computer program must allow for this, as well as the minimum one extra entry before release of a protected switch.

Regardless of the method used to operate remotely controlled switches, remember that the intent of the locking device provision is to force the operator to make some special effort to move a protected a switch. This causes him to recall that there are workers on rolling equipment on that track. Use good judgment in determining if this has been accomplished.

Subpart C – Protection of Trains and Locomotives

Part 218.35 - Yard Limits

Application: Establishment of Yard Limits: Part 218.35 was promulgated in an effort to get all railroads to adopt a uniform procedure to govern train movements within designated Yard Limits. In so doing, the FRA attempted to preserve the basic concepts of the "Yard Limit Rule" as it had existed for years. Historically, the yard limit rule established controls to coordinate train movements and switching movements on a main track. The rule grants trains and switching movements the right to occupy segments of the main track within a designated area defined as yard limits, provided the main track is clear so as not to interfere with through movements of preferential trains of a designated class which retained a superior right to occupy the main track. All train or switching movements other than the designated class or classes thus become inferior and are required to observe vigorous speed restrictions since they could expect to find the main track occupied at any location by other "inferior" movements operating under the same restriction.

The language of the regulation was promulgated so as to provide the utmost safety to all train and engine movements within designated yard limits while at the same time giving all train and engine movements the maximum flexibility to enter and move within the limits. Without the requirements of the regulation, safety would suffer. Although 218.35 does prescribe the language of a railroad's operating rule on yard limits, it does not specify where yard limits may or may not be established. That still is the prerogative of the railroad.

Application: Designation of Yard Limits: 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. It is FRA's preference that yard limit boundaries be denoted with specific milepost designations.

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. Proscriptions 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 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 the intent of the rule, and is understood and observed by employees.

Given the background of the Yard Limit Rule, the intent is clear that such presence is to serve as a physical reminder to all train movements entering the limits territory for which the yard limit signs establish. Therefore, compliance is not complete until such signs are installed at locations within the established yard limits where: (1) connecting railroads enter the yard limit territory from non-yard limit territory; (2) where movements from other subdivisions of the same railroad may have train movements into the yard limits of the yard limit territory from non-yard limit territory; and (3) where one railroad may operate trains by a trackage right agreement from non-yard limit territory over a segment of track within the designated yard limit territory of another railroad.

Yard limit signs are not required in situations where the train movement is continuous within a yard limit rule method of operation, examples: (1) a train movement of the same railroad from a yard limit territory of one division/subdivision to a yard limit territory of another; (2) when a train movement of another railroad enters from a connection for which train operation is also governed by the yard limit rule; and (3) within the confines of a yard limit territory.

Although Part 218.35(b) of the yard limit rule does not address the need to be specific in the identification of the yard limit locations, any location designation which serves to be so vague or otherwise ambiguous should be considered the subject of non-compliance with the intent of the rule.

Application: Clear by Block Signal Indication: Within yard limits, what is required upon encountering a block signal conveying an indication less favorable than one containing green as its aspect, or part of its aspect? In FRA's letter to the General Code of Operating Rules Committee dated July 23, 1990, FRA 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 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 are clear in advance of the 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 mph, 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.

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" signal 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" signal 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.

Yard limits 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.

Application: Yard Limits 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... It is important that any collective bargaining constraints associated with "switching limits" be kept separate and distinct from "yard limits." Unfortunately some railroads have elected not to make this distinction, retaining yard limits in interlocking or CTC territory. Such equivocal application of the rule results in confusion and undermines the safety intent of the provision.

Part 218.37 – Flag Protection

Application: Use of torpedoes/ Rear End Flag Protection: 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 218.35 (b)(1). Further, flag protection to the front against opposing movements, as prescribed in 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) [clearing designated class trains] and 218.37 (a)(2) [when protection is not required] 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 218.37, including the use of torpedoes. Adjacent track protection and flag protection imposed by railroad operating rules for conditions other than those specifically prescribed in 218.35 and 218.37 are additional requirements and are therefore outside the scope of this regulation. It follows, of course, that whenever trains operate on main tracks of other railroads, they will be expected to be in compliance with Federal regulations and the host railroad's operating rules, as applicable. It should also be understood that even though the flag protection prescribed in 218.37 may not be required as discussed above, all railroads must continue to have in effect an operating rule, which complies with the requirements of 218.37, until such time as a future rulemaking eliminates this requirement.

Application: Waivers for use of torpedoes: Use of torpedoes during flagging operations under certain conditions is a Federal requirement under Part 218.37. Waivers are considered on an individual basis. Procedures for petitioning for a waiver are outlined in 49 CFR Part 211. Absent such formal approval, FRA cannot grant relief from compliance with this Federal requisite.

Part 218.39 - Hump Operations

Protection of employees during hump operations: (summary)

Affects only train and yard crew employees.

Rule only concerns operations at remote-control hump yards. Per the preamble to the final rule, the rule does not apply to manual humps or to remotely controlled humps that are functioning in a manual mode.

In the preamble, a commenter noted that normal switching operations, when the hump is not in service, would not expose the switch crew to danger...and that compliance with the regulation should not be necessary for those switching moves. FRA agrees...since the rule is intended to protect employees only from hump operations. An example would be when a hump master goes to lunch.

In the preamble, FRA indicated that a specially designed wedge inserted to prevent computer override of the desired alignment of the switch at the direction of the remote control operator would provide the appropriate level of protection (where routing functions are computer controlled).

Computer software can be used to block a track.

In the preamble, 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.

Note that there is no requirement for a written record.

Part 218.55 – Tampering with Safety Devices

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 tampered or disabled device. If a locomotive is equipped with a "dead man feature" it must function as intended (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 Part 229. Nullification of safety devices can result in FRA enforcement action 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

Monitors for end-of-train devices

Bells or whistles that are not connected to alerters, dead man pedals, or signal system devices

Fans for controlling interior temperature of locomotive cabs

Locomotive performance monitoring devices (unless they control data such as train speed and air brake operations)

Items that are considered to be safety devices:

Event recorders

Alerters

Deadman controls

Automatic cab signals

Automatic train control equipment

Culpability: Subsequent operators 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

having ascertained that the device was not functioning still elected to operate the train. This also applies to railroad supervisors who permit or direct that a train with a disabled device be operated after having learned that the safety device is not functioning or after having failed to use reasonable care in the performance of their duties. A negligence standard in this context appears unwarranted. Enforcement policy is currently limited to where individuals clearly had actual knowledge of disabled devices and intentionally operated the train. Knowledge of facts constitutes a violation, not knowledge of the law. This is unlike the case where willfulness must be shown.

Part 219 – Control of Alcohol and Drug Use

Scope: This part of the regulation prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

Americans with Disabilities Act (ADA): The ADA does not preclude or interfere with employers' compliance with the alcohol/drug regulation. However, Title I of the ADA, which prohibits discrimination against a qualified individual with a disability, may affect the personnel actions an employer might wish to take with respect to some individuals who test positive for alcohol or drugs or violate the prohibition rules. Furthermore, Title I covers employers who have 15 or more employees for more than 20 calendar weeks, and provides for "reasonable accommodations" Note - Questions should be directed to headquarters.

Family & Medical Leave Act (FMLA): The FMLA does not conflict with drug and alcohol rules. Treatment for substance abuse may also be included, as in a case where inpatient treatment is required. On the other hand, an employee's use of a substance, without professional treatment, does not qualify for leave. Note - Questions should be directed to headquarters.

Subpart A – General

219.3 - Applicability

Inspector Guidance: As defined by the Surface Transportation Board (formerly the ICC), U.S. Class I Railroads are those with average annual operating revenues of $253.7 Million or more. Class I railroads are Amtrak, ATSF, BC Rail, BN, CNW, CN North America, CN North America-GTW, Conrail, CP Rail,

CSX, FNDM (Mexican), IC, KCS, NS, SP/DRGW, Soo Line, UP. There are approximately 28 Class II railroads (operating revenues of $40 Million or greater, but less than $253.7 Million). Class III line-haul railroads and switching and terminal companies have operating revenues below $39 Million.

Application: FRA intends the phrase "except as necessary for purposes of interchange" to be construed with appropriate emphasis on the adjective "necessary." Where interchange-related trackage rights are used for operating convenience of either railroad, the small railroad shall comply with all relevant provisions of Part 219. FRA field inspectors will make decisions regarding "necessary."

Subpart B - Prohibitions

219.101 - Alcohol and drug use prohibited.

Application: Definition - Alcohol: Includes, but is not limited to alcohol/based cough syrups, prescriptions, over-the-counter medications, or liquor-filled chocolates.

Application: Definition - Alcohol Use: "Use" is intended to have its common sense meaning. For instance, an employee may not knowingly ingest an alcoholic beverage or take/inject a controlled substance unless authorized by a physician.

Application: Definition - Alcohol Concentration (or Content): A breath alcohol concentration of .04 means .04 grams of alcohol in 210 liters of expired deep lung air. This breath standard is analogous to a blood alcohol concentration of .04.

Application: Under the Influence: "Under the influence" refers to noticeable effects of alcohol or a drug that causes the employee to behave or appear in a way characteristic of the effects of the substance and thus suggest the employee is not fit to undertake safety-sensitive functions. For instance, an employee who is under the influence of alcohol or another central nervous system depressant may give evidence through slurred speech ("heavy tongue") or unsteady gait. An employee who is under the acute influence of a central nervous system stimulant may appear extremely nervous or unusually talkative. Obviously, for an employee to be found "under the influence" it will be necessary to form a judgment that the observed appearance or behavior is related to alcohol or drug use, as opposed to other causes.

Application: Impairment: The concept of impairment relates to the employee's ability to perform his functions properly. For instance, an employee with a significant level of alcohol in his/her system might be capable, as a result of practice or selective tolerance, to conceal the conventional signs that he/she is "under the influence." However, if the employee fails to perform an assigned task in a proper manner, and it can be established that that failure was associated with alcohol consumption, the employee would be shown to be "impaired."...The testing authority conferred by Subpart D can assist in resolving marginal cases.

Application: Possession: An alcohol test is not needed to confirm possession of alcohol or controlled substances.

Application: 0.04 or More: The .04 sets a per se level of alcohol that is absolutely prohibited...the consensus of scientific and professional opinion supports the position that material detrimental effects on human performance begin at least in the range of .04 percent.

Application: 0.02 to 0.039: While a test result of .02 to .039 percent is below FRA's per se prohibition level of .04 percent, the result could still indicate some level of impairment. The railroad must immediately remove the employee from covered service for a minimum of 8 hours since administration of the "confirmatory" test. The railroad could take further action under its own railroad policy.

Application: Less than 0.02: FRA learned that some railroads were misapplying DOT's alcohol testing procedures by using FRA test results that indicate an alcohol concentration below 0.02 as a basis for discipline. No further testing is authorized under Federal regulations because levels below .02 are considered to be negative results (i.e., not persuasive evidence of alcohol use). The .02 alcohol concentration represents the lowest level at which a scientifically accurate alcohol concentration can be measured given the limitations of any current breath testing technology. A railroad can take further action only if it has an independent basis for doing so. For example, if a supervisor reasonably suspects alcohol use because the employee smells of alcohol (result below .02 on a reasonable suspicion test), the railroad may use the supervisor's continuing observations (after the Federal test has been completed) as an independent basis for additional non-Federal company testing. After the Federal test has been completed, and before starting the separate company testing process, the railroad must ensure that the employee understands that the Federal test was negative, and that no Federal violation occurred. If the railroad has on-going reason to suspect alcohol use, then the railroad may conduct a company test.

Application: Definition - Covered Employee: The ban of on-the-job use refers to any such use while the employee is assigned to perform covered service. For instance, an employee who accepts a call to perform yard service and reports at the appointed time becomes subject to the prohibition upon reporting, even though the employee may not yet have engaged in the movement of rolling stock.

Inspector Guidance: A violation of 219.101 (on-the-job use) is difficult to prove, but is usually found during FRA post-accident or breathe alcohol testing.

219.102 - Prohibition on abuse of controlled substances

Inspector Guidance: A 219.102 (prohibition of drugs on/off duty, except for approved medical use) violation is marginally less serious than a 219.101 violation because in most cases on-the-job use, possession, or impairment is not established. A 219.102 violation is normally found as a consequence of a Federal urine drug test.

219.103 - Prescribed and over-the-counter drugs

Inspector Guidance: Northwest Toxicology completed analysis of a Hemp Bar for the presence of THC. A one-gram portion of the 52-gram bar was found to contain 11.024 micrograms. This indicates than an individual would have to consume about 1,800 bars to obtain an equivalent amount of THC contained in a typical marijuana cigarette. Based on the testing of a single Hemp Bar, it did not appear likely that the ingestion of 1-2 bars per day would result in a positive drug test. DOT and DHHS are conducting tests in this arena. Results will be provided when available.

In November 1996, California voters passed a proposition authorizing physicians to recommend the use of marijuana for the treatment of cancer, AIDS, anorexia, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. DOT and FRA's position is that the use of marijuana by transportation safety-sensitive employees is prohibited. DOT and FRA will continue to fully enforce the current drug testing laws regardless of the recent passage of the California proposition.

219.104 - Responsive action

Application: Removal from covered service includes removal from covered service in all modes of transportation affected by Part 40. This section and the information requirements listed in 219.23 (railroad policies; educational materials) do not apply to applicants who refuse to submit to a pre-employment test or who have a pre-employment test with a result indicating misuse of controlled substances.

Application: Presenting Negative Test Result: If a pre-employment or return-to-duty test is canceled due to a "fatal flaw," a specimen must be recollected because the donor still needs to provide a negative test result.

Definition - Substance Abuse Professional: NAADAC is a national organization that imposes qualification standards for treatment of alcohol-related disorders. The SAP definition in the rules defines who is qualified. Counselors who meet only state-certification criterion are not authorized to be SAPs because qualifications vary greatly by state. Degrees and certificates alone do not confer this knowledge. DOT does not certify, license, or approve individual SAPs.

Inspector Guidance - SAPs: In June 1995, DOT published Substance Abuse Professional Procedures Guidelines for Transportation Workplace Drug and Alcohol Testing Programs. It contains six sections, including SAP duties, SAP prohibitions, Release of Information, Record Maintenance, and Questions and Answers.

The primary duties of the SAP are to conduct a face-to-face assessment and clinical evaluation to determine if an employee needs assistance, and if assistance is needed, to recommend a course of treatment and serve as a referral source. The SAP also conducts a face-to-face follow-up evaluation before returning him to duty, to determine if the employee has demonstrated successful compliance with the recommendation. The SAP (and not the employer) also directs the follow-up testing plan (number and frequency) for returning to work (in addition to regular random testing). The employer is then responsible for scheduling testing per the plan.

The rules require an employer to advise the employee, who engages in conduct prohibited under the DOT rules, of the available resources for evaluation and treatment including the names, addresses, and telephone numbers of SAPs and counseling and treatment programs. In the scenario where the employer discharges the employee, that employer would be considered to be in compliance with the rules if they provide the list and ensure that SAPs on the list are qualified. This employer has no further obligation to facilitate referral to the SAP, ensure that the employee receives a SAP evaluation or pay for the evaluation.

Follow-Up Testing: Random and follow-up tests are to be separated. One cannot be substituted for the other or be conducted in lieu of the other. If a company has several employees in follow-up testing, those employees must be tested as prescribed by the SAP and over and above any selection for random testing.

219.105 - Railroad's Duty to Prevent Violations

Application: An employer who actually knows an employee has used alcohol during the pre- duty abstinence period is prohibited from allowing the employee to perform covered service duties. A railroad cannot always be aware of pre-duty behavior, but actual knowledge can come from the railroad's direct observation of an employee, a reliable witness or the employee's admission of alcohol use. Generally, this prohibition is enforceable vis-à-vis the railroad only in "actual knowledge" situations.

219.107 - Consequences of unlawful refusal

Application: Refusals: A refusal to take an FRA post-accident or breath test would be a 219.101 violation because in the worst case could establish: use on the job, violation of the .04 alcohol prohibition, or - with other evidence - impairment. A refusal of a drug test, which in most cases could only be used to establish a 219.102 violation, would be treated as if it were a violation of 219.102. The following could be considered a refusal:

1) Failure to Remain Available: Failure to remain available for a Federal test, following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples. A covered employee subject to a post-accident test who leaves the scene of an accident before being tested (except, for example, when necessary to receive medical treatment) and is not reasonably available for a test is deemed to have refused to submit to a required test.

2) Donor Leaves Collection Site: If a collector (with concurrence of collection site supervisor or the designated employer representative) determines than an observed collection is required and unequivocally indicates this to the donor and the donor leaves the site, this must be considered a refusal by the employer.

What if the donor "leaves the collection site" to drink fluids and returns to attempt another void? If the donor leaves the collection site area after he/she was told to remain at the site, this must be considered a refusal.
If a breath alcohol test has begun and the donor leaves, it is a refusal to test.

3) Donor Refuses to Drink Fluids: If the employee refuses to drink fluids as directed and does not provide the required urine specimen, the collection site person shall terminate the collection at the end of three hours and notify the employer that the employee has refused to submit to testing. The donor has up to the three-hour period to drink fluids and provide the required specimen.

4) Refusal to Report for a Medical Evaluation: If an employee who is directed to report for a medical evaluation and either declines to do so or does not comply with the directions of the physician in the course of the examination, it is appropriate to treat the employee's behavior as a refusal to be tested, which has the same consequences as a positive test.

5) Refusal of Breath Alcohol Confirmation Test: A refusal occurs when an employee who screens positive for alcohol, refuses the confirmation test. A refusal also can occur when an employee, who screens positive for alcohol, decides to admit alcohol misuse in violation of the rules and refuses the confirmation test. This situation is different from allowing employees to voluntarily "mark off" from duty when not threatened with a test under these rules, if they feel they are unable to perform their jobs due to alcohol misuse. The employer must still confirm the positive screen to protect the integrity of the process and to comply with the statutory requirement for a confirmation test.

6) Refusal to Cooperate: Refusal by an employee to cooperate in a way that prevents the completion of the testing process shall be noted by the collector/BAT/STT in the remarks section and the testing process shall be terminated and the employer immediately notified. This must be administered as a refusal.

7) Failure to Sign Step 2 (Certification) on DOT Breath Alcohol Testing Form: Failure of the donor to sign the certification in Step 2 for a breath alcohol test (not urine drug) constitutes a refusal to submit to testing.

8) Tampering (Adulteration): Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample. Adulteration of a urine sample is considered a refusal to test because it constitutes an obstruction of the testing process. Bringing an adulterant or a substitute specimen to a collection site, even if it is not used, constitutes a refusal.

The following are not considered refusals:

Refusal to provide social security number or other identification number. This is not a refusal if the donor subsequently provides a sample. The collector should assign "any" identifying number.

Refusal to sign a consent form cannot be interpreted as a refusal to provide a specimen.

When the donor does not have appropriate identification, this should not be considered a refusal.

An applicant's or employee's refusal to submit to a pre-employment test does not trigger the need for additional evaluation. In this case, the applicant or employee is not in a safety-sensitive position and does not have to be removed from a safety-sensitive position. (They could simply not be hired).

219.201 - Subpart C - Post Accident Toxicological Testing

Application: Testing for Cause: The urine testing authority conferred by "testing for reasonable cause" does not apply with respect to any event subject to post-accident toxicological testing as required by 219.201. Post-accident testing takes priority and must be accomplished.

219.201 - Events for which testing is required

Application: Evacuations: An evacuation has occurred only if someone actually evacuates. It need not be an official evacuation.

Application: Determination of the Event: If an accident/incident falls into more than one category of events, testing will be conducted pursuant to the criteria for the higher testing category. For example, if a collision occurs with $1.5 Million in property damage, testing will be conducted for a "Major Train Accident," rather than for an "Impact Accident."

Application: Testing Railroad Employees, Contractors and Volunteers: Any railroad employee, railroad contractor, or volunteer involved in an accident/incident that meets the testing criteria will be tested if they are fatally injured.

Application: Sunkinks: A derailment involving a sunkink does not fit within the natural cause exception to testing, because a sunkink is not "wholly" attributable to a natural cause.

Application: Authority of Law Enforcement Officers: FRA's alcohol and drug testing regulations generally preempt other authorities from issuing drug testing regulations of their own. However, they do not preempt provisions of state criminal law that may require drug testing after highway-rail crossing accidents (or other train accidents) if such provisions impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property.
Application: Good Faith Determinations: This provision is intended to be responsive to the concern of the railroads that they might be penalized for a good faith error or lack of information on the accident scene. The paragraph excuses good faith estimates of damage that ultimately prove to be too high or too low. Likewise, it excuses testing where an injury is not manifest on the accident scene (as in the case of exposure to toxic substances that produces illness the following day). It does not excuse a failure to make a good faith estimate of damage, a failure to inquire as to the condition of person who may have been affected, or ignorance of the regulations.

219.203 - Responsibility of railroads and employees

Application: Recalled for Testing: An April 1990, letter of interpretation responds to an incident in which a train crew who had been released from duty under normal procedures was recalled for testing some hours later, because further inspection of the damaged equipment revealed in excess of the monetary threshold for an impact accident. FRA stated that the recall of these employees was not within the limited exception of the rule...Once the testing decision is made, facts discovered later will not warrant recall...No delay in this determination is warranted or allowed...The rule contemplates the exception will seldom apply to train crewmembers ...rather...to cases where a dispatcher, signal maintainer, or other key

employee is not on the scene of the accident and goes off duty before the responding supervisor can establish control over all relevant personnel and make the required investigation and determination.

Application: Failure to Remain Available: Nothing prohibits the subsequent testing of an employee who has failed to remain available (absent without leave).

219.205 - Sample collection and handling

Inspector Guidance: FRA's PAT Laboratory: NWT, Inc., 1141 E. 3900 S., STE. A-110, Salt Lake City, UT 84124; telephone (801) 268-2431; nights and weekends (801) 483-3383. Initial testing is performed on urine (or blood if urine is not available) by an immunoassay for 8 drug groups [Cannabinoids (Marijuana); Cocaine; Opiates (Codeine, Morphine); Amphetamine; Methamphetamine; Phencyclidine (PCP); Barbiturates (Major Sedatives); and Benzodiazepines (Minor Tranquilizers)]. If the test is negative (that is, the results are below the cut-off), routinely no further analysis is performed. If the initial test is presumptively positive, the urine and/or the blood and/or the tissue specimens are analyzed using GCMS. See the Summary of Analysis Performed on Specimens for Toxicology Under FRA Post-Accident Testing Program, revised 11/1/96, for specific drug or metabolites and cut-off levels for urine and blood for each drug or metabolite. Note: FRA tests for more drugs and cut-off levels are lower for post accident testing, than for Part 40 tests. FRA can test for "any" drug if there is credible need established.

Inspector Guidance: FRA's Oversight Contractor: FRA employs the services of a contractor, Greystone Health Sciences Corporation for scientific and technical oversight of FRA's contract laboratory. Expert consultants in forensics toxicology are utilized by Greystone to evaluate laboratory methods, testing protocols and records. FRA conducts periodic oversight inspections to review the performance of the lab in complying with the terms and requirements of the contract. (George M. Ellis, Jr., President, 7777 Alvarado Road, Suite 606, La Mesa, CA 91941; (619) 698-0105).

Inspector Guidance: Expired Blood Tubes: FRA authorizes railroads to instruct local medical personnel to replace any expired tubes with their own stock of unexpired 10 mL gray-top tubes (not 5 mL). This action is requested, but not required, and need only be considered when expired tubes are discovered during an actual post-accident collection. If no unexpired tubes are available, then use of "expired" tubes is required. There is not a chance that negative results will be changed to positive.

There is an expiration date on the outside of the shipping box. The expiration date refers to the vacuum of the blood tubes in each kit. When blood tubes are replaced, cross through the expiration date on the shipping box, and record the next expiration date.

Subpart D - Testing for Cause

219.300 - Mandatory reasonable suspicion testing

Application: For drugs, observations may include indications of the chronic and withdrawal effects of drugs. Long-term decline in job performance (i.e., missing work, tardiness) may not be considered as a factor in determining whether to conduct reasonable suspicion testing. This is best handled through EAP programs.

Application: Recommended (not required) "Logic Tree" for symptoms consistent with either alcohol or drug uses: Alcohol test first. If breath test is below .02, collect urine sample for drug testing. If breath test is .02 or more, a urine collection for drugs should also be made.

Application: Trained Supervisors: For a urine drug test, the required observations shall be made by two supervisors, at least one of whom is trained in accordance with 219.11 (g). Only one supervisor who is trained is required to be on-site; the other supervisor could be contacted by telephone. Regarding supervisor training, supervisors who were formerly trained under the previous rule are required to be

retrained, following the inclusion of alcohol testing in 1994. No refresher training is required. A supervisor cannot make a reasonable suspicion determination for a Federal test until he or she is trained.

Application: Chain of Custody Form: There have been many problems with the railroads' use of chain of custody forms. The railroads must use the Federal custody form for reasonable suspicion testing.

219.301 - Testing for reasonable cause

Application:

Blood testing is no longer authorized under Subpart D.

Neither timing (injury occurred soon after going on duty) nor an employee's history of previous injuries constitutes "reasonable cause."

A perceived dilute specimen (low creatinine and specific gravity) may not trigger a reasonable cause/suspicion test.

Inspector Guidance: FRA does not investigate testing that is being performed pursuant to a railroad medical policy or based on a railroad's own authority, unless there is reason to believe Federal authority (forms) were used.

Application: Chain of Custody Form: If a railroad conducts reasonable cause testing under FRA authority, the Federal custody form must be used. If a railroad conducts reasonable cause testing under its own authority and mistakenly uses the Federal custody form, the test is considered a Federal test and must be administered and followed-up as a Federal test. If the facts do not support Federal testing, the employer can still be violated.

Application: Excess Service: If a railroad performs reasonable cause testing under company authority (if the event would have qualified under Federal authority), FRA would treat it the same as if the railroad had elected to conduct the tests under FRA authority. That is, if the railroad makes a good faith effort to avoid or minimize the excess service, we would treat it as justifiable excess service. The railroad must report the incident as excess service, and we would consider all the circumstances in determining the validity of the railroad efforts at avoidance or minimization.

Subpart F - Pre-Employment Tests

219.501 - Pre-employment tests

Pre-employment breath "alcohol" testing was implemented on January 1, 1995, but was suspended as of May 10, 1995. An NPRM was published on May 9, 1996, proposing to remove the pre-employment alcohol testing mandate; and to "authorize, but not require" such testing.

Pre-employment drug tests may be conducted as part of the pre-employment medical exam.
In a collection for a pre-employment test, if the employer chooses not to hire the applicant, the MRO does not need to refer persons with "shy bladders" to a physician. There is no exception for railroads involved in work stoppages (strikes).

Inspector Guidance: When evaluating the performance of covered service by inside hostlers, ensure these employees (normally in the mechanical department) have a pre-employment drug test prior to performing covered service duties.

Subpart G – Random Alcohol and Drug Testing Programs

Application: Testing Frequency: FRA's March 1991, letter of interpretation to a small railroad indicates the program's testing frequency of twice a year is too infrequent. The program would have to schedule a minimum of quarterly tests (4 tests per year).

Application: Random Pools: An employer may not combine DOT and non-DOT pools; but may separate union and non-union employees in pools as long as they are tested at the required rate.

Application: Work Stoppage: A railroad subjected to a legal, prolonged work stoppage, must be prepared to continue the administration of their random testing plan. FRA expects railroads to exercise due diligence to administer respective random programs within a reasonable time after a strike (certainly no longer than 24-36 hours) is effected. FRA expects "non agreement employees" to be tested in the same manner as workers they may temporarily replace, within a reasonable time after an unanticipated, lawful strike occurs. For anticipated work stoppages, random testing must begin at once. Before anyone does hours of service work, they must be pre-employment, tested, and have a negative test result.

Application: Call to Duty: The regulation requires that a person selected for random testing be notified and tested while on duty. Employees must be on duty in conjunction with a normal work assignment, or be first out on the extra list when called to duty.

Application: Call to Duty (Follow-Up Test): On a non-routine basis, employers may call an employee "who is available for duty" (not on medical or authorized leave) to duty for purposes of drug or alcohol testing when abstinence for drugs and/or alcohol is required in an FRA follow-up testing plan.

Application: Inside Hostlers: FRA takes no exception to the inclusion of mechanical department employees who work in the locomotive facilities, subject to performing hostler duties being included in the railroad's random drug testing pool. FRA has identified commingled service options a railroad may wish to consider. They are: 1) Include all employees who occasionally (at least four times a year/quarterly) perform covered service in the random testing pool, as if they regularly perform covered service; provide a covered service classification in every job posting so that each employee knows before bidding whether or not the position will be subject to random testing; 2) Place all employees in the random pool, but only test those who actually perform covered service on the day that they are selected; or 3) The railroad makes its own determination as to how to handle de minimus service, subject to the proviso that if FRA disagrees with their interpretation of de minimis they may be subject to a random testing violation. To the extent practical within the limitations of Part 219 and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service. Note: These options apply to other non-routine covered positions, not just hostlers.

Application: Consortiums: If the railroad conducts random testing through a consortium, the annual rate may be calculated for each individual employer via an individual employee pool, or for the total number of covered employees subject to random testing by the consortium.

Application: Random Drug Testing Programs: Railroads may combine their alcohol and drug random plans and testing. On August 24, 1989, FRA published, Random Drug Testing Implementation Guidance which includes criteria for review of random testing programs, including a question and answer section.

The program should explain which employees of the railroad are included (by occupation or function) and describe any variations regarding eligibility (seasonal, part-time, intermittent assignments).

If an employee is only in covered service temporarily, e.g., 2 weeks during the summer, does he have to be in the selection pool? Yes, if however, there are clearly identified times during the year when they will perform covered service; they only need to be in the pool during that timeframe. This is only relevant to

selection if the railroad is using a method that selects by "name." If the method used selects by assignment, crew, location, unit, etc., they would be eligible for selection only when performing the duty. In any event, an employee is available for testing only when on duty.

Service in excess of the 12-hour rule will constitute an hours of service violation.

If at some time during the year, the number of covered employees falls to 15 or less, this does not mean a railroad becomes exempt from testing. If a railroad can anticipate seasonal or cyclical employment, they may choose to adjust the program so that more persons are tested during the periods of peak employment, provided that some testing is also performed during the non-peak periods as well.

How are part-time employees, and persons who only occasionally perform covered service, included in calculations of having tested 25% of employees? Positions that exist primarily to perform covered service should be counted for the whole year, even though the work may alternate between covered service and non-covered service during a shift or week (e.g., persons performing hostler duties). For part-time or seasonal positions, FRA suggests the following procedure: First, consider estimating the average number of days or weeks each year that such positions perform covered service. Second, add all of the estimates to obtain a total for the year. Third, the railroad should specify how many hours constitute a "normal" work shift or week. Fourth, determine the number of equivalent "normal" shifts there would be during the year (i.e., divide the total hours/weeks by a "normal" shift/week). Fifth, add this result to the number of whole year positions subject to testing. Finally, 25% of that total, then, would comprise the number of tests required for the year.

FRA does not condone random testing to be conducted after the hours of service limitations except where a direct observation test is required.

Subpart H – Procedures and Safeguards for Urine Drug Testing and for Alcohol Testing

219.703 - Drug testing procedures

Inspector Guidance: All deficiencies or violations of Part 40 should be written under 219.701 (a) or 219.703 (a) for urine drug testing and 219.715 (c) for alcohol breath testing. These sections basically say that drug (or alcohol) testing must be conducted as required by Part 40. In the narrative section of the inspection and/or violation report, the inspector should refer to the specific sections of Part 40, which were in noncompliance.

Subpart I – Annual Report

Inspector Guidance: Although the annual MIS Report does not apply to a railroad that has fewer than 400,000 total manhours, there are 25 shortline railroads each year that voluntarily send in an MIS Report for sampling purposes. No violation reports will be recommended for railroads not filing MIS reports unless they had 400,000 or more total manhours.

Subpart J – Recordkeeping Requirements

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

DOT policy regarding Parts 40 and 219 records is as follows:

Maintenance of records required by 49 CFR Parts 40 and 219 could be delegated to an agent of the employer such as a consortium/third 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.