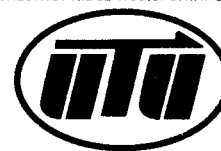


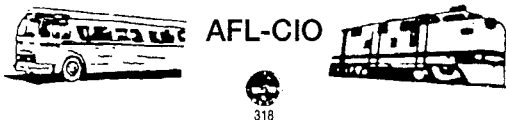
united transportation union



NEW YORK STATE LEGISLATIVE BOARD

Samuel J. Nasca
State Legislative Director/
Chairperson
35 Fuller Road, Suite 205
Albany, New York 12205
Telephone (518) 438-8403
Fax (518) 438-8404
E-mail: SJNasca@aol.com

Vaughn Becker
Secretary-Treasurer



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March 27, 2008

MEMORANDUM TO: All Railroad Legislative Representatives, Alternates and Local Secretaries

SUBJECT: Circular 7.08 - Further information on changes to 49, CFR, Part 217

As noted in my previous circular letter, the Federal Railroad Administration has issued new guidelines and mandates for 49, CFR, Part 217 - 218. There are very ominous implications coming from these regulations, which will not only impact the railroads and railroad managers, but also the employees.

As stated in our previous circular letter, the full regulation is 128 pages long and rather than send out the entire text of the law, we are sending you the summary, for your records and file. I would urge everyone to review this summary, as the issues contained in this document are most important and will impact your membership in some way, down the road.

Again, should there be questions; please contact my office for clarification.

Sincerely & fraternally,

Samuel J. Nasca
Director/Chairperson

SJN:bp

cc: A. Simon, Gen. Chm.
RC McVeen, Gen. chm.
G. Casey, Gen. Chm.
W. Wodowski, Gen. Chm.

Enc.



FINAL RULE IMPLEMENTATION SCHEDULE 49 CFR, PARTS 217 & 218

Final Rule published in the Federal Register
(73 FR 8442)

Effective Date of the Final Rule.
All requirements of the Final Rule go into effect on April 14. However, the Rule permits delayed implementation as shown below.

§ 218.95 Instruction, training and examination.
§ 218.95(a)(3) Employees hired between April 14, 2008 and January 1, 2009, required to perform duties subject to the requirements of Subpart F, shall be qualified before performing duties required by Subpart F.

§ 218.95 Instruction, training and examination.
§ 218.95(a)(3) All employees performing duties on the effective date of the rule (April 14, 2008), must be initially qualified on the requirements of Subpart F by January 1, 2009, and all employees hired on or after January 1, 2009 must be initially qualified on the requirements of Subpart F before performing such duties.

§ 218.95 Instruction, training and examination.
§ 218.95(a) *Program.* Each railroad must maintain a written program of instruction, training and examination on operating rules implementing Subpart F. Railroads may consolidate this program with a § 217.11 program.

§ 217.9 Program of operational tests and inspections; recordkeeping.
§ 217.9(b) *Railroad and railroad testing officer responsibilities.* Testing officers must be qualified on the operating rules, operational testing program, have received field training prior to conducting tests, and actually go out and conduct tests. Written records documenting testing officer qualifications must be kept at System and Division headquarters.
§ 217.9(c) *Written program of operational tests and inspections.*
§ 217.9(c)(1) Program must be amended to emphasize rules causing accidents/incidents such as those identified in quarterly and six-month reviews, and annual summaries.
§ 217.9(c)(6) Railroads must identify a system officer responsible for ensuring the program of operational tests is being properly implemented. In addition, a railroad with divisions must identify a responsible officer for each division.
§ 217.9(e) *Reviews of tests and inspections and adjustments to the program of operational tests.* Class I railroads to commence conducting quarterly and six-month reviews, and Amtrak to commence conducting six-month reviews.

§ 217.9 Program of operational tests and inspections; recordkeeping.
§ 217.9(e) *Reviews of tests and inspections and adjustments to the program of operational tests.*
§ 217.9(e)(1) *Non-passenger railroads:* All non-Class I railroads (i.e., Class II, regional, and short line), except railroads with fewer than 400,000 total annual employee work hours, to have written program of operational tests and inspections, and commence conducting tests and inspections in accordance with quarterly and six-month reviews.
§ 217.9(e)(2) *Passenger railroads:* All passenger railroads, except Amtrak, to have written program of operational tests and inspections, and commence conducting tests and inspections in accordance with six-month reviews.

February 13, 2008

April 14, 2008

July 1, 2008



March 11, 2008

MEMORANDUM

To: James Brunkenhoefer

James Stem

From: Lawrence Mann

Re: New FRA Operating Rules Regulation

**SUMMARY OF NEW FRA REGULATION COVERING
RAILROAD OPERATING RULES**

CHANGES TO 49 C.F.R. PART 217

I. SCOPE OF RULE

The new regulation requires the railroads to adequately train their employees on the railroad operating rules. In addition, requirements for special handling, instruction, and testing of railroad operating rules covering hand-operated main track switches in non-signaled territory. Lastly, guidance is provided for remote locomotive operations that utilize technology in aiding point protection.

Each railroad shall periodically conduct operational tests and inspections to determine the extent of compliance with its operating rules, timetables, and timetable special instructions.

Each railroad officer who conducts the operational tests and inspections shall be qualified on the operating rules, receive appropriate field training, conduct operational tests and inspections. The railroad is required to retain at its system headquarters records of the qualifications of the testing officer.

Operational tests and inspections:

Every railroad shall:

-- have a written program of operational tests and inspections;

--keep a record of the date, time, place, and result of each operational test and inspection, which shall specify each officer administering the test, and the name of each employee tested. The records shall be retained at system headquarters and at

each division headquarters where the tests and inspections are conducted for one calendar year;

--retain a copy of a current program for periodic performance of the tests and inspections;

--The program shall become fully operative within 210 days after it begins.

Reviews of tests and inspections:

(The review provisions shall apply to each class I and AMTRAK on July 1, 2008, and all other railroads on January 1, 2009. This section does not apply to a railroad with less than 400,000 employee work hours annually).

Each railroad shall conduct periodic reviews and analysis of the program, and keep a copy of the review at each division headquarters or system headquarters as follows:

--The designated officer of each division headquarters or system headquarters (if no system headquarters exist) a written quarterly review of the accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data to identify relevant operating rules related to those accidents/incidents occurring during that quarter.

--The designated officer of each system headquarters office responsible for development and administration of the program of operational tests and inspections shall conduct a review of the program on six month basis to ensure that the quarterly reviews have been properly completed, and appropriate adjustments made, and that the testing officers are properly performing their duties.

--Annual Review. Before March 1 of each year, a railroad (except those with less than 400,000 total employee hours) shall retain a copy at its divisional headquarters and at its system headquarters of the number, type, and result of each operational test and activities. The results shall be retained for 3 years.

--Railroads are permitted to retain results by electronic recordkeeping.

Written program of instruction, training, and examination:

Effective July 1, 2008, each railroad shall maintain a written program of instruction, training, and examination of employees for compliance with the operating rules. The written program shall include procedures covering new technology.

An employee who completes all of the instruction, training, and examination shall be considered qualified. The employees shall be initially qualified prior to Jan. 1, 2009.

After Jan. 1, 2009, no employee shall perform work requiring compliance with the operating rules unless qualified on the rules within the previous 3 years.

CHANGES TO 49 C.F.R. PART 218

Good faith challenge procedures:

An employee shall inform the railroad or employer whenever the employee makes a good faith determination that the employee has been directed to either take actions that would violate FRA regulations regarding handling of equipment, switches, and fixed derails, or to take actions that would violate the railroad's operating rules implementing such requirements.

Each railroad or employer shall adopt and implement procedures which guarantee each employee the right to challenge in good faith the procedures of the carrier. There shall be a prompt and equitable resolution of the challenges.

As part of the training, the employee shall be instructed on the procedures required in a good faith challenge. The employee shall be provided a copy of the written procedures.

This will not take away any rights the employee has under collective bargaining agreement, or any federal law.

The written procedures shall include:

--Grant each employee the right to challenge any directive;

--The employee shall not be required to comply with a directive until the challenge is resolved; However, he could be required to perform tasks unrelated to the challenge;

--An employee, other than the challenging employee may be directed to perform the challenged task, so long as such employee is informed of the challenge and does not also make a good faith challenge of the task;

--In the event that the person issuing the directive determines that the challenge was not made in good faith, or that there is no reasonable alternative, an immediate review shall be provided by at least one officer.(This provision does not apply to railroads which have less than 400,000 work hours annually.) This immediate review shall not be conducted by the person issuing the challenged directive, or his subordinate.

--If the officer making the final decision determines that no violation has occurred, and directs the employee to perform the challenged task, he shall inform the employee the Federal law protects him from retaliation if he still refuses to perform the work, and the refusal was lawful and in good faith.

--The employee shall be afforded the opportunity to document electronically or in writing any protest;

--Upon written request, the employee has a right to a further review by a designated officer, within 30 days after expiration of the month during which the challenge occurred. The employer's decision shall be in writing. Each decision shall be maintained for 1 calendar year after the year in which the verification decision was made;

--A copy of all of the procedures shall be kept at the railroad's system headquarters and at each division headquarters.

Shoving or pushing movements

Any person violating an operating rule which complies with this section is a violation of this regulation. **(The employee should be aware that an employee could be assessed a penalty by FRA for violating a railroad operating rule).**

The requirements of this part do not apply to rolling equipment intentionally shoved or pushed to permit the rolling equipment to roll without power attached.

Job briefing. Rolling equipment shall not be shoved or pushed until the engineer has been briefed by the employee who will direct the move. The job

briefing shall include the means of communication to be used, and how point protection will be provided.

During the shoving or pushing, the employee effecting the movement shall not engage in any unrelated task.

Point Protection. When rolling equipment or lite locomotive is shoved or pushed, point protection shall be provided by a crewmember or other qualified employee by:

--Visually determining that the track is clear. The determination that the track is clear may be made with the aid of monitored cameras or other technological means, provided that it and the procedures for use provide an equivalent level of protection.; and giving signals or instructions necessary to control the movement.

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

When initiating a remote control shoving or pushing movement:

--the remote control operator shall visually determine the direction of movement. If no confirmation is received, the movement shall be ended immediately.

--If technology is relied upon, whether primarily or as a safeguard, to provide pull-out protection by preventing the movement from exceeding the limits of a remote control zone, the technology shall be demonstrated to be failsafe; or to provide suitable redundancy to prevent unsafe failure.

Remote control zone, exception to track is clear requirements. After an initial track is clear determination has been made in an activated remote control zone, it is not necessary to make a new determination prior to each subsequent shoving or pushing movement provided that:

(1) The controlling locomotive of the remote control movement is on the leading end in the direction of movement, i.e., the movement occurs on the pull-out end;

(2) The remote control zone is not jointly occupied; and

(3) The initial determination was made by a crewmember of either:

(i) The remote control crew;

(ii) A relieved remote control crew who has transferred the remote control zone directly to the relieving crew; or

(iii) The last jointly occupying crew who directly communicates, i.e., not through a third party, to a remote control crewmember that the remote control zone is no longer jointly occupied and meets the requirements for track is clear.

Exceptions. A railroad does not need to comply in the following circumstances:

(1) Push-pull operations when operated from the leading end in the direction of movement, i.e., push mode;

(2) Shoving or pushing operations with manned helper locomotives or distributed power locomotives assisting a train when the train is being operated from the leading end in the direction of movement;

(3) During the performance of roadway maintenance activity under the direct control of a roadway worker performing work in accordance with railroad operating rules specific to roadway workers; or

(4) When the leading end of a shoving movement is on a main track or signaled siding, under the following conditions:

(i) The train dispatcher gives authority or permission to make the movement and verifies that:

(A) Another movement or work authority is not in effect within the same or overlapping limits unless conflicting movements are protected; and

(B) A main track is not removed from service by a work authority within the same or overlapping limits;

(ii) Movement is limited to the train's authority;

(iii) Movement shall not be made into or within yard limits, restricted limits, drawbridges, or work authority limits;

(iv) Movement shall not enter or foul a highway-rail grade crossing or pedestrian crossing except when:

(A) Crossing gates are in the fully lowered position; or

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

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

(v) Movement shall not be made into or within interlocking limits or controlled point limits unless the following conditions are met:

(A) The signal governing movement is more favorable than restricting aspect;

(B) Each signal governing movement into and through interlocking limits or controlled point limits shall be continuously observed by a member of that crew who is in a position to determine that the train's movement has occupied the circuit controlling that signal as evidenced by that signal assuming its most restrictive aspect; and

(C) The movement does not exceed the train's length.

Leaving rolling and on-track maintenance-of-way equipment in the clear.

(a) Each railroad shall adopt and comply with an operating rule which complies with this section.

When any person violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Rolling and on-track maintenance-of-way equipment shall not be left where it will foul a connecting track unless:

(1) The equipment is standing on a main track and a siding track switch that the equipment is fouling is lined for the main track on which the equipment is standing; or

(2) The equipment is standing on a siding and a main track switch that the equipment is fouling is lined for the siding on which the equipment is standing; or

(3) The equipment is standing on a yard switching lead track, and the yard track switch that the equipment is fouling is lined for the yard switching lead track on which the equipment is standing; or

(4) The equipment is on an industry track beyond the clearance point of the switch leading to the industry.

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

Hand-operated switches, including crossover switches.

Each railroad shall adopt and comply with an operating rule which complies with the requirements of this section.

When any person violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

Each railroad shall specify minimum requirements necessary for an adequate job briefing.

(a) General. Employees operating or verifying the position of a hand-