

Pt. 217, App. A

(3) Section 217.11.

[50 FR 7919, Feb. 27, 1985. Redesignated and amended at 59 FR 43071, Aug. 22, 1994]

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES¹

Section	Violation	Willful violation
217.7 Operating rules:		
(a)	\$2,500	\$5,000
(b)	\$2,000	\$5,000
(c)	\$2,500	\$5,000
217.9 Operational tests and inspections:		
(a) Program	\$5,000	\$7,500
(b) Record of program	2,500	\$5,000
(c) Record of tests and inspections	\$5,000	\$7,500
(d) Annual summary	\$5,000	\$7,500
217.11 Program of instruction on operating rules:		
(a)	\$5,000	\$7,500
(b)	\$2,500	\$5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[59 FR 43071, Aug. 22, 1994]

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APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES

APPENDIX B TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON BLUE SIGNAL PROTECTION FOR UTILITY EMPLOYEES

APPENDIX C TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON TAMPERING

AUTHORITY: 49 U.S.C. 20101 *et seq.*; and 49 CFR 1.49(m).

SOURCE: 44 FR 2175, Jan. 10, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 218 appear at 58 FR 43292, Aug. 16, 1993.

Subpart A—General

§218.1 Purpose.

This part prescribes minimum requirements for railroad operating rules and practices. Each railroad may prescribe additional or more stringent requirements in its operating rules, timetables, timetable special instructions, and other special instructions.

§218.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation.

(b) This part does not apply to—

- (1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation, or
- (2) Rapid transit operations in an urban area that are not connected with

the general railroad system of transportation.

[44 FR 2175, Jan. 10, 1979, as amended at 53 FR 28599, July 28, 1988]

§218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling Locomotive means a locomotive arranged as having the only controls over all electrical, mechanical and pneumatic functions for one or more locomotives, including controls transmitted by radio signals if so equipped. It does not include two or more locomotives coupled in multiple which can be moved from more than one set of locomotive controls.

Designated crew member means an individual designated under the railroad's operating rules as the point of contact between a train or yard crew and a utility employee working with that crew.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

- (1) Vandal resistant;
- (2) Tamper resistant; and
- (3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a white light at night, and a specified number of torpedoes and

fuseses as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other railroad rolling equipment in revenue service including a self-propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Locomotive servicing track area means one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Train or yard crew means one or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member; called to perform service covered by Section 2 of the Hours of Service Act; involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew; reporting and working together as a unit that remains in close contact if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in §§217.9 and 217.11 of this chapter.

Utility employee means a railroad employee assigned to and functioning as a temporary member of a train or yard

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crew whose primary function is to assist the train or yard crew in the assembly, disassembly or classification of rail cars, or operation of trains (subject to the conditions set forth in § 218.22 of this chapter).

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as “utility employees”). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.

NOTE: Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

Testing does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

[58 FR 43292, Aug. 16, 1993, as amended at 60 FR 11049, Mar. 1, 1995]

§ 218.7 Waivers.

(a) A railroad may petition the Federal Railroad Administration for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, he may grant the waiver subject to any conditions he deems necessary. Notice of each waiver granted, including a statement of the reasons, therefore, is published in the FEDERAL REGISTER.

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§ 218.9 Civil penalty.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than \$10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

[53 FR 28599, July 28, 1988, as amended at 53 FR 52928, Dec. 29, 1988]

§ 218.11 Filing, testing, and instruction.

The operating rules prescribed in this part, and any additional or more stringent requirements issued by a railroad in relation to the operating rules prescribed in this part, shall be subject to the provisions of part 217 of this chapter, Railroad Operating Rules: Filing, Testing, and Instruction.

Subpart B—Blue Signal Protection of Workers

§ 218.21 Scope.

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.

§ 218.22 Utility employee.

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer of that crew;

(2) The locomotive engineer is in the cab of the controlling locomotive, or, while the locomotive is stationary be replaced in the cab by another member of the same crew;

(3) The utility employee established communication with the crew by contacting the designated crew member on arriving at the train (as defined for the purpose of this section as one or more locomotives coupled, with or without cars) and before commencing any duties with the crew.

(4) Before each utility employee commences duties, the designated crew member shall provide notice to each crew member of the presence and identity of the utility employee. Once all crew members have acknowledged this notice, the designated crew member shall advise the utility employee that he or she is authorized to work as part of the crew. Thereafter, communication shall be maintained in such a manner that each member of the train or yard crew understands the duties to be performed and whether those duties will cause any crew member to go on, under, or between the rolling equipment; and

(5) The utility employee is performing one or more of the following functions: set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad

rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(d) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall notify the designated crew member. The designated crew member shall then provide notice to each crew member that the utility employee is being released from the crew. Once each crew member has acknowledged the notice, the designated crew member shall then notify the utility employee that he is released from the train or yard crew.

(e) Communications required by § 218.22(c)(4) and (d) shall be conducted between the utility employee and the designated crew member. This communications shall be conducted either through direct verbal contact, by radio in compliance with part 220 of this chapter, or by oral telecommunication of equivalent integrity.

(f) No more than three utility employees may be attached to one train or yard crew at any given time.

(g) Any railroad employee who is not assigned to a train or yard crew, or authorized to work with a crew under the conditions set forth by paragraph (b) of this section, is a worker required to be provided blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(h) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.

[58 FR 43293, Aug. 16, 1993, as amended at 60 FR 11050, Mar. 1, 1995]

§ 218.23 Blue signal display.

(a) Blue signals displayed in accordance with § 218.25, 218.27, or 218.29 signify that workers are on, under, or between rolling equipment. When so displayed—

(1) The equipment may not be coupled to;

(2) The equipment may not be moved, except as provided for in § 218.29;

(3) Other rolling equipment may not be placed on the same track so as to reduce or block the view of a blue signal,

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except as provided for in § 218.29 (a), (b) and (c); and

(4) Rolling equipment may not pass a displayed blue signal.

(b) Blue signals must be displayed in accordance with § 218.25, 218.27, or 218.29 by each craft or group of workers prior to their going on, under, or between rolling equipment and may only be removed by the same craft or group that displayed them.

§ 218.24 One-person crew.

(a) An engineer working alone as a one-person crew shall not perform duties on, under, or between rolling equipment, without blue signal protection that complies with § 218.27 or § 218.29, unless the duties to be performed are listed in § 218.22(c)(5) and the following protections are provided:

(1) Each locomotive in the locomotive engineer's charge is either:

(i) Coupled to the train or other railroad rolling equipment to be assisted; or

(ii) Stopped a sufficient distance from the train or rolling equipment to ensure a separation of at least 50 feet; and

(2) Before a controlling locomotive is left unattended, the one-member crew shall secure the locomotive as follows:

(i) The throttle is in the IDLE position;

(ii) The generator field switch is in the OFF position;

(iii) The reverser handle is removed (if so equipped);

(iv) The isolation switch is in the ISOLATE position;

(v) The locomotive independent (engine) brake valve is fully applied;

(vi) The hand brake on the controlling locomotive is fully applied (if so equipped); and

(vii) A bright orange engineer's tag (a tag that is a minimum of three by eight inches with the words ASSIGNED LOCOMOTIVE—DO NOT OPERATE) is displayed on the control stand of the controlling locomotive.

(b) When assisting another train or yard crew with the equipment the other crew was assigned to operate, a single engineer must communicate directly, either by radio in compliance with part 220 of this chapter or by oral telecommunication of equivalent in-

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tegrity, with the crew of the train to be assisted. The crews of both trains must notify each other in advance of all moves to be made by their respective equipment. Prior to attachment or detachment of the assisting locomotive(s), the crew of the train to be assisted must inform the single engineer that the train is secured against movement. The crew of the train to be assisted must not move the train or permit the train to move until authorized by the single engineer.

[60 FR 11050, Mar. 1, 1995]

EFFECTIVE DATE NOTE: Section 218.24 was added at 60 FR 11050, Mar. 1, 1995, effective May 15, 1995. At 60 FR 30469, June 9, 1995, § 218.24 was suspended effective May 15, 1995.

§ 218.25 Workers on a main track.

When workers are on, under, or between rolling equipment on a main track:

(a) A blue signal must be displayed at each end of the rolling equipment; and

(b) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

(c) When emergency repair work is to be done on, under, or between a locomotive or one or more cars coupled to a locomotive, and blue signals are not available, the engineman or operator must be notified and effective measures must be taken to protect the workers making the repairs.

[44 FR 2175, Jan. 10, 1979, as amended at 48 FR 6123, Feb. 10, 1983]

§ 218.27 Workers on track other than main track.

When workers are on, under, or between rolling equipment on track other than main track—

(a) A blue signal must be displayed at or near each manually operated switch providing access to that track;

(b) Each manually operated switch providing access to the track on which the equipment is located must be lined against movement to that track and locked with an effective locking device; and

(c) The person in charge of the workers must have notified the operator of any remotely controlled switch that work is to be performed and have been informed by the operator that each remotely controlled switch providing access to the track on which the equipment is located has been lined against movement to that track and locked as prescribed in §218.30.

(d) If rolling equipment requiring blue signal protection as provided for in this section is on a track equipped with one or more crossovers, both switches of each crossover must be lined against movement through the crossover toward that rolling equipment, and the switch of each crossover that provides access to the rolling equipment must be protected in accordance with the provisions of paragraphs (a) and (b), or (c) of this section.

(e) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

§218.29 Alternate methods of protection.

Instead of providing blue signal protection for workers in accordance with §218.27, the following methods for blue signal protection may be used:

(a) When workers are on, under, or between rolling equipment in a locomotive servicing track area:

(1) A blue signal must be displayed at or near each switch providing entrance to or departure from the area;

(2) Each switch providing entrance to or departure from the area must be lined against movement to the area and locked with an effective locking device; and

(3) A blue signal must be attached to each controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive;

(4) If the speed within this area is restricted to not more than 5 miles per hour a derail, capable of restricting access to that portion of a track within the area on which the rolling equipment is located, will fulfill the requirements of a manually operated switch in

compliance with paragraph (a)(2) of this section when positioned at least 50 feet from the end of the equipment to be protected by the blue signal, when locked in a derailing position with an effective locking device, and when a blue signal is displayed at the derail;

(5) A locomotive may be moved onto a locomotive servicing area track after the blue signal has been removed from the entrance switch to the area. However, the locomotive must be stopped short of coupling to another locomotive;

(6) A locomotive may be moved off of a locomotive servicing area track after the blue signal has been removed from the controlling locomotive to be moved and from the area departure switch;

(7) If operated by an authorized employee under the direction of the person in charge of the workers, a locomotive protected by blue signals may be repositioned within this area after the blue signal has been removed from the locomotive to be repositioned and the workers on the affected track have been notified of the movement; and

(8) Blue signal protection removed for the movement of locomotives as provided in paragraphs (a) (5) and (6) of this section must be restored immediately after the locomotive has cleared the switch.

(b) When workers are on, under, or between rolling equipment in a car shop repair track area:

(1) A blue signal must be displayed at or near each switch providing entrance to or departure from the area; and

(2) Each switch providing entrance to or departure from the area must be lined against movement to the area and locked with an effective locking device;

(3) If the speed within this area is restricted to not more than 5 miles per hour, a derail capable of restricting access to that portion of a track within the area on which the rolling equipment is located will fulfill the requirements of a manually operated switch in compliance with paragraph (a)(2) of this section when positioned at least 50 feet from the end of the equipment to be protected by the blue signal, when locked in a derailing position with an effective locking device and when a blue signal is displayed at the derail;

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(4) If operated by an authorized employee under the direction of the person in charge of the workmen, a car mover may be used to reposition rolling equipment within this area after workers on the affected track have been notified of the movement.

(c) Except as provided in paragraphs (a) and (b) of this section, when workers are on, under, or between rolling equipment on any track, other than a main track:

(1) A derail capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end so such equipment; and

(2) Each derail must be locked in a derailing position with an effective locking device and a blue signal must be displayed at each derail.

(d) When emergency repair work is to be done on, under, or between a locomotive or one or more cars coupled to a locomotive, and blue signals are not available, the engineman or operator at the controls of that locomotive must be notified and effective measures must be taken to protect the workers making the repairs.

[44 FR 2175, Jan. 10, 1979, as amended at 48 FR 6123, Feb. 10, 1983]

§ 218.30 Remotely controlled switches.

(a) After the operator of the remotely controlled switches has received the notification required by § 218.27(c), he must line each remotely controlled switch against movement to that track and apply an effective locking device to the lever, button, or other device controlling the switch before he may inform the employee in charge of the workers that protection has been provided.

(b) The operator may not remove the locking device unless he has been informed by the person in charge of the workers that it is safe to do so.

(c) The operator must maintain for 15 days a written record of each notification which contains the following information:

(1) The name and craft of the employee in charge who provided the notification;

(2) The number or other designation of the track involved;

(3) The date and time the operator notified the employee in charge that protection had been provided in accordance with paragraph (a) of this section; and

(4) The date and time the operator was informed that the work had been completed, and the name and craft of the employee in charge who provided this information.

[44 FR 2175, Jan. 10, 1979, as amended at 48 FR 6123, Feb. 10, 1983]

Subpart C—Protection of Trains and Locomotives

§ 218.31 Scope.

This subpart prescribes minimum operating rule requirements for the protection of railroad employees engaged in the operation of trains, locomotives and other rolling equipment.

[42 FR 5065, Jan. 27, 1977]

§ 218.35 Yard limits.

(a) After August 1, 1977, yard limits must be designated by—

(1) Yard limit signs, and

(2) Timetable, train orders, or special instructions.

(b) After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements set forth below:

(1) The main tracks within yard limits may be used, clearing the time an approaching designated class train is due to leave the nearest station where time is shown. In case of failure to clear the time of designated class trains, protection must be provided as § 218.37. In yard limits where main tracks are governed by block signal system rules, protection as prescribed by § 218.37 is not required.

(2) Trains and engines, except designated class trains, within yard limits must move prepared to stop within onehalf the range of vision but not exceeding 20 m.p.h. unless the main track is known to be clear by block signal indications.

(3) Within yard limits, movements against the current of traffic on the main tracks must not be made unless authorized and protected by train

order, yardmaster, or other designated official and only under the operating restrictions prescribed in § 218.35(b)(2).

(c) Each railroad shall designate in the operating rule prescribed under paragraph (b) of this section the class or classes of trains which shall have superiority on the main track within yard limits.

[42 FR 5065, Jan. 27, 1977]

§ 218.37 Flag protection.

(a) After August 1, 1977, each railroad must have in effect an operating rule which complies with the requirements set forth below:

(1) Except as provided in paragraph (a)(2) of this section, flag protection shall be provided—

(i) When a train is moving on the main track at less than one-half the maximum authorized speed (including slow order limits) in that territory, flag protection against following trains on the same track must be provided by a crew member by dropping off single lighted fuses at intervals that do not exceed the burning time of the fusee.

(ii) When a train is moving on the main track at more than one-half the maximum authorized speed (including slow order limits) in that territory under circumstances in which it may be overtaken, crew members responsible for providing protection will take into consideration the grade, curvature of track, weather conditions, sight distance and relative speed of his train to following trains and will be governed accordingly in the use of fusees.

(iii) When a train stops on main track, flag protection against following trains on the same track must be provided as follows: A crew member with flagman's signals must immediately go back at least the distance prescribed by timetable or other instructions for the territory, place at least two torpedoes on the rail at least 100 feet apart and display one lighted fusee. He may then return one-half of the distance to his train where he must remain until he has stopped the approaching train or is recalled. When recalled, he must leave one lighted fusee and while returning to his train, he must also place single lighted fusees at intervals that do not exceed the burning time of the fusee. When the train

departs, a crew member must leave one lighted fusee and until the train resumes speed not less than one-half the maximum authorized speed (including slow order limits) in that territory, he must drop off single lighted fusees at intervals that do not exceed the burning time of the fusee.

(iv) When required by the railroad's operating rules, a forward crew member with flagman's signals must protect the front of his train against opposing movements by immediately going forward at least the distance prescribed by timetable or other instructions for the territory placing at least two torpedoes on the rail at least 100 feet apart, displaying one lighted fusee, and remaining at that location until recalled.

(v) Whenever a crew member is providing flag protection, he must not permit other duties to interfere with the protection of his train.

(2) Flag protection against following trains on the same track is not required if—

(i) The rear of the train is protected by at least two block signals;

(ii) The rear of the train is protected by an absolute block;

(iii) The rear of the train is within interlocking limits; or

(iv) A train order specifies that flag protection is not required.

(v) A railroad operates only one train at any given time.

(b) Each railroad shall designate by timetable or other instruction for each territory the specific distance which a crew member providing flag protection must go out in order to provide adequate protection for his train.

(c) Whenever the use of fusees is prohibited by a Federal, State or local fire regulation, each railroad operating within that jurisdiction shall provide alternate operating procedures to assure full protection of trains in lieu of flag protection required by this section.

[42 FR 5065, Jan. 27, 1977, as amended at 42 FR 38362, July 28, 1977]

§ 218.39 Hump operations.

After June 30, 1984, each railroad that operates a remote control hump yard

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facility must have in effect an operating rule that adopts the following provisions in substance:

(a) When a train or engine service employee is required to couple an air hose or to adjust a coupling device and that activity will require that the employee place himself between pieces of rolling equipment located on a bowl track, the operator of any remotely controlled switch that provides access from the apex of the hump to the track on which the rolling equipment is located shall be notified;

(b) Upon such notification, the operator of such remotely controlled switch shall line it against movement to the affected bowl track and shall apply a locking or blocking device to the control for that switch; and

(c) The operator shall then notify the employee that the requested protection has been provided and shall remove the locking or blocking device only after being notified by the employee that protection is no longer required on that track.

(Sec. 202, 84 Stat. 971 (45 U.S.C. 431); sec. 1.49(m) of the regulations of the Secretary of Transportation (49 CFR 1.49(m))

[49 FR 6497, Feb. 22, 1984]

§ 218.41 Noncompliance with hump operations rule.

A person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who fails to comply with a railroad's operating rule issued pursuant to § 218.39 of this part is subject to a penalty, as provided in appendix A of this part.

[53 FR 52928, Dec. 29, 1988]

Subpart D—Prohibition Against Tampering With Safety Devices

SOURCE: 54 FR 5492, Feb. 3, 1989, unless otherwise noted.

§ 218.51 Purpose.

(a) The purpose of this subpart is to prevent accidents and casualties that can result from the operation of trains when safety devices intended to improve the safety of their movement have been disabled.

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(b) This subpart does not prohibit intervention with safety devices that is permitted:

(1) Under the provisions of § 236.566 or § 236.567 of this chapter;

(2) Under the provisions of § 218.61 of this part; or

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter or deadman pedal at the first available point of communication.

[54 FR 5492, Feb. 3, 1989, as amended at 58 FR 36613, July 8, 1993]

§ 218.53 Scope and definitions.

(a) This subpart establishes standards of conduct for railroads and individuals who operate or permit to be operated locomotives equipped with one or more of the safety devices identified in paragraph (c) of this section.

(b) *Disable* means to unlawfully render a device incapable of proper and effective action or to materially impair the functioning of that device.

(c) *Safety device* means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering. See appendix B to this part for a statement of agency policy on this subject.

§ 218.55 Tampering prohibited.

Any individual who willfully disables a safety device is subject to a civil penalty as provided in appendix A of this part and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures provided for in 49 CFR part 209.

§ 218.57 Responsibilities of individuals.

Any individual who knowingly operates a train, or permits it to be operated, when the controlling locomotive of that train is equipped with a disabled safety device, is subject to a civil penalty as provided for in appendix A of this part and to disqualification

from performing safety-sensitive functions on a railroad if found to be unfit for such duties. See appendix B to this part for a statement of agency enforcement policy concerning violations of this section.

§218.59 Responsibilities of railroads.

Any railroad that operates a train when the controlling locomotive of a train is equipped with a disabled safety device is subject to a civil penalty as provided for in appendix A of this part.

§218.61 Authority to deactivate safety devices.

(a) For the purpose of this chapter, it is lawful to temporarily render a safety device incapable of proper or effective action or to materially impair its function if this action is taken as provided for in paragraph (b) or (c) of this section.

(b) If a locomotive is equipped with a device to assure that the operator is alert or not physically incapacitated, that device may be deactivated when:

- (1) The locomotive is not the controlling locomotive;
- (2) The locomotive is performing switching operations and not hauling cars in a manner that constitutes a train movement under part 232 of this chapter;
- (3) The locomotive is dead-in-tow; or
- (4) The locomotive is a mid-train slave unit being controlled by radio from a remote location.

(c) If a locomotive is equipped with a device to record data concerning the operation of that locomotive and/or of the train it is powering, that device may be deactivated only in accordance with the provisions of § 229.135.

[54 FR 5492, Feb. 3, 1989, as amended at 58 FR 36613, July 8, 1993]

Subpart E—Protection of Occupied Camp Cars

SOURCE: 54 FR 39545, Sept. 27, 1989, unless otherwise noted.

§218.71 Purpose and scope.

This subpart prescribes minimum requirements governing protection of camp cars that house railroad employ-

ees. The rule does not apply to such cars while they are in a train.

§218.73 Warning signal display.

(a) Warning signals, *i.e.*, a white disk with the words "Occupied Camp Car" in black lettering during daylight hours and an illuminated white signal at night, displayed in accordance with §218.75, §218.77, or §218.79 signify that employees are in, around, or in the vicinity of camp cars. Once the signals have been displayed—

(1) The camp cars may not be moved for coupling to other rolling equipment or moved to another location;

(2) Rolling equipment may not be placed on the same track so as to reduce or block the view of a warning signal; and

(3) Rolling equipment may not pass a warning signal.

(b) Warning signals indicating the presence of occupied camp cars, displayed in accordance with §§218.75 and 218.79, shall be displayed by a designated occupant of the camp cars or that person's immediate supervisor. The signal(s) shall be displayed as soon as such cars are placed on the track, and such signals may only be removed by those same individuals prior to the time the cars are moved to another location.

§218.75 Methods of protection for camp cars.

When camp cars requiring protection are on either main track or track other than main track:

(a) A warning signal shall be displayed at or near each switch providing access to that track;

(b) The person in charge of the camp car occupants shall immediately notify the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked;

(c) Once notified of the presence of camp cars and their location on main track or other than main track, the person responsible for directing train movements on that portion of the railroad where the camp cars are being parked shall take appropriate action to alert affected personnel to the presence of the cars;

§ 218.77

(d) Each manually operating switch providing access to track on which the camp cars are located shall be lined against movement to that track and secured with an effective locking device and spiked; and

(e) Each remotely controlled switch providing access to the track on which the camp cars are located shall be protected in accordance with § 218.77.

§ 218.77 Remotely controlled switches.

(a) After the operator of the remotely controlled switch is notified that a camp car is to be placed on a particular track, he shall line such switch against movement to that track and apply an effective locking device applied to the lever, button, or other device controlling the switch before informing the person in charge of the camp car occupants that protection has been provided.

(b) The operator may not remove the locking device until informed by the person in charge of the camp car occupants that protection is no longer required.

(c) The operator shall maintain for 15 days a written record of each notification that contains the following information:

(1) The name and craft of the employee in charge who provided the notification;

(2) The number or other designation of the track involved;

(3) The date and time the operator notified the employee in charge that protection had been provided in accordance with paragraph (a) of this section; and

(4) The date and time the operator was informed that the work had been completed, and the name and craft of the employee in charge who provided this information.

(d) When occupied camp cars are parked on main track, a derail, capable of restricting access to that portion of the track on which such equipment is located, shall be positioned no less than 150 feet from the end of such equipment and locked in a derailing position with an effective locking de-

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vice, and a warning signal must be displayed at the derail.

§ 218.79 Alternative methods of protection.

Instead of providing protection for occupied camp cars in accordance with § 218.75 or § 218.77, the following methods of protection may be used:

(a) When occupied camp cars are on track other than main track:

(1) A warning signal must be displayed at or near each switch providing access to or from the track;

(2) Each switch providing entrance to or departure from the area must be lined against movement to the track and locked with an effective locking device; and

(3) If the speed within this area is restricted to not more than five miles per hour, a derail, capable of restricting access to that portion of track on which the camp cars are located, will fulfill the requirements of a manually operated switch in compliance with paragraph (a)(2) of this section when positioned at least 50 feet from the end of the camp cars to be protected by the warning signal, when locked in a derailing position with an effective locking device, and when a warning signal is displayed at the derail.

(b) Except as provided in paragraph (a) of this section, when occupied camp cars are on track other than main track:

(1) A derail, capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end of such equipment; and

(2) Each derail must be locked in a derailing position with an effective locking device and a warning signal must be displayed at each derail.

§ 218.80 Movement of occupied camp cars.

Occupied cars may not be humped or flat switched unless coupled to a locomotive.

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Pt.218, App. B

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES¹

APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
Subpart B—Blue signal protection of workmen:		
218.22 Utility employees:		
(a) Employee qualifications	\$5,000	\$7,500
(b) Concurrent service	5,000	7,500
(c) Assignment conditions.		
(1) No controlling locomotive	5,000	7,500
(2) Empty cab	5,000	7,500
(3)(4) Improper communication	5,000	7,500
(5) Performing functions not listed	2,000	4,000
(d) Improper release of utility employee	2,000	4,000
(f) More than three utility employees with one crew	2,000	4,000
218.23 Blue signal display	5,000	7,500
218.24 One-person crew:		
(a)(1) Equipment not coupled or insufficiently separated	2,000	4,000
(a)(2) Unoccupied locomotive cab not secured	5,000	7,500
(b) Helper service	2,000	4,000
218.25 Workmen on a main track	5,000	7,500
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch	2,000	4,000
(b) through (e)	5,000	7,500
218.29 Alternate methods of protection:		
(a)(1) protection provided except that signal not displayed at switch	2,000	4,000
(a)(2) through (a)(8)	5,000	7,500
(b)(1) Protection provided except that signal not displayed at switch	2,000	4,000
(b)(2) through (b)(4)	5,000	7,500
(c) Use of derails	5,000	7,500
(d) Emergency repairs	5,000	7,500
218.30 Remotely controlled switches:		
(a) and (b)	5,000	7,500
(c)	1,000	2,000
Subpart C—Protection of trains and locomotives:		
218.35 Yard limits:		
(a) and (b)	5,000	7,500
(c)	1,000	2,000
218.37 Flag protection:		
(a)	5,000	7,500
(b) and (c)	5,000	7,500
218.39 Hump operations	5,000	7,500
218.41 Noncompliance with hump operations rule	5,000	7,500

Section	Violation	Willful violation
Subpart D—Prohibition against tampering with safety devices:		
218.55 Tampering		7,500
218.57 (i) Knowingly operating or permitting operation of disabled equipment	2,500	
(ii) Willfully operating or permitting operation of disabled equipment		5,000
218.59 Operation of disabled equipment	2,500	5,000

¹ Except as provided for in §218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where the circumstances warrant. See 49 CFR part 209, appendix A.

[53 FR 52928, Dec. 29, 1988, as amended at 54 FR 5492, Feb. 3, 1989; 58 FR 43293, Aug. 16, 1993; 60 FR 11050, Mar. 1, 1995]

APPENDIX B TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON BLUE SIGNAL PROTECTION FOR UTILITY EMPLOYEES

The following examples of the application of the train or yard crew exclusion from required blue signal protection for utility employees are provided to clarify FRA's enforcement policy. In the first four examples, the utility employee is properly attached to and functioning as member of a train or yard crew and is excluded from blue signal protection, provided all the conditions specified in §218.22 are met:

Example 1: A utility employee assists a train crew by adding or reducing railroad cars to or from the train. The utility employee may perform any duties which would normally be conducted by members of the train crew, i.e., setting or releasing handbrakes, coupling air hoses and other connections, prepare rail cars for coupling, and perform air brake tests.

Example 2: A utility employee is assigned to assist a yard crew for the purpose of classifying and assembling railroad cars. The yard crew onboard their locomotive arrives at the location in the yard where the work is to be performed. At that time, the utility employee may attach himself to the yard crew and commence duties as a member of that yard crew.

Example 3: A utility employee is assigned to inspect, test, remove and replace if necessary, a combination rear end marking device/end of train device on a through freight train. The utility employee attaches himself to the train crew after the arrival of the train and its crew at the location where this

work is to be conducted. He may then perform duties as a member of that crew.

Example 4: A railroad manager who properly attaches himself as a utility employee to a train or yard crew, in accordance with §218.22, may then function as a member of the train or yard crew under the exclusion provided for train and yard crews.

NOTE: In the last four examples, any railroad employee, including regularly assigned crew members, would need blue signal protection to perform the described function.

Example 5: Prior to the arrival of a through freight train, a utility employee installs an end-of-train device on one end of a block of railroad cars that are scheduled to be picked up by the freight train.

Example 6: A railroad employee attaches himself to a train or yard crew while the crew is in the ready room preparing to take charge of their train. Prior to the train crew leaving the ready room and taking charge of the equipment, the employee couples air hoses and other connections between the locomotives.

Example 7: A railroad employee is attached to a train crew after the train crew has taken charge of the train. It is necessary for the employee to perform a repair on a rail car, such as replacing a brake shoe, in addition to those duties normally performed by train or yard crew members.

Example 8: A train or yard crew, supplemented by three utility employees, has an assigned locomotive and train. The regular crew, including the engineer, has left the train to eat lunch. The utility employees have remained with the train and are coupling air hoses between rail cars in the train.

[58 FR 43293, Aug. 16, 1993]

APPENDIX C TO PART 218—STATEMENT OF AGENCY ENFORCEMENT POLICY ON TAMPERING

The Rail Safety Improvement Act of 1988 (Pub. L. 100-342, enacted June 22, 1988) ("RSIA") raised the maximum civil penalties available under the railroad safety laws and made individuals liable for willful violations of those laws. Section 21 of the RSIA requires that FRA adopt regulations addressing three related but distinct aspects of problems that can occur when safety devices are tampered with or disabled. It requires that FRA make it unlawful for (i) any individual to willfully tamper with or disable a device; (ii) any individual to knowingly operate or permit to be operated a train with a tampered or disabled device; and (iii) any railroad to operate such a train.

Because the introduction of civil penalties against individuals brings FRA's enforcement of the rail safety laws into a new era and because the changes being introduced by this regulation are so significant, FRA be-

lieves that it is advisable to set forth the manner in which it will exercise its enforcement authority under this regulation.

SAFETY DEVICES COVERED BY THIS RULE

FRA has employed a functional description of what constitutes a safety device under this rule. FRA's wording effectively identifies existing equipment and is sufficiently expansive to cover equipment that may appear in the future, particularly devices associated with advanced train control systems currently undergoing research testing.

FRA has been advised by portions of the regulated community that its functional definition has some potential for confusing people who read the rule without the benefit of the preamble discussions concerning the meaning of this definition. Since this rule is specifically intended to preclude misconduct by individuals, FRA wants this rule to be easily comprehended by all who read it. To achieve that clarity, FRA has decided to specify which types of equipment it considers to be within the scope of this rule and provide some examples of equipment that is not covered. In addition, FRA is ready and willing to respond in writing to any inquiry about any other devices that a party believes are treated ambiguously under this rule. This regulation applies to a variety of devices including equipment known as "event recorders," "alerters," "deadman controls," "automatic cab signals," "cab signal whistles," "automatic train stop equipment," and "automatic train control equipment." FRA does not consider the following equipment to be covered by this rule: Radios; monitors for end-of-train devices; bells or whistles that are not connected to alerters, deadman pedals, or signal system devices; fans for controlling interior temperature of locomotive cabs; and locomotive performance monitoring devices, unless they record data such as train speed and air brake operations. Although FRA considers such devices beyond the scope of the regulation, this does not imply that FRA condones the disabling of such devices. FRA will not hesitate to include such devices at a later date should instances of tampering with these devices be discovered. FRA does not currently perceive a need to directly proscribe tampering with such devices because there is no history of these devices being subjected to tampering.

SUBSEQUENT OPERATORS OF TRAINS WITH DISABLED DEVICES

Section 218.57 addresses instances in which one individual has tampered with a safety device and a second individual (a "subsequent operator") knowingly operates a train or permits it to be operated, notwithstanding the presence of the disabled or tampered-with unit. The most common occurrence addressed by this provision is the situation in

which a train crew encounters a locomotive with a safety device that has been tampered with prior to the crew's assuming responsibility for the locomotive. FRA has structured this provision and its attendant enforcement policy to reflect the fact that instances in which one individual encounters a locomotive that someone else has tampered with are relatively infrequent occurrences.

FRA's regulatory prohibition for subsequent operator conduct reflects the legal standard for individual culpability set forth in the RSIA. Under the relevant statutory standard ("knowingly operates or permits to be operated a train on which such devices have been tampered with or disabled by another person")—now incorporated into §218.57—individuals could be held to a simple negligence standard of conduct, i.e., a standard of reasonable care under the circumstances. FRA's conclusion about the proper interpretation of the word "knowingly" stems from both normal canons of statutory construction and analysis of decisional law concerning the use of similar statutory constructs in the civil penalty context. It is also consistent with other Departmental interpretations of the word as used in similar contexts. (See 49 CFR 107.299, defining "knowingly" under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*)

Under that statutory language, the responsible members of the crew could be culpable if either (1) due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or (2) having ascertained that the device was not functioning, still elected to operate the train. Similarly, 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 could also be subject to sanction.

However, as a matter of enforcement policy, application of a negligence standard in this particular context presently appears unwarranted. We have seen no evidence of an employee's negligent failure to detect another employee's tampering having caused a safety problem. FRA can effectively attack the known dimensions of the tampering problem by employing an enforcement policy that limits its enforcement actions to situations where individuals clearly had actual knowledge of the disabled device and intentionally operated the train notwithstanding that knowledge.

Therefore, FRA will not take enforcement action against an individual under §218.57 absent a showing of such actual knowledge of the facts. Actual, subjective knowledge need not be demonstrated. It will suffice to show objectively that the alleged violator must have known the facts based on reasonable in-

ferences drawn from the circumstances. For example, it is reasonable to infer that a person knows about something plainly in sight on the locomotive he is operating. Also, unlike the case where willfulness must be shown (see FRA's statement of policy at 49 CFR part 209, appendix A), knowledge of or reckless disregard for the law need not be shown to make out a violation of §218.57. The knowledge relevant here is knowledge of the facts constituting the violation, not knowledge of the law.

Should FRA receive evidence indicating that a stricter enforcement policy is necessary to address the tampering problem, it will revise its enforcement policy to permit enforcement actions based only on a showing of the subsequent operator's negligent failure to detect the tampering, as the relevant provision of the RSIA permits it to do now. Any such change in enforcement policy will become effective only after publication of a revised version of this appendix.

[54 FR 5492, Feb. 3, 1989. Redesignated and amended at 58 FR 43293, Aug. 16, 1993]

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

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- 219.3 Application.
- 219.5 Definitions.
- 219.7 Waivers.
- 219.9 Responsibility for compliance.
- 219.11 General conditions for chemical tests.
- 219.13 Preemptive effect.
- 219.15 [Reserved]
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- 219.21 Information collection.
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- 219.205 Sample collection and handling.
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