

### §216.13

for further service to the nearest available point where the car can be repaired, if such movement is necessary to make such repairs. However, the movement is subject to the further restrictions of §215.9 of this chapter.

[41 FR 18657, May 6, 1976, as amended at 41 FR 43153, Sept. 30, 1976]

#### **§216.13 Special notice for repairs—locomotive.**

(a) When an FRA Motive Power and Equipment Inspector or State Equipment Inspector determines a locomotive is not safe to operate in the service to which it is put, whether by reason of nonconformity with the FRA Railroad Locomotive Safety Standards set forth in part 229 of this chapter or the FRA Railroad Locomotive Inspection Regulations set forth in part 230 of this chapter or by reason of any other condition rendering the locomotive unsafe, he or she will notify the railroad in writing that the locomotive is not in serviceable condition. After receipt of the Special Notice, the railroad shall remove the locomotive from service until it is restored to serviceable condition. The locomotive may not be deemed to be in serviceable condition until it complies with all applicable requirements of parts 229 and 230 of this chapter and until all additional deficiencies identified in the Special Notice have been corrected.

(b) The carrier shall notify the FRA Regional Administrator in writing when the locomotive is returned to service, specifying the repairs completed. The carrier officer or employee directly responsible for the repairs shall subscribe this writing under oath.

[41 FR 18657, May 6, 1976, as amended at 64 FR 25659, May 12, 1999]

#### **§216.14 Special notice for repairs—passenger equipment.**

(a) When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that railroad passenger equipment is not in conformity with one or more of the requirements of the FRA Passenger Equipment Safety Standards set forth in part 238 of this chapter and that it is unsafe for further service, he or she will issue a written Special Notice to the railroad that the equipment is not

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in serviceable condition. The Special Notice describes the defect or defects that cause the equipment to be in un-serviceable condition. After receipt of the Special Notice, the railroad shall remove the equipment from service until it is restored to serviceable condition. The equipment may not be deemed in serviceable condition until it complies with all applicable requirements of part 238 of this chapter.

(b) The railroad shall notify in writing the FRA Regional Administrator for the FRA region in which the Special Notice was issued when the equipment is returned to service, specifying the repairs completed.

(c) Railroad passenger equipment subject to a Special Notice may be moved from the place where it was found to be unsafe for further service to the nearest available point where the equipment can be repaired, if such movement is necessary to make the repairs. However, the movement is subject to the further restrictions of §§238.15 and 238.17 of this chapter.

[64 FR 25659, May 12, 1999]

#### **§216.15 Special notice for repairs—track class.**

(a) When an FRA Track Inspector or State Track Inspector determines that track does not comply with the requirements for the class at which the track is being operated, as defined in the Track Safety Standards (49 CFR part 213), he notifies the railroad in writing that the track is being lowered in class and that operations over that track must comply with the speed limitations prescribed in part 213 of this chapter. The notice describes the conditions requiring the track to be lowered in class, specifies the exact location of the affected track segment, and states the highest class and corresponding maximum speeds at which trains may be operated over that track. After receipt of such notice, the speeds at which trains operate over that track shall not exceed the stated maximum permissible speeds, until such time as the track conforms to applicable standards for a higher class.

(b) The railroad shall notify the FRA Regional Administrator in writing when the track is restored to a condition permitting operations at speeds

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authorized for a higher class, specifying the repairs completed.

[41 FR 43153, Sept. 30, 1976]

### § 216.17 Appeals.

(a) Upon receipt of a Special Notice prescribed in §§ 216.11, 216.13, 216.14, or 216.15, a railroad may appeal the decision of the Inspector to the FRA Regional Administrator for the region in which the notice was given. The appeal shall be made by letter or telegram. The FRA Regional Administrator assigns an inspector, other than the inspector from whose decision the appeal is being taken, to reinspect the railroad freight car, locomotive, railroad passenger equipment, or track. The reinspection will be made immediately. If upon reinspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective. If on reinspection the decision of the original inspector is sustained, the FRA Regional Administrator notifies the railroad that the appeal has been denied.

(b) A railroad whose appeal to the FRA Regional Administrator has been denied may, within thirty (30) days from the denial, appeal to the Administrator. After affording an opportunity for informal oral hearing, the Administrator may affirm, set aside, or modify, in whole or in part, the action of the FRA Regional Administrator.

(c) The requirements of a Special Notice issued under this subpart shall remain in effect and be observed by a railroad pending appeal to the FRA Regional Administrator or to the Administrator.

[67 FR 19989, Apr. 23, 2002]

## Subpart C—Emergency Order— Track

### § 216.21 Notice of track conditions.

(a) When an FRA Track Inspector or State Track Inspector finds track conditions which may require the issuance

of an Emergency order removing the track from service under section 203, Public Law No. 91-458, 84 Stat. 972 (45 U.S.C. 432), the Inspector may issue a notice to the railroad owning the track. The notice sets out and describes the conditions found by the Inspector and specifies the location of defects on the affected track segment. The Inspector provides a copy to the FRA Regional Track Engineer and the FRA Regional Administrator.

(b) In the event the railroad immediately commences repairs on the affected track and so advises the FRA Regional Track Engineer, the Regional Track Engineer assigns an Inspector to reinspect the track immediately on the completion of repairs. If upon reinspection the Inspector determines that necessary repairs have been completed, he withdraws the Notice of Track Conditions.

### § 216.23 Consideration of recommendation.

Upon receipt of a Notice of Track Conditions issued under § 216.21, the FRA Regional Administrator prepares a recommendation to the Administrator concerning the issuance of an Emergency order removing the affected track from service. In preparing this recommendation, the FRA Regional Administrator considers all written or other material bearing on the condition of the track received from the railroad within three (3) calendar days of the issuance of the Notice of Track Conditions and also considers the report of the FRA Regional Track Engineer.

[67 FR 19989, Apr. 23, 2002]

### § 216.25 Issuance and review of emergency order.

(a) Upon recommendation of the FRA Regional Administrator, the Administrator may issue an Emergency order removing from service track identified in the notice issued under § 216.21.

(b) As specified in section 203, Public Law No. 91-458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of the Emergency order is provided in accordance with section 554 of title 5 of the U.S.C. Petitions for such review must be submitted in writing to the Office of