

§ 218.95 Instruction, training, and examination.

(a) *Program.* Beginning January 1, 2009, each railroad shall maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under §217.11 of this chapter. An employee who successfully completes all instruction, training, and examination required by this written program shall be considered qualified.

(1) The written program of instruction, training, and examination shall address the requirements of this subpart, as well as consequences of noncompliance.

(2) The written program of instruction, training, and examination shall include procedures addressing how the railroad qualifies employees in any technology necessary to accomplish work subject to the requirements of this subpart. Such procedures shall include, but are not limited to, those which explain:

(i) The purpose for using the technology;

(ii) How an employee will be expected to use the technology;

(iii) How to detect malfunctioning equipment or deviations from proper procedures;

(iv) How to respond when equipment malfunctions or deviations from proper procedures are detected; and

(v) How to prevent unintentional interference with the proper functioning of the technology.

(3) *Implementation schedule for employees, generally.* Each employee performing duties subject to the requirements in this subpart shall be initially qualified prior to July 1, 2009.

(4) Beginning July 1, 2009, no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified on these rules within the previous three years.

(5) The records of successful completion of instruction, examination and training required by this section shall document qualification of employees under this subpart.

(b) Written records documenting successful completion of instruction, training, and examination of each employee required by this subpart shall be retained at its system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this

part applies is authorized to retain a program, or any records maintained to prove compliance with such a program, by electronic recordkeeping in accordance with §§217.9(g) and 217.11(c) of this chapter.

(c) Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program,

(1) The railroad has 35 days from the date of the written notification of such disapproval to:

(i) Amend its program and submit it to the Associate Administrator for Safety for approval; or

(ii) Provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing; and

(2) A failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this part.

[73 FR 8498, Feb. 13, 2008, as amended at 73 FR 33902, June 16, 2008]

§ 218.97 Good faith challenge procedures.

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

(b) *General procedures.* Each railroad or employer is responsible for the training of and compliance by its employees with the requirements of this subpart.

(1) Each railroad or employer shall adopt and implement written procedures which guarantee each employee the right to challenge in good faith whether the procedures that will be used to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each railroad or employer's written procedures shall provide for prompt and equitable resolution of challenges made in accordance with this subpart.

(2) The written procedures required by this section shall indicate that the good faith challenge described in paragraph (b)(1) of this section is not intended to abridge any rights or remedies available to the employee under a collective bargaining agreement, or any Federal law including, but not limited to, 29 U.S.C. 651 *et seq.*, 6 U.S.C. 1142, or 49 U.S.C. 20109.

(3) Each affected employee shall be instructed on the written procedures required by this paragraph as part of the training prescribed by §217.11 of this chapter.

(4) A copy of the current written procedures shall be provided to each affected employee and made available for inspection and copying by representatives of the FRA during normal business hours.

(c) The written procedures shall—

(1) Grant each employee the right to challenge any directive which, based on the employee's good faith determination, would cause the employee to violate any requirement of this subpart or any operating rule relied upon to fulfill the requirements of this subpart;

(2) Provide that the railroad or employer shall not require the challenging employee to comply with the directive until the challenge resulting from the good faith determination is resolved;

(3) Provide that the railroad or employer may require the challenging employee to perform tasks unrelated to the challenge until the challenge is resolved;

(4) Provide that the railroad or employer may direct an employee, other than the challenging employee, to perform the challenged task prior to the challenge being resolved as long as this other employee is informed of the challenge and does not also make a good faith determination that the challenged task would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required in this subpart, or a railroad's operating rules implementing the requirements of this subpart;

(5) Provide that a challenge may be resolved by:

(i) A railroad or employer officer's acceptance of the employee's request;

(ii) An employee's acceptance of the directive;

(iii) An employee's agreement to a compromise solution acceptable to the person issuing the directive; or

(iv) As further determined under paragraph (d) of this section.

(d) In the event that the challenge cannot be resolved because the person issuing the directive determines that the employee's challenge has not been made in good faith or there is no reasonable alternative to the direct order, the written procedures shall:

(1) Provide for immediate review by at least one officer of the railroad or employer, except for each railroad with less than 400,000 total employee work hours annually. This immediate review shall:

(i) Not be conducted by the person issuing the challenged directive, or that person's subordinate; and

(ii) Provide that a challenge may be resolved by using the same options available for resolving the challenge as the initial officer as well as the option described in paragraph (d)(2) of this section, except that the reviewing officer's decision shall not be subject to further immediate review, unless provided for in the railroad's or employer's written procedures;

(2) Provide that if the officer making the railroad's or employer's final decision concludes that the challenged directive would not cause the employee to violate any requirement of this subpart or the railroad's or employer's operating rule relied upon to fulfill the requirements of this subpart and directs the employee to perform the challenged directive, the officer shall further explain to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee's refusal is a lawful, good faith act;

(3) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the railroad or employer's final decision before the tour of duty is complete. The employee shall be afforded the opportunity to retain a copy of the protest;

(4) Provide that the employee, upon written request, has a right to further review by a designated railroad or employer officer, within 30 days after the expiration of the month during which the challenge occurred, for the purpose of verifying the proper application of the regulation, law, procedure or rule in question. The verification decision shall be made in writing to the employee.

(e) *Recordkeeping and record retention.* (1) A copy of the written procedures required by this section shall be retained at the employer or railroad's system headquarters and at each division headquarters, and made available to representatives of the FRA for inspection and copying during normal business hours.

(2) A copy of any written good faith challenge verification decision, made in accordance with paragraph (d)(4) of this section, shall be retained at the employer or railroad's system headquarters and at the division headquarters to which the employee was working when the challenge was initiated, and made available to representatives of the FRA for inspection and copying during normal business hours for at least one calendar year after expiration of the year during which the decision was issued.

(3) Each employer or railroad to which this subpart applies is authorized to retain by electronic recordkeeping the information prescribed in this subpart in accordance with the electronic recordkeeping standards set forth in §217.9(g)(1) through (5) of this chapter.

§ 218.99 Shoving or pushing movements.

(a)(1) Each railroad shall adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which

complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(2) The following requirements for shoving or pushing movements do not apply to rolling equipment intentionally shoved or pushed to permit the rolling equipment to roll without power attached, i.e., free rolling equipment, during switching activities known as kicking, humping, or dropping cars.

(b) *General movement requirements*—(1) *Job briefing*. Rolling equipment shall not be shoved or pushed until the locomotive engineer participating in the move has been briefed by the employee who will direct the move. The job briefing shall include the means of communication to be used between the locomotive engineer and the employee directing the move and how point protection will be provided.

(2) *No unrelated tasks*. During the shoving or pushing movement, the employee directing the movement shall not engage in any task unrelated to the oversight of the shoving or pushing movement.

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

(i) 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 to that of a direct visual determination by a crewmember or other qualified employee properly positioned to make the observation as prescribed in this section and appendix D to this part; and

(ii) Giving signals or instructions necessary to control the movement.

(c) *Additional requirements for remote control movements*. 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. In addition to the other requirements of this section,

(1) When initiating a remote control shoving or pushing movement:

(i) The remote control operator shall visually determine the direction the equipment moves; or

(ii) A member of the crew shall visually determine the direction the equipment moves and confirm the direction with the remote control operator. If no confirmation is received, the movement shall be immediately stopped; and

(2) 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

(i) To be failsafe; or

(ii) To provide suitable redundancy to prevent unsafe failure.

(d) *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.

(e) *Operational exceptions.* A railroad does not need to comply with paragraphs (b) through (d) of this section 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.
- (5) Shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system, if all of the following conditions are met:
 - (i) The shove light system is demonstrated to be failsafe;
 - (ii) The shove light system is arranged to display a less favorable aspect when the circuited section of the track is occupied;

- (iii) Written procedures are adopted and complied with that provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement;
- (iv) The track is designated in writing;
- (v) The track is under the exclusive and continuous control of a yardmaster or other qualified employee;
- (vi) The train crewmember or other qualified employee directing the shoving or pushing movement complies with the general movement requirements contained in paragraphs (b)(1) and (b)(2) of this section;
- (vii) All remote control shoving or pushing movements comply with the requirements contained in paragraph (c)(1) of this section; and
- (viii) The shove light system is continuously illuminated when the circuited section of the track is unoccupied.

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

§ 218.103 Hand-operated switches, including crossover switches.

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

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

(b) *General.* Employees operating or verifying the position of a hand-operated switch shall:

(1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work;

(2) Be qualified on the railroad's operating rules relating to the operation of the switch;

(3) Be individually responsible for the position of the switch in use;

(4) Visually determine that switches are properly lined for the intended route and that no equipment is fouling the switches;

(5) Visually determine that the points fit properly and the target, if so equipped, corresponds with the switch's position;

(6) After operating a switch and before making movements in either direction over the switch, ensure that the switch is secured from unintentional movement of the switch points;

(7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is fouling the switch, or standing or moving over the switch; and

(8) After operating a switch, ensure that when not in use, each switch is locked, hooked, or latched, if so equipped.

(c) Rolling and on-track maintenance-of-way equipment shall not foul a track until all hand-operated switches connected with the movement are properly lined, or in the case of hand-operated switches designed and permitted to be trailed through, until the intended route is seen to be clear or the train has been granted movement authority. When a conflicting movement is approaching a hand-operated switch, the track shall not be fouled or the switch operated.

(d) When rolling and on-track maintenance-of-way equipment has entered a track, the hand-operated switch to that track shall not be lined away from the track until the equipment has passed the clearance point of the track.

218.105 Additional operational requirements for hand-operated main track switches.

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

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

(1) The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided; or

(2) The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

(c) *Additional job briefing requirements for hand-operated main track switches.* (1) Before a train or a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers shall have verbal communication to confirm the position of the switch.

(2) In the case of exclusive track occupancy authority established under §214.321, foul time under §214.323, or train coordination under §214.325, when a roadway worker qualified to operate hand-operated main track switches is granted permission by the roadway worker in charge to occupy or otherwise use the limits of the exclusive track occupancy, such employee receiving permission to occupy the working limits shall report the position of any such switches operated upon expiration of the authority limits to the roadway worker in charge or to a designated intermediary employee who shall convey the switch position to the roadway worker in charge.

(d) *Releasing authority limits.* In non-signalized territory, before an employee releases the limits of a main track authority and a hand-operated switch is used to clear the main track, and, prior to departing the switch's location, the following conditions are required:

(1) The employee releasing the limits, after conducting a job briefing in accordance with this subpart, shall report to the train dispatcher that the hand-operated main track switch has been restored to its normal position and locked, unless the train dispatcher directs that the hand-operated main track switch be left lined and locked in the reverse position and the necessary protection is provided;

(2) If the report of the switch position is correct, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether that is correct; and

(3) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct.

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

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

(b) *Hand-operated crossover switches, generally.* Both hand-operated switches of a crossover shall be properly lined before rolling and on-track maintenance-of-way equipment begins a crossover movement. A crossover movement shall be completed before either hand-operated crossover switch is restored to normal position.

(c) *Correspondence of hand-operated crossover switches.* Hand-operated crossover switches shall be left in corresponding position except when:

(1) Used to provide blue signal protection under §218.27 of this part; or

(2) Used for inaccessible track protection under §214.327 of this chapter; or

(3) Performing maintenance, testing or inspection of crossover switches in traffic control system (TCS) territory; or

(4) One crew is using both tracks connected by the crossover during continuous switching operations.

§ 218.109 Hand-operated fixed derails.

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

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

(b) *General.* (1) The normal position of fixed derails is in the derailing position except as provided in part 218, subpart B of this chapter, or the railroad's operating rules or special instructions.

(2) Fixed derails shall be kept in the derailing position whether or not any rolling and on-track maintenance-of-way equipment is on the tracks they protect, except as provided in paragraph (b) (1) of this section or when changed to permit movement.

(3) Movement must not be made over a fixed derail in the derailing position.

(c) Employees operating or verifying the position of a fixed derail shall:

(1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work;

(2) Be qualified on the railroad's operating rules relating to the operation of the derail;

(3) Be individually responsible for the position of the derail in use;

(4) Determine that the target, if so equipped, corresponds with the derail's position;

(5) Determine that the derail is secured by:

(i) Placing the throw lever in the latch stand, if so equipped;

(ii) Placing the lock or hook in the hasp, if so equipped; and

(iii) Testing such latches, locks or hooks; and

(6) Ensure that when not in use, derails are locked, hooked, or latched in the normal position if so equipped.