

POSSIBLE WAIVERS FOR LIGHT RAIL OPERATIONS ON THE GENERAL RAILROAD SYSTEM BASED ON SEPARATION IN TIME FROM CONVENTIONAL OPERATIONS—Continued

Title 49 CFR part	Subject of rule	Likely treatment	Comments
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary.	State safety oversight.
225	Accident reporting and investigation.	Comply with regard to train accidents and crossing accidents; waive as to injuries; FRA accident investigation authority not subject to waiver.	Employee injuries would be reported under FTA or OSHA rules.
228**	Hours of service record-keeping.	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track.	See note below on possible waiver of statutory requirements.
239	Passenger train emergency preparedness.	Waive	State safety oversight.
240	Engineer certification	Waive	State safety oversight.

\* *Safety appliance statute.* Certain safety appliance requirements (e.g., automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would "preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations." If consistent with employee safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

\*\* *Hours of service statute.* Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a "pilot project" provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment.

[65 FR 42546, July 10, 2000, as amended at 74 FR 25172, May 27, 2009]

**PART 212—STATE SAFETY PARTICIPATION REGULATIONS**

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AUTHORITY: 49 U.S.C. 20103, 20106, 20105, and 20113 (formerly secs. 202, 205, 206, and 208, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436)); and 49 CFR 1.49.

SOURCE: 47 FR 41051, Sept. 16, 1982, unless otherwise noted.

**Subpart A—General**

**§ 212.1 Purpose and scope.**

This part establishes standards and procedures for State participation in investigative and surveillance activities under the Federal railroad safety laws and regulations.

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### § 212.3 Definitions.

As used in this part:

(a) *Administrator* means the Federal Railroad Administrator or the Deputy Administrator or the delegate of either of them.

(b) *Associate Administrator* means the Associate Administrator for Safety, Federal Railroad Administration (FRA), or the Deputy Associate Administrator for Safety, FRA.

(c) *FRA* means the Federal Railroad Administration.

(d) *Federal railroad safety laws* means the following enactments, together with regulations and orders issued under their authority:

(1) The Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 421, 431–441);

(2) The Safety Appliance Acts, as amended (45 U.S.C. 1–16);

(3) The Locomotive Inspection Act, as amended (45 U.S.C. 22–34);

(4) The Signal Inspection Act, as amended (49 U.S.C. 26);

(5) The Accident Reports Act, as amended (45 U.S.C. 38–42);

(6) The Hours of Service Act, as amended (45 U.S.C. 61–64(b)); and

(7) The Hazardous Materials Transportation Act (49 app. U.S.C. 1801 *et seq.*), as it pertains to shipment or transportation by railroad.

(e) *Manufacturer* means a person that manufactures, fabricates, marks, maintains, reconditions, repairs, or tests containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

(f) *Shipper* means a person that offers a hazardous material for transportation or otherwise causes it to be transported.

(g) *Planned compliance inspections* means investigative and surveillance activities described in the annual work plan required by § 212.109 of this part that provide basic surveillance of railroad facilities, equipment and/or operations for the purpose of determining the level of compliance with relevant Federal safety requirements.

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

### § 212.5 Filing.

Each State agency desiring to conduct investigative and surveillance activities must submit to the Associate Administrator for Safety, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, the documentation which contains the information prescribed by §§ 212.105 and 212.107.

[47 FR 41051, Sept. 16, 1982, as amended at 74 FR 25172, May 27, 2009]

## Subpart B—State/Federal Roles

### § 212.101 Program principles.

(a) The purpose of the national railroad safety program is to promote safety in all areas of railroad operations in order to reduce deaths, injuries and damage to property resulting from railroad accidents.

(b)(1) The national railroad safety program is carried out in part through the issuance of mandatory Federal safety requirements and through inspection efforts designed to monitor compliance with those requirements. FRA and State inspections determine the extent to which the railroads, shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision. The FRA and participating States do not conduct inspections of track, equipment, signal systems, operating practices, and hazardous materials handling for the railroads, shippers, and manufacturers.

(2) The national railroad safety program is also carried out through routine inspections, accident investigations, formal and informal educational efforts, complaint investigations, safety assessments, special inquiries, regulatory development, research and similar initiatives.

(c) It is the policy of the FRA to maintain direct oversight of railroad, shipper, and manufacturer conditions and practices relevant to safety by conducting inspections and investigations in concert with participating State agencies.

(d) The principal role of the State Safety Participation Program in the national railroad safety effort is to provide an enhanced investigative and

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surveillance capability through assumption, by participating State agencies, of responsibility for planned routine compliance inspections. The FRA encourages further State contributions to the national railroad safety program consistent with overall program needs, individual State capabilities, and the willingness of the States to undertake additional investigative and surveillance activities.

(e) It is the policy of the FRA to promote the growth and vitality of the State Safety Participation Program through liaison with State government, coordination of Federal and State investigative and surveillance activities, and training of inspection personnel.

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

### §212.103 Investigative and surveillance authority.

(a) Subject to the requirements of this part, a State agency with jurisdiction under State law may participate in investigative and surveillance activities concerning Federal railroad safety laws and regulations by entering into an agreement under §212.105 for the exercise of specified authority.

(b) Subject to requirements of this part, a State agency with jurisdiction under State law may participate in investigative and surveillance activities with respect to particular rules, regulations, orders or standards issued under the regulatory authority of the Federal Railroad Safety Act of 1970 by filing an annual certification under §212.107.

### §212.105 Agreements.

(a) *Scope.* The principal method by which States may participate in investigative and surveillance activities is by agreement with FRA. An agreement may delegate investigative and surveillance authority with respect to all or any part of the Federal railroad safety laws.

(b) *Duration.* An agreement may be for a fixed term or for an indefinite duration.

(c) *Amendments.* An agreement may be amended to expand or contract its scope by consent of FRA and the State.

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(d) *Common terms.* Each agreement entered into under this section provides that:

(1) The State agency is delegated certain specified authority with respect to investigative and surveillance activities;

(2) The delgation is effective only to the extent it is carried out through personnel recognized by the State and the FRA (pursuant to subpart C of this part) to be qualified to perform the particular investigative and surveillance activities to which the personnel are assigned; and

(3) The State agency agrees to provide the capability necessary to assure coverage of facilities, equipment, and operating practices through planned routine compliance inspections for all, or a specified part of, the territory of the State.

(e) *Request for agreement.* A request for agreement shall contain the following information:

(1) An opinion of the counsel for the State agency stating that:

(i) The agency has jurisdiction over the safety practices of the facilities, equipment, rolling stock, and operations of railroads in that State and whether the agency has jurisdiction over shippers and manufacturers;

(ii) The agency has the authority and capability to conduct investigative and surveillance activities in connection with the rules, regulations, orders, and standards issued by the Administrator under the Federal railroad safety laws; and

(iii) State funds may be used for this purpose.

(2) A statement that the State agency has been furnished a copy of each Federal safety statute, rule, regulation, order, or standard pertinent to the State's participation;

(3) The names of the railroads operating in the State together with the number of miles of main and branch lines operated by each railroad in the State;

(4) The name, title and telephone number of the person designated by the agency to coordinate the program; and

(5) A description of the organization, programs, and functions of the agency with respect to railroad safety.

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(f) *Developmental agreement.* Consistent with national program requirements, the Associate Administrator may enter into an agreement under this section prior to the qualification of inspection personnel of the State under subpart C of this part. In such a case, the agreement shall (1) specify the date at which the State will assume investigative and surveillance duties, and (2) refer to any undertaking by the FRA to provide training for State inspection personnel, including a schedule for the training courses that will be made available.

(g) *Action on request.* The Associate Administrator responds to a request for agreement by entering into an agreement based on the request, by declining the request, or by suggesting modifications.

(Approved by the Office of Management and Budget under control number 2130-0509)

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

### §212.107 Certification.

(a) *Scope.* In the event the FRA and the State agency do not agree on terms for the participation of the State under §212.105 of this part and the State wishes to engage in investigative and surveillance activities with respect to any rule, regulation, order, or standard issued under the authority of the Federal Railroad Safety Act of 1970, the State shall file an annual certification with respect to such activities.

(b) *Content.* The annual certification shall be filed not less than 60 days before the beginning of the Federal fiscal year to which it applies, shall contain the information required by §212.105(e) of this part and, in addition, shall certify that:

(1) The State agency has the authority and capability to conduct investigative and surveillance activities under the requirements of this part with respect to each rule, regulation, order or standard for which certification is submitted; and

(2) The State agency will, at a minimum, conduct planned compliance inspections meeting the level of effort prescribed in the applicable appendix to this part.

(c) *Action on certification.* The Associate Administrator responds to the fil-

ing of an annual certification within 60 days of its receipt by accepting it or by rejecting it for cause stated.

(d) *Delegation of authority.* Acceptance of an annual certification constitutes a delegation of authority to conduct investigative and surveillance activities only to the extent that the delegation is carried out through personnel recognized by the State and the FRA (pursuant to subpart C of this part) to be qualified to perform the particular investigative and surveillance activities to which the personnel are assigned.

(Approved by the Office of Management and Budget under control number 2130-0509)

### §212.109 Joint planning of inspections.

Prior to the beginning of each calendar year, each participating State applying for grant assistance under subpart D of this part shall develop, in conjunction with the FRA Regional Director of the region in which the State is located, an annual work plan for the conduct of investigative and surveillance activities by the State agency. The plan shall include a program of inspections designed to monitor the compliance of the railroads, shippers, and manufacturers operating within the State (or portion thereof) with applicable Federal railroad safety laws and regulations. In the event the participating State and the FRA Regional Director cannot agree on an annual work plan, the Associate Administrator for Safety shall review the matter.

(Approved by the Office of Management and Budget under control number 2130-0509)

[57 FR 28115, June 24, 1992]

### §212.111 Monitoring and other inspections.

(a) It is the policy of the FRA to monitor State investigative and surveillance practices at the program level.

(b) It is the policy of the FRA to coordinate its direct inspection and investigative functions in participating States with the responsible State agency, providing prior advice to the States whenever practicable.

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(c) The FRA may conduct such monitoring of State investigative and surveillance practices and such other inspection and investigation as may be necessary to aid in the enforcement of the Federal railroad safety laws.

### §212.113 Program termination.

(a) A State agency participating in investigative and surveillance activities by agreement or certification shall provide thirty (30) days notice of its intent to terminate its participation.

(b) The Administrator may, on his own initiative, terminate the participation of a State agency if, after at least thirty (30) days notice an opportunity for oral hearing under section 553 of title 5 U.S.C., the State agency does not establish that it has complied and is complying with:

(1) The requirements of this part;

(2) Relevant directives, enforcement manuals, and written interpretations of law and regulations provided by the FRA for guidance of the program; and

(3) The rule of national uniformity of laws, rules, regulations, orders, and standards relating to railroad safety as expressed in section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434).

### §212.115 Enforcement actions.

(a) Except as provided in paragraph (b) of this section, the FRA reserves exclusive authority to assess and compromise penalties, to issue emergency orders and compliance orders, institute or cause to be instituted actions for collection of civil penalties or for injunctive relief, and to commence any and all other enforcement actions under the Federal railroad safety laws.

(b)(1) Section 207(a) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 436(a)), authorizes a participating State to bring an action for assessment and collection of a civil penalty in a Federal district court of proper venue, if the FRA has not acted on a request for civil penalty assessment originated by the State, within sixty (60) days of receipt, by assessing the penalty or by determining in writing that no violation occurred.

(2) Section 207(b) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 436(b)), authorizes a partici-

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pating State to bring an action for injunctive relief in a Federal district court of proper venue, if the FRA has not acted on a request to initiate such an action within fifteen (15) days of receipt, by referring the matter to the Attorney General for litigation, by undertaking other enforcement action, or by determining in writing that no violation has occurred.

(3) For purposes of this paragraph, a request for legal action is deemed to be received when a legally sufficient investigative report specifying the action requested is received by the designated FRA offices.

(c)(1) Requests for civil penalty assessments and other administrative actions shall be submitted to the FRA Regional Director for Railroad Safety for the FRA region in which the State is located.

(2) Requests for the institution of injunctive actions shall be submitted simultaneously to—

(i) The FRA Regional Director for Railroad Safety for the FRA region in which the State is located and

(ii) The Enforcement Division, Office of Chief Counsel, FRA, Washington, DC 20590.

## Subpart C—State Inspection Personnel

### §212.201 General qualifications of State inspection personnel.

(a) This subpart prescribes the minimum qualification requirements for State railroad safety inspectors, compliance inspectors and inspector apprentices. A State agency may establish more stringent or additional requirements for its employees.

(b) An inspector, compliance inspector, or apprentice inspector shall be recognized as qualified under this part by the State agency and the Associate Administrator prior to assuming the responsibilities of the position.

(c) Each inspector, compliance inspectors and apprentice inspector shall be a bona fide employee of the State agency.

(d) Each inspector, compliance inspector, and apprentice inspector shall demonstrate:

(1) The ability to read and comprehend written materials such as

training and enforcement manuals, regulations, operating and safety rules of the railroad, and similar materials;

(2) The ability to compose narrative reports of investigative findings that are clear, complete, and grammatically acceptable;

(3) The ability to record data on standard report forms with a high degree of accuracy;

(4) The ability to communicate orally; and

(5) Basic knowledge of rail transportation functions, the organization of railroad, shipper, and manufacturer companies, and standard industry rules for personal safety.

(e) Each inspector shall demonstrate a thorough knowledge of:

(1) Railroad rules, practices, record systems, and terminology common to operating and maintenance functions; and

(2) The scope and major requirements of all of the Federal railroad safety laws and regulations.

(f) In addition to meeting the requirements of this section, each inspector and apprentice inspector shall meet the applicable requirements of §§ 212.203 through 212.229 of this subpart.

[47 FR 41051, Sept. 16, 1982, as amended at 57 FR 28115, June 24, 1992]

#### § 212.203 Track inspector.

(a) The track inspector is required, at a minimum, to be able to conduct independent inspections of track structures for the purpose of determining compliance with the Track Safety Standards (49 CFR part 213), to make reports of those inspections, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The track inspector is required, at a minimum to have at least four years of recent experience in track construction or maintenance. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement and successful completion of the apprentice training program may be substituted for the four years of this experience requirement.

(c) The track inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of track nomenclature, track inspection techniques, track maintenance methods, and track equipment;

(2) The ability to understand and detect deviations from:

(i) Track maintenance standards accepted in the industry; and

(ii) The Track Safety Standards (49 CFR part 213).

(3) Knowledge of operating practices and vehicle/track interaction sufficient to understand the safety significance of deviations and combinations of deviations; and

(4) Specialized knowledge of the requirements of the Track Safety Standards, including the remedial action required to bring defective track into compliance with the standards.

#### § 212.205 Apprentice track inspector.

(a) The apprentice track inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as a track inspector. The apprentice track inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice track inspector shall demonstrate basic knowledge of track inspection techniques, track maintenance methods, and track equipment prior to being enrolled in the program.

#### § 212.207 Signal and train control inspector.

(a) The signal and train control inspector is required, at a minimum, to be able to conduct independent inspections of all types of signal and train control systems for the purpose of determining compliance with the Rules, Standards and Instructions for Railroad Signal Systems (49 CFR part 236), to make reports of those inspections, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The signal and train inspector is required, at a minimum, to have at least four years of recent experience in signal construction or maintenance. A

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bachelor's degree in electrical engineering or a related technical specialization may be substituted for two of the four years of this experience requirement and successful completion of the apprentice training program may be substituted for the four years of this requirement.

(c) The signal and train control inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of signal and train control systems, maintenance practices, test and inspection techniques;

(2) The ability to understand and detect deviations from:

(i) Signal and train control maintenance standards accepted in the industry; and

(ii) The Rules, Standards and Instructions for Railroad Signal Systems (49 CFR part 236).

(3) The ability to examine plans and records, to make inspections of signal train control systems and to determine adequacy of stopping distances from prescribed speeds;

(4) Knowledge of operating practices and signal systems sufficient to understand the safety significance of deviations and combination of deviations; and

(5) Specialized knowledge of the requirements of the Rules, Standards and Instructions for Railroad Signal Systems, including the remedial action required to bring signal and train control systems into compliance with the standards.

### §212.209 Train control inspector.

(a) The train control inspector is required, at a minimum, to be able to conduct independent inspections of automatic cab signal, automatic train stop, and automatic train control devices on board locomotives for the purpose of determining compliance with subpart E of the Rules, Standards and Instructions for Railroad Signal Systems (49 CFR part 236) and to recommend the institution of enforcement action when appropriate to promote compliance.

(b) The train control inspector is required, at a minimum, to have at least four years of recent experience in locomotive construction or maintenance. A

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bachelor's degree in electrical engineering or a related technical specialization may be substituted for two of the four years of this experience requirement and successful completion of the apprentice training program may be substituted for the four year experience requirement.

(c) The train control inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of the various train control systems used on board locomotives, locomotive air brake systems and test and inspection procedures;

(2) The ability to understand and detect deviations from:

(i) Train control maintenance standards accepted in the industry; and

(ii) Subpart E of the Rules, Standards and Instructions for Railroad Signal Systems (49 CFR part 236);

(3) Knowledge of operating practices and train control systems sufficient to understand the safety significance of deviations and combinations of deviations; and

(4) Specialized knowledge of the requirements of subpart E of the Rules, Standards and Instructions for Railroad Signal Systems, including the remedial action required to bring train control systems used on board locomotives into compliance with the standards.

### §212.211 Apprentice signal and train control inspector.

(a) The apprentice signal and train control inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as a signal and train control inspector. The apprentice inspector may not participate in the investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) Prior to being enrolled in the program the apprentice inspector shall demonstrate:

(1) Working knowledge of basic electricity and the ability to use electrical test equipment in direct current and alternating current circuits; and

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(2) A basic knowledge of signal and train control inspection and maintenance methods and procedures.

**§212.213 Motive power and equipment (MP&E) inspector.**

(a) The MP&E inspector is required, at a minimum, to be able to conduct independent inspections of railroad equipment for the purpose of determining compliance with all sections of the Freight Car Safety Standards (49 CFR part 215), Safety Glazing Standards (49 CFR part 223), Locomotive Safety Standards (49 CFR part 229), Safety Appliance Standards (49 CFR part 231), and Power Brake Standards (49 CFR part 232), to make reports of those inspections and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The MP&E inspector is required, at a minimum, to have at least four years of recent experience in the construction or maintenance of railroad rolling equipment. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement and successful completion of the apprentice training program may be substituted for the four year experience requirement.

(c) The MP&E inspector shall demonstrate the following qualifications:

(1) A comprehensive knowledge of construction, testing, inspecting and repair of railroad freight cars, passenger cars, locomotives and air brakes;

(2) The ability to understand and detect deviations from:

(i) Railroad equipment maintenance standards accepted in the industry; and

(ii) The Freight Car Safety Standards, Safety Glazing Standards, Locomotive Safety Standards, Safety Appliance Standards and Power Brake Standards.

(3) The knowledge of railroad operating procedures associated with the operation of freight cars, passenger cars, locomotives and air brakes sufficient to understand the safety significance of deviations and combinations of deviations; and

(4) Specialized knowledge of proper remedial action to be taken in order to

bring defective freight cars, passenger cars, locomotives, and air brakes into compliance with applicable Federal standards.

**§212.215 Locomotive inspector.**

(a) The locomotive inspector is required, at a minimum, to be able to conduct independent inspections of locomotives and air brake systems for the purpose of determining compliance with applicable sections of the Safety Glazing Standards (49 CFR part 223), Locomotive Safety Standards (49 CFR part 229), Safety Appliance Standards (49 CFR part 231) and Power Brake Standards (49 CFR part 232), to make reports of those inspections and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The locomotive inspector is required, at a minimum, to have at least four years of experience in locomotive construction or maintenance. A bachelor's degree in mechanical engineering or a related technical specialization may be substituted for two of the four years of this experience requirement and successful completion of the apprentice training program may be substituted for the four year experience requirement.

(c) The locomotive inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of construction, testing, inspecting and repair of locomotive and air brakes;

(2) The ability to understand and detect deviations from:

(i) Railroad equipment maintenance standards accepted in the industry; and

(ii) Safety Glazing Standards, Locomotive Safety Standards, Safety Appliance Standards and Power Brake Standards;

(3) The knowledge of railroad operating procedures associated with the operation of locomotives and air brakes sufficient to understand the safety significance of deviations and combinations of deviations; and

(4) Specialized knowledge of proper remedial action to be taken in order to bring defective locomotives, and air brakes into compliance with applicable Federal standards.



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### § 212.217 Car inspector.

(a) The car inspector is required, at a minimum, to be able to conduct independent inspections of railroad rolling stock for the purpose of determining compliance with all sections of the Freight Car Safety Standards (49 CFR part 215), Safety Glazing Standards (49 CFR part 223), Safety Appliance Standards (49 CFR part 231) and Power Brake Standards (49 CFR part 232), to make reports of those inspections and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The car inspector is required, at a minimum, to have at least two years of recent experience in freight car or passenger car construction, maintenance or inspection. Successful completion of the apprentice training program may be substituted for this two year experience requirement.

(c) The car inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of the construction and testing of freight and passenger cars and air brakes;

(2) The ability to understand and detect deviations from:

(i) Railroad freight and passenger car maintenance standards accepted in the industry; and

(ii) The Freight Car Safety Standards (49 CFR part 215), Safety Glazing Standards (49 CFR part 223), Safety Appliance Standards (49 CFR part 231) and Power Brake Standards (49 CFR part 232);

(3) The knowledge of railroad operating procedures associated with the operation of freight and passenger cars and air brakes sufficient to understand the safety significance of deviations and combinations of deviations; and

(4) Specialized knowledge of proper remedial action to be taken in order to bring defective freight and passenger car equipment and air brakes into compliance with applicable Federal standards.

### § 212.219 Apprentice MP&E inspector.

(a) The apprentice MP&E inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as an MP&E inspector. The apprentice may

not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice MP&E inspector shall demonstrate basic knowledge of railroad equipment and air brake inspection, testing and maintenance, prior to being enrolled in the program.

### § 212.221 Operating practices inspector.

(a) The operating practices inspector is required, at a minimum, to be able to conduct independent inspections for the purpose of determining compliance with all sections of the Federal operating practice regulations (49 CFR parts 217, 218, 219, 220, 221, 225 and 228) and the Hours of Service Act (45 U.S.C. 61–64b), to make reports of those inspections, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The operating practices inspector is required at a minimum to have at least four years of recent experience in developing or administering railroad operating rules. Successful completion of the apprentice training program may be substituted for this four year experience requirement.

(c) The operating practices inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of railroad operating practices, railroad operating rules, duties of railroad employees, and general railroad nomenclature;

(2) The ability to understand and detect deviations from:

(i) Railroad operating rules accepted in the industry; and

(ii) Federal operating practice regulations;

(3) Knowledge of operating practices and rules sufficient to understand the safety significance of deviations; and

(4) Specialized knowledge of the requirements of the Federal operating practices regulations listed in paragraph (a) of this section, including the remedial action required to bring railroad operations into compliance with the regulations.

[47 FR 41051, Sept. 16, 1982, as amended at 50 FR 31578, Aug. 2, 1985]

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**§ 212.223 Operating practices compliance inspector.**

(a) The operating practices compliance inspector is required, at a minimum, to be able to conduct independent inspections for the purpose of determining compliance with the requirements of the following:

- (1) Operating Rules—blue flag (49 CFR part 218);
- (2) Control of Alcohol and Drug Use (49 CFR part 219);
- (3) Rear End Marking Device Regulations (49 CFR part 221);
- (4) Railroad accidents/incidents: reports classification and investigations (49 CFR part 225); and
- (5) Hours of Service Act (45 U.S.C. 61–64b) and implementing regulations (49 CFR part 228); to make reports of those inspections and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The operating practices compliance inspector is required, at a minimum, to have at least two years of recent experience in developing or administering railroad operating rules. Successful completion of the apprentice training program may be substituted for the two year experience requirement.

(c) The compliance inspector shall demonstrate the following specific qualifications.

- (1) A basic knowledge of railroad operations, duties of railroad employees and general railroad safety as it relates to the protection of railroad employees;
- (2) A basic knowledge of railroad rules and practices;
- (3) The ability to understand and detect deviations from the requirements cited in paragraph (a) of this section; and
- (4) Specialized knowledge of the requirements of the Federal operating practices regulations listed in paragraph (a) of this section, including the remedial action required to bring defective conditions into compliance with the applicable Federal standards.

[47 FR 41051, Sept. 16, 1982, as amended at 50 FR 31578, Aug. 2, 1985]

**§ 212.225 Apprentice operating practices inspector.**

(a) The apprentice operating practices inspector must be enrolled in a program of training prescribed by the Associate Administrator leading to qualification as an inspector. The apprentice inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice operating practices inspector shall demonstrate basic knowledge of railroad operating practices, railroad operating rules and general duties of railroad employees prior to being enrolled in the program.

**§ 212.227 Hazardous materials inspector.**

(a) The hazardous materials inspector is required, at a minimum, to be able to conduct independent inspections to determine compliance with all pertinent sections of the Federal hazardous materials regulations (49 CFR parts 171 through 174, and 179), to make reports of those inspections and findings, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The hazardous materials inspector is required, at a minimum, to have at least two years of recent experience in developing, administering, or performing managerial functions related to compliance with the hazardous materials regulations; four years of recent experience in performing functions related to compliance with the hazardous materials regulations; or a bachelor's degree in a related technical specialization. Successful completion of the apprentice training program may be substituted for this requirement.

(c) The hazardous materials inspector shall demonstrate the following specific qualifications:

- (1) A comprehensive knowledge of the transportation and operating procedures employed in the railroad, shipping, or manufacturing industries associated with the transportation of hazardous materials;
- (2) Knowledge and ability to understand and detect deviations from the

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Department of Transportation's Hazardous Materials Regulations, including Federal requirements and industry standards for the manufacturing of bulk packaging used in the transportation of hazardous materials by railroad;

(3) Knowledge of the physical and chemical properties and chemical hazards associated with hazardous materials that are transported by railroad;

(4) Knowledge of the proper remedial actions required to bring railroad, shipper, and/or manufacturing facilities into compliance with the Federal regulations; and

(5) Knowledge of the proper remedial actions required when a hazardous materials transportation accident or incident occurs.

[57 FR 28115, June 24, 1992]

### **§212.229 Apprentice hazardous materials inspector.**

(a) The apprentice hazardous materials inspector must be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a hazardous materials inspector. The apprentice may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice hazardous materials inspector shall demonstrate a basic knowledge of the chemical hazards associated with hazardous materials that are transported by railroad, including requirements such as shipping papers, marking, labeling, placarding, and the manufacturing and maintenance of packagings associated with these shipments.

[57 FR 28116, June 24, 1992]

### **§212.231 Highway-rail grade crossing inspector.**

(a) The highway-rail grade crossing inspector is required, at a minimum, to be able to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR part 234), to make reports of those inspections, and to rec-

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ommend institution of enforcement actions when appropriate to promote compliance.

(b) The highway-rail grade crossing inspector is required, at a minimum, to have at least four years of recent experience in highway-rail grade crossing construction or maintenance. A bachelor's degree in engineering or a related technical specialization may be substituted for two of the four years of this experience requirement. Successful completion of an apprentice training program under §212.233 may be substituted for the four years of this experience requirement.

(c) The highway-rail grade crossing inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of highway-rail grade crossing nomenclature, inspection techniques, maintenance requirements, and methods;

(2) The ability to understand and detect deviations from:

(i) Grade crossing signal system maintenance, inspection and testing standards accepted in the industry; and

(ii) The Grade Crossing Signal System Safety Rules (49 CFR part 234);

(3) Knowledge of operating practices and highway-rail grade crossing systems sufficient to understand the safety significance of deviations and combinations of deviations from §212.231(c)(2) (i) and (ii);

(4) Specialized knowledge of the requirements of the Grade Crossing Signal System Safety Rules (49 CFR part 234), including the remedial action required to bring highway-rail grade crossing signal systems into compliance with those Rules;

(5) Specialized knowledge of highway-rail grade crossing standards contained in the Manual on Uniform Traffic Control Devices; and

(6) Knowledge of railroad signal systems sufficient to ensure that highway-rail grade crossing warning systems and inspections of those systems do not adversely affect the safety of railroad signal systems.

(d) A State signal and train control inspector qualified under this part and who has demonstrated the ability to understand and detect deviations from the Grade Crossing Signal System Safety Rules (49 CFR part 234) is

deemed to meet all requirements of this section and is qualified to conduct independent inspections of all types of highway-rail grade crossing warning systems for the purpose of determining compliance with Grade Crossing Signal System Safety Rules (49 CFR part 234), to make reports of those inspections, and to recommend institution of enforcement actions when appropriate to promote compliance.

[59 FR 50104, Sept. 30, 1994]

**§ 212.233 Apprentice highway-rail grade crossing inspector.**

(a) An apprentice highway-rail grade crossing inspector shall be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a highway-rail grade crossing inspector. The apprentice inspector may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) Prior to being enrolled in the program the apprentice inspector shall demonstrate:

(1) Working basic knowledge of electricity;

(2) The ability to use electrical test equipment in direct current and alternating current circuits; and

(3) A basic knowledge of highway-rail grade crossing inspection and maintenance methods and procedures.

[59 FR 50104, Sept. 30, 1994]

**§ 212.235 Inapplicable qualification requirements.**

The Associate Administrator may determine that a specific requirement of this subpart is inapplicable to an identified position created by a State agency if it is not relevant to the actual duties of the position. The determination is made in writing.

[47 FR 41051, Sept. 16, 1982. Redesignated at 57 FR 28115, June 24, 1992. Further redesignated at 59 FR 50104, Sept. 30, 1994]

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