

- (2) Inoperative.
  - (D) Vertical coupler pin retainer plate:
    - (1) Missing;
    - (2) Has missing fastener.
  - (E) Draft key or key retainer:
    - (1) Inoperative;
    - (2) Missing.
  - (F) Follower plate missing or broken.
- 215.129 Defective cushioning device unless effectively immobilized.
- (A) Broken.
  - (B) Inoperative.
  - (C) Missing parts.
- 215.203 Operating a restricted car, except under conditions approved by FRA.

#### *Stenciling*

- 215.301 Failure to stencil car number and built date on freight car as required.
- 215.303 Failure to stencil restricted car as required.
- 215.305 Failure to stencil maintenance-of-way equipment as required.

#### APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

At each location where a freight car is placed in a train and a person designated under § 215.11 is not on duty for the purpose of inspecting freight cars, the freight car shall, as a minimum, be inspected for the imminently hazardous conditions listed below that are likely to cause an accident or casualty before the train arrives at its destination. These conditions are readily discoverable by a train crew member in the course of a customary inspection.

1. Car body:
  - (a) Leaning or listing to side.
  - (b) Sagging downward.
  - (c) Positioned improperly on truck.
  - (d) Object dragging below.
  - (e) Object extending from side.
  - (f) Door insecurely attached.
  - (g) Broken or missing safety appliance.
  - (h) Lading leaking from a placarded hazardous material car.
2. Insecure coupling.
3. Overheated wheel or journal.
4. Broken or extensively cracked wheel.
5. Brake that fails to release.
6. Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

[45 FR 26711, Apr. 21, 1980, as amended at 73 FR 79701, Dec. 30, 2008]

## PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

### Subpart A—General

- Sec.
- 216.1 Application.
  - 216.3 Definitions.
  - 216.5 Delegation and general provisions.
  - 216.7 Penalties.

### Subpart B—Special Notice for Repairs

- 216.11 Special notice for repairs—railroad freight car.
- 216.13 Special notice for repairs—locomotive.
- 216.14 Special notice for repairs—passenger equipment.
- 216.15 Special notice for repairs—track class.
- 216.17 Appeals.

### Subpart C—Emergency Order—Track

- 216.21 Notice of track conditions.
- 216.23 Consideration of recommendation.
- 216.25 Issuance and review of emergency order.
- 216.27 Reservation of authority and discretion.

AUTHORITY: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

SOURCE: 41 FR 18657, May 6, 1976, unless otherwise noted.

### Subpart A—General

#### § 216.1 Application.

(a) This part applies, according to its terms, to each railroad that uses or operates—

- (1) A railroad freight car subject to part 215 of this chapter;
- (2) A locomotive subject to 49 U.S.C. chapter 207 (49 U.S.C. 20701–03); or
- (3) Railroad passenger equipment subject to part 238 of this chapter.

(b) This part applies, according to its terms, to each railroad owning track subject to part 213 of this chapter.

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

#### § 216.3 Definitions.

As used in this part—

- (a) *FRA* means the Federal Railroad Administration.

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(b) *State* means a State participating in investigative and surveillance activities under 49 U.S.C. 20105.

(c) *Inspector* includes FRA Regional Supervisors of Inspectors.

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

### §216.5 Delegation and general provisions.

(a) The Administrator has delegated to the appropriate FRA and State personnel the authority to implement this part.

(b) Communications to the Administrator relating to the operation of this part should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590.

(c) The notices prescribed in §§216.11, 216.13, 216.14, 216.15, and 216.21 of this part are issued on standard FRA forms indicating the particular subject matter. An inspector issues a notice by delivering it to an appropriate officer or agent immediately responsible for the affected locomotive, car, or track.

[41 FR 18657, May 6, 1976, as amended at 41 FR 43153, Sept. 30, 1976; 64 FR 25659, May 12, 1999; 74 FR 25172, May 27, 2009]

### §216.7 Penalties.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$1,086 and not more than \$35,516 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 \$142,063 per violation may be assessed. Each day a violation continues shall constitute a separate

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offense. See 49 CFR part 209, appendix A.

[53 FR 28599, July 28, 1988, as amended at 63 FR 11620, Mar. 10, 1998; 69 FR 30593, May 28, 2004; 72 FR 51196, Sept. 6, 2007; 73 FR 79701, Dec. 30, 2008; 77 FR 24420, Apr. 24, 2012; 81 FR 43109, July 1, 2016; 82 FR 16132, Apr. 3, 2017; 83 FR 60746, Nov. 27, 2018; 84 FR 37072, July 31, 2019; 86 FR 1757, Jan. 11, 2021; 86 FR 23253, May 3, 2021; 87 FR 15867, Mar. 21, 2022; 88 FR 1126, Jan. 6, 2023; 88 FR 89561, Dec. 28, 2023]

### Subpart B—Special Notice for Repairs

EDITORIAL NOTE: Nomenclature changes to subpart B of part 216 appear at 64 FR 25659, May 12, 1999.

#### §216.11 Special notice for repairs—railroad freight car.

(a) When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that a railroad freight car is not in conformity with the requirements of the FRA Freight Car Safety Standards set forth in part 215 of this chapter and that it is unsafe for further service, he notifies the railroad in writing that the car is not in serviceable condition. The Special Notice sets out and describes the defects that cause the car to be in un-serviceable condition. After receipt of the Special Notice, the railroad shall remove the car from service until it is restored to serviceable condition. The car may not be deemed to be in serviceable condition until it complies with all applicable requirements of part 215 of this chapter.

(b) The railroad shall notify the FRA Regional Administrator in writing when the equipment is returned to service, specifying the repairs completed.

(c) A railroad freight car subject to the notice prescribed in paragraph (a) of this section may be moved from the place where it was found to be unsafe 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 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 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

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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 In-

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spector 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 Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will

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be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at this conference and a hearing is desired, the petitioner must submit a written request for a hearing within fifteen (15) days after the conference. The hearing will commence within fourteen (14) calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C.

(c) Unless stayed or modified by the Administrator, the requirements of each Emergency order issued under this subpart shall remain in effect and be observed pending decision on a petition for review.

### §216.27 Reservation of authority and discretion.

The FRA may issue Emergency orders concerning track without regard to the procedures prescribed in this subpart whenever the Administrator determines that immediate action is required to assure the public safety.

## PART 217—RAILROAD OPERATING RULES

### Subpart A—General

- Sec.
- 217.1 Purpose.
- 217.2 Preemptive effect.
- 217.3 Application.
- 217.4 Definitions.
- 217.5 Penalty.
- 217.7 Operating rules; filing and record-keeping.
- 217.9 Program of operational tests and inspections; recordkeeping.
- 217.11 Program of instruction on operating rules; recordkeeping; electronic record-keeping.
- 217.13 Information collection.

AUTHORITY: 49 U.S.C. 20103, 20107, 20168, 28 U.S.C. 2461, note; and 49 CFR 1.89.

SOURCE: 39 FR 41176, Nov. 25, 1974, unless otherwise noted.

### Subpart A—General

#### §217.1 Purpose.

Through the requirements of this part, the Federal Railroad Administration learns the condition of operating rules and practices with respect to

trains and other rolling equipment in the railroad industry, and each railroad is required to instruct its employees in operating practices.

#### §217.2 Preemptive effect.

Normal State negligence standards apply where there is no Federal action covering the subject matter. Under 49 U.S.C. 20106 (section 20106), issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local railroad safety or railroad security hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce. Section 20106 permits State tort actions arising from events or activities occurring on or after January 18, 2002, for the following: violation of the Federal standard of care established by regulation or order issued by the Secretary of Transportation (with respect to railroad safety, such as these regulations) or the Secretary of Homeland Security (with respect to railroad security); a party's violation of, or failure to comply with, its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the two Secretaries; and a party's violation of a State standard that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulation, or order of the United States Government, and does not unreasonably burden interstate commerce. Nothing in section 20106 creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

[73 FR 8495, Feb. 13, 2008]

#### §217.3 Application.

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

(b) This part does not apply to—