

§ 90.437 Posting station licenses.

(d) An applicant operating under a temporary permit authorized in accordance with §§ 90.393 or 90.657 must retain an executed copy of FCC Form 572 as a permanent part of the station records.

14. Redesignate § 90.485 as § 90.492 and revise to read as follows:

§ 90.492 One-way paging operations in the 806-821 MHz and 851-866 MHz bands.

Except as provided at § 90.378(c) and § 90.645(e) of the rules, systems of communications licensed in the 806-821 and 851-866 MHz bands may not be employed for either tone only or tone and voice paging operations.

15. In § 90.213, paragraph (a), is amended by adding new footnote 15 to the Frequency Tolerance Table as follows:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

Frequency range (MHz)	Fixed and base stations		Mobile stations	
	Over 200 W output power	200 W or less output power	Over 2 W output power	2 W or less output power
470-512.....	*.00025	*.00025	.0005	.0005
806-821..... ¹⁵	¹⁵ .00015	¹⁵ .00015	¹⁵ .00025	¹⁵ .00025
851-866.....	¹⁵ .00015	¹⁵ .00015	¹⁵ .00015	¹⁵ .00025

¹⁵ This limitation does not apply where specifically provided for in other sections of this part.

[FR Doc. 82-25028 Filed 9-15-82; 8:45 am]

47 CFR Part 90

[PR Docket No. 79-191; RM-3380; et al]

Amendment Rules To Release Spectrum in Specific MHz Bands and To Adopt Rules To Govern Their Use; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains certain corrections and material inadvertently omitted from the Appendix of the Second Report and Order (FCC 82-338) in PR Docket proceedings 79-191, 79-334, 79-107 and 81-703 concerning amendment of Part 90 of the Commission's Rules to release spectrum in the 806-821/851-866 MHz bands and to adopt rules which govern their use published elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Albert J. Catalano or Stephanie M. Spornak, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of Part 90 of the Commission's rules to release spectrum in the 806-821/851-866 MHz bands and to adopt rules and regulations which govern their use. (PR Docket No. 79-191, RM-3380) Amendment of Part 90 of the Commission's rules to facilitate authorization of wide-area mobile radio communications systems. (PR Docket No. 79-334, RM-3691) An Inquiry concerning the multiple licensing of 800 MHz radio systems ("community repeaters"). (PR Docket No. 79-107) and Amendment of § 90.385(c) of the Commission's rules to allow transmission of non-voice signals at 800 MHz. (PR Docket No. 81-703).

Erratum

Released: August 26, 1982.

On August 16, 1982 the Commission released the Second Report and Order (FCC 82-338) in the above captioned proceeding. This erratum corrects certain omissions and makes certain corrections in the Appendix of that item.

1. Footnotes 2 and 3 are added to Table 2 of § 90.362 as follows:

§ 90.362 Selection and assignment of frequencies.Table 2.—Chicago Plan ^{2 3}

2. Add the following sentence to the end of § 90.619(a):

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

(a) * * * Stations located on Mt. Lemmon, serving the Tucson, AZ area, shall only be authorized offset frequencies.

3. In §§ 90.374(b) and 90.635(d) change 20 dBu to 20 dBw.

§ 90.635 [Amended]

4. In Table 1 of § 90.635 the north latitude coordinate for Chicago, Ill.

² These frequencies will be authorized only in the area encompassed by a 70 mile radius centered at 41°52'28" N. 87°28'32" W.

³ Stations located beyond the 70 mile distance authorized prior to August 16, 1981 to use these frequencies may continue to do so. Stations beyond the 70 mile distance authorized after August 16, 1982 shall employ frequencies listed in Table 1 subject to the provisions of § 90.621(b) or (c) as applicable.

should be changed from 45°52'28" to 41°52'28".

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 82-25028 Filed 9-15-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 81-703; FCC 82-389]

Signals at 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Order consolidating proceedings.

SUMMARY: By this Order, the Commission consolidates Dockets 79-191, 79-334, and 79-107 with this proceeding, PR Docket No. 81-703, which proposes to allow the transmission of non-voice signalling at 800 MHz. In the Report and Order the Commission concludes that there is a need for data transmission by private land mobile users and adopts rules to permit such operation on a co-equal, primary basis at 800 MHz.

FOR FURTHER INFORMATION CONTACT: Albert J. Catalano or Stephanie Spornak, Private Radio Bureau, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

Order

Adopted: July 22, 1982.

Released: August 16, 1982.

1. On October 14, 1981, we released a *Notice of Proposed Rule Making* in PR Docket No. 81-703 proposing to amend §§ 90.233, "Secondary base/mobile non-voice signaling operations," and 90.385, "Restrictions and limitations on permissible communications, on use, and on mode of operation" of the Commission's Rules. The amendments would permit the transmission of fixed tone and alarm signals on a secondary basis and the transmission of non-voice signaling in the frequency bands 806-821 MHz and 851-866 MHz in the Private Land Mobile Radio Services.

2. Concurrent with this proceeding, we have under consideration the release of the remaining 800 MHz channels which have been held in reserve (*See Further Notice of Proposed Rule Making*, PR Docket No. 79-191, FCC No. 81-268, released July 14, 1981). In PR Docket No. 79-191, we have proposed greater

technical flexibility in the same frequency bands, with specific regard to allowing flexibility in choosing the type of emission mode to be used and the amount of bandwidth to be occupied. *Id.* at para. 73.

3. The issues in PR Docket No. 79-191 include the issues contained in PR Docket No. 81-703. Because it is not appropriate to have either docket prejudice the other in any way on any overlapping issues, and because it will best conduce to the dispatch of Commission business and to the ends of justice to treat these issues in one proceeding, we have decided to consolidate PR Docket Nos. 79-191 and 81-703.

4. Accordingly, pursuant to sections 4 (i) and (j) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154 (i) and (j) and 303(r)), it is ordered that PR Docket Nos. 79-191 and 81-703 are consolidated. It is further ordered that PR Docket No. 81-703 will be captioned under the earlier-docketed PR Docket No. 79-191.

Federal Communications Commission.¹

William J. Tricarico,
Secretary.

[FR Doc. 82-25030 Filed 9-15-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 79-107; FCC 82-388]

Action Concerning the Multiple Licensing of Land Mobile Radio Systems "Community Repeaters" in Certain MHz bands

AGENCY: Federal Communications Commission.

ACTION: Order consolidating proceedings.

SUMMARY: By this Order, the Commission consolidates Dockets 79-191 and 79-334 with this proceeding, PR Docket 79-107, which explores the appropriateness of community repeater operation. As part of its Report and Order the Commission concludes that community repeaters are a valuable user

option for which authorization at 800 MHz should continue.

FOR FURTHER INFORMATION CONTACT:

Albert J. Catalano or Stephanie Spornak, Private Radio Bureau, Washington, D.C. 20554, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

In the matter an inquiry concerning the multiple radio systems ("community repeaters") in the bands 806-821 and 851-866 MHz (PR Docket No. 79-107).

Order

Adopted: July 22, 1982.

Released: August 16, 1982.

1. On May 11, 1979, the Commission released a *Notice of Inquiry* in PR Docket No. 79-107 exploring the policy implications of community repeater licensing in the 800 MHz frequency band. Concurrent with this proceeding, we have under consideration the release of the remaining 800 MHz channels which have been held in reserve (*See Further Notice of Proposed Rule Making*, PR Docket No. 79-191, FCC No. 81-268, released July 14, 1981) PR Docket No. 79-191 necessarily includes policy decisions relating to the question of community repeater licensing at 800 MHz. *Id.* at paras. 29-31.

2. Because it is not appropriate to have either docket prejudice the other in any way on any overlapping issues, and because it will best conduce to the dispatch of Commission business and to the ends of justice to treat these issues in one proceeding, we have decided to consolidate PR Docket Nos. 79-191 and 79-107.

3. Accordingly, pursuant to sections (i) and (j) and 303 (r) of the Communications Act of 1934, as amended (47 U.S.C. 154 (i) and (j) and 303 (j)), it is ordered that PR Docket Nos. 79-191 and 79-107 are consolidated. It is further ordered that PR Docket No. 79-107 will be captioned under the later-docketed PR Docket No. 79-191.

Federal Communications Commission.¹

William J. Tricarico,
Secretary.

[FR Doc. 82-25031 Filed 9-15-82; 8:45 am]

BILLING CODE 6712-01-M

¹ Commissioner Quello concurring in part.

¹ Commissioner Quello concurring in part.

49 CFR Part 229 Federal Railroad Administration

Thursday
September 16, 1982

Part III

Department of Transportation

Federal Railroad Administration

Revision of State Safety Participation
Regulations

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
49 CFR Part 212

[FRA Docket No. RSSP-3, Notice No. 3]

Revision of State Safety Participation Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document revises the FRA regulations on State participation in railroad safety inspections and investigations (49 CFR Part 212). The revisions are necessary to implement the expanded State participation authority contained in the Federal Railroad Safety Authorization Act of 1980. The revised rules implement the new authority and make other changes in the regulations designed to facilitate expanded State participation authority while assuring proper coordination of Federal and State inspection activities.

EFFECTIVE DATE: This regulation will become effective on November 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Principal Program Person: Bruce Fine,
 Office of Safety, Federal Railroad Administration, Washington, D.C. 20590 (Phone: 202-426-4345).

Principal Attorney: Lawrence I. Wagner,
 Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590 (Phone: 202-426-8836).

SUPPLEMENTARY INFORMATION: This regulation contains provisions concerning the submission of information that are subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96-511). Those requirements have been approved by the Office of Management and the Budget (OMB) and have been assigned OMB control number 2130-0509.

Background

On June 25, 1981, the FRA published a notice of proposed rulemaking (NPRM) in the *Federal Register* (46 FR 32888) to revise the State Safety Participation Program regulation. The specific objectives of the proposed revision included expansion of the inspection and surveillance authority of State inspectors; clarification of the policy framework; redefinition of inspector qualification requirements; and making appropriate editorial changes to the rules.

As announced in the NPRM, the FRA held a public hearing on the proposed revision on July 30, 1981. At the hearing FRA received testimony from State

agencies, the National Association of Regulatory Utility Commissioners (NARUC), the Association of American Railroads (AAR) and the Railway Labor Executives' Association (RLEA). In addition, written comments were submitted by a number of State agencies, one railroad and private individuals who did not testify at the hearing. All the comments and testimony have been reviewed and fully considered during the formulation of the rule set forth in this document.

Most commenters expressed support for the proposed changes. However, many recommended that changes be made to one or more sections. Although most of the suggested changes were minor, there were three issues of broad concern raised by the commenters.

The first of these issues was raised by several commenters who questioned the appropriateness of the proposed regulation. The views of these commenters included opposition to the basic concept of State inspectors being permitted any investigative or surveillance role and objections to expanding of State inspector authority prior to revision of the older FRA regulations.

The basic policy of providing for a State role in investigation and surveillance activities with respect to safety regulations issued by FRA was established by the Federal Railroad Safety Act of 1970 (45 U.S.C. 435) (Safety Act). The wisdom of creating the program was extensively debated during the process of enacting the Safety Act. Congress concluded that the creation of the State program was appropriate, and after reviewing the program in 1980, authorized FRA to expand the scope of the program. Section 4 of the Federal Railroad Safety Authorization Act of 1980 (Pub. L. No. 96-423, 94 Stat. 1812). The final rule implements the authorization for expansion contained in the 1980 statute.

The remaining commenter on this issue expressed concern about FRA's decision to expand the State inspection role before completing review and revision of all of the FRA safety regulations. Although the FRA agrees that there is a need for review and revision of its older safety regulations, FRA does not believe that State inspectors should be precluded from investigative and surveillance activities regarding these regulations pending the completion of the revision process. The commenter's recommended course of action would, for example, preclude State participation in effecting compliance with the Locomotive Safety Standards (49 CFR Part 229) which have already been revised. Consequently,

rather than adopt the commenter's suggestion to delay this regulation, FRA is acting to expedite its review and revision process in an effort to alleviate the commenter's concern about potentially increased efforts to effect compliance with outmoded regulations. As part of this effort, the FRA currently plans to revise the Power Brake Standards and the Track Safety Standards during 1982 as indicated in the NPRM issued on February 18, 1982 (47 FR 7283, 7275). The specific changes proposed in both NPRMs were responsive to joint recommendations by rail labor and rail management.

The second issue of concern expressed by many commenters involved FRA's expressed preference to make "agreement" the primary means by which States would participate in the program as opposed to the "certification" approach which is presently the primary means for participation. The testimony presented at the public hearing revealed that the opposition to the "agreement" method was based on misunderstandings concerning the details of this method. Once these misunderstandings were identified and resolved through questioning, the commenters initial objections were resolved and subsequent written comments endorsed the FRA proposal to make "agreement" the primary means by which States will participate in the future. The primary misconception that troubled the commenters was the absence of a reference tool to indicate what level of effort FRA would anticipate from a participating State. This absence of a reference point was contrasted with the specificity for the level of effort contained in the "certification" method. FRA will provide that reference point in the program manuals which contain a variety of administrative details concerning implementation of this regulation.

The final issue raised by the commenters concerned the matter of the proposed qualifications for State inspectors. This issue involved the absence of an experience requirement for State inspectors; the absence of qualification requirements for State inspectors to effect compliance with Hazardous Materials Regulations (49 CFR Parts 171-179); and resolution of potential conflicts of interest for State inspectors. The State agencies and NARUC supported the FRA proposal to omit any reference to specific levels of experience as a requirement for individuals who would be permitted to seek authority to engage in investigative or surveillance work. These commenters

indicated that the knowledge, skill and ability criteria proposed by the FRA would be sufficient. Other commenters, particularly the AAR and the RLEA, objected to this proposal and indicated that an experience requirement was of critical importance in their judgment.

After reviewing the comments received, particularly the testimony provided at the public hearing, which indicates that the State agencies individually believe that some "time in service" criteria should be utilized, FRA has decided that a specific duration of experience provision should be included in the final rule. The FRA is therefore adopting a four year experience requirement for most inspectors. This "time in service" requirement is lower than that utilized by FRA in selecting Federal inspectors and is premised on the fact that State inspectors will be utilized for routine surveillance and investigative activities rather than the more extensive and sophisticated tasks for which FRA inspectors will be responsible. Additionally, the final rule will permit substitution of technical education for portions of this "time in service" requirement. Finally, to avoid impeding talented personnel who merely lack sufficient "time in service", FRA is structuring the apprentice provisions to permit rapid advancement to inspector status without regard to the "time in service" if such individuals are capable of successfully completing the training program very rapidly.

One commenter noted the absence of qualification requirements for a State inspector to effect compliance with the DOT Hazardous Materials Regulations and urged that appropriate provisions be placed in the final rule. The FRA has not adopted this suggestion. The regulations in question are not within the regulatory jurisdiction of the FRA but are issued by the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration of the DOT and neither the language of Safety Act nor the 1980 amendment empower the FRA to permit State inspectors to effect compliance with these regulations. Finally, the MTB has a parallel program for State inspection and enforcement efforts that has significant differences including a separate budget.

The final comments on inspector qualifications dealt with the topic of conflict of interest standards for State inspectors. The FRA was urged to require that State inspectors adhere to the same rules on conflict of interest that are utilized by FRA for Federal inspectors. Although FRA agrees that this is a correct standard, FRA is not adopting regulatory language to address

this topic at this time. However, the FRA will provide guidance to the State agencies on this topic in the program manual and will attempt to assure that State inspectors adhere to FRA policies on this topic.

The following is a summary of the comments received and an explanation of the revisions made by FRA in response to those comments. The comments and related revisions have been organized in a section-by-section format. Minor editorial or language changes have been made to some sections without a specific explanation.

Subpart A—General

§ 212.1 Purpose and scope.

One commenter suggested language changes that would add the wording of the existing regulatory provision to that contained in the NPRM. The FRA has not accepted this suggestion because the addition would merely constitute a redundant statement of purpose. No other comments on this Subpart were received and no changes have been made.

Subpart B—State/Federal Roles

§ 212.101 Program principles.

One commenter made several recommendations for language changes to this section. These changes primarily focus on the tone of the section. The FRA, with one exception, does not believe that the suggested changes should be made to the wording of this section since the proposed language effectively and succinctly states FRA policy. The exception involves the insertion of the phrase "planned routine" as a descriptor for the term "compliance inspections" in subsection 212.101(d).

§ 212.103 Investigative and surveillance authority.

No comments were received on this section and no changes have been made.

§ 212.105 Agreements.

One commenter suggested several changes to this section. The first change involved the addition of the word "routine" to paragraph (d)(3) to describe the planned inspections and to add language about preferential coverage. The FRA has added the word "routine" to describe the planned inspections since this is consonant with the FRA concept but has not added any language about preferences since it is not clear what the commenter is referring to in this context. The other change involved paragraph (f) and included deletion of the phrase "consistent with national program requirements" and addition of

language to indicate that a timetable or schedule for training would be established. The suggested deletion has not been made because that language refers to a major consideration in the creation of a developmental agreement and reflects FRA policy on this point. However, the FRA has adopted the suggestion for creating a timetable or schedule for training and has provided appropriate language on this point.

§ 212.107 Certification.

Two commenters suggested changes to this section that have been adopted by FRA. These changes are basically editorial and create clearly parallel mandatory filing requirements for the certification process and the agreement process.

§ 212.109 Joint planning of inspections.

As suggested by a commenter, FRA has added a sentence to this section to provide a clear method to resolve any disagreements on the joint planning process and has altered the schedule for developing the joint inspection plan to a calendar year basis instead of the proposed fiscal year basis.

§ 212.111 Monitoring and other inspections.

A number of comments on this section were received. These comments addressed matters of general program administration, including FRA monitoring and inspection practices, which are not relevant to this rulemaking proceeding and do not warrant changes in the regulatory language. However, the FRA has reordered the sequence of the paragraphs in this section for improved clarity as suggested by one commenter.

§ 212.113 Program termination.

No substantive comments were received on this section and no change has been made.

§ 212.115 Enforcement actions.

One commenter suggested that State requests for injunctive action only be submitted to a single FRA office rather than the dual submission proposed. The FRA has not accepted this suggestion because the timeliness of such requests is critical and necessitates prompt analysis and action on both the legal and policy issues. The potential for delay or misrouted communications inherent in a single office submission is not acceptable in FRA's judgment. Retention of the proposed dual submission provision should not represent a troublesome burden for State agencies since historically it is

very rare that recourse to injunctive action is even contemplated as an adjunct to normal enforcement methods.

Subpart C—State inspection personnel

As noted earlier, the FRA has decided to impose an experience requirement for all inspectors except for apprentice inspectors. Consequently, §§ 212.203, 212.207, 212.209, 212.213, 212.215, and 212.221 have been changed to provide for a four year experience level requirement for fully qualified track, train control, signal and train control, motive power and equipment, locomotive and operating practices inspectors. These sections also make specific provision for the substitution of appropriate educational background for a portion of the experience requirement in each of the respective inspector disciplines. Sections 212.217 and 212.223 have been changed to provide for two year experience requirements for car and operating practices compliance inspectors. All of these sections also were changed to provide that successful completion of the apprentice training program can be substituted for the experience requirement.

§ 212.229 Subsequent regulations and orders.

Two commenters objected to this provision and the FRA has decided to delete the provision as unnecessary and potentially troublesome. Additionally, in responding to the proposed provisions of this Subpart, the AAR raised a number of points such as inspector credentials and salary levels that FRA considers to be issues of program administration. None of these are relevant to adoption of this final rule and are not being addressed specifically. To the degree that any of these concerns are pertinent to the betterment of the program, the FRA will consider them in formulation of the Program Manual.

Subpart D—Grants in Aid

The FRA received a variety of comments on the proposed provisions for Subpart D. Those comments and the issues they presented are discussed below under the appropriate regulatory sections. However, there is an additional issue concerning this subpart which was not contemplated or addressed by those commenting on the NPRM.

This additional issue involved the availability of Federal appropriations to fund the grants in aid aspect of the State Safety Participation Program. The recently proposed Federal budget for Fiscal Year 1983 does not seek grant in aid money for the State Safety Participation Program. Accordingly, if no

funds are appropriated for this purpose, there would be no need to revise the current provisions of this subpart. However, if funds should be appropriated for grants in aid, this subpart would have to be revised. To preclude the need for emergency rulemaking in that eventuality, the FRA has decided to revise the subpart in this final rule.

Furthermore, additional delay in revising this regulation, to permit resolution of the funding issue, would ignore the fact that FRA has an independent need to alter the other subparts of this regulation. This separate impetus for modifying the other subparts arises from the need to permit State agencies to voluntarily make more effective use of their existing qualified inspectors as contemplated by the 1980 statutory changes and must be resolved regardless of the resolution of the funding issue.

§ 212.301 Grant authority.

No substantive comments were received and no changes have been made.

§ 212.303 Annual funding process.

One commenter expressed concern that the proposed wording of this section could be interpreted to preclude the filing of a funding application after the start of a fiscal year. Although the proposed language did not contain any prohibitory wording, the FRA has modified the language of this section to permit late filing.

§ 212.305 Reports.

No comments were received and no changes have been made.

§ 212.307 Maximum reimbursement levels.

One commenter suggested that FRA retain the concept of the existing regulation that permits a State participating by "certification" to obtain an increase in its funding based on a showing that unique circumstances in that State justify the employment of additional inspectors. The FRA believes that this suggestion has merit and has modified this section to incorporate this concept. Additional commenters suggested that FRA consider various factors in determining reimbursement payments to State agencies. The FRA believes that no change to the regulatory language is appropriate but will consider any relevant concepts in its administration of the program.

Appendix A

No comments were received and no changes have been made.

Appendix B

No comments were received and no changes have been made.

Appendix C

The final rule contains a provision for determining the level of operating practices inspection activity for each State and the reimbursement level for certified States. The levels set forth in Appendix C are similar to those in Appendix A and B and apply to a State that is engaged in inspection and surveillance activities with respect to the Railroad Operating Rules (49 CFR Parts 217, 218), Radio Standards and Procedures (49 CFR Part 220), Rear End Marking Devices (49 CFR Part 221), Accident/Incident Reporting (49 CFR Part 225), Hours of Service of Railroad Employees (49 CFR Part 228) and the Hours of Service Act (45 U.S.C. 61-64b). In determining the levels of inspection effort, FRA used a formula based on the total number of operating employees based in the individual State and the determination that one inspector could adequately monitor the activities of approximately 4,000 operating employees.

List of Subjects in 49 CFR Part 212

Railroad safety.

Regulatory Impact

The final rule has been evaluated in accordance with existing regulatory policies. This regulation will only have a direct effect on State governments. It will not have an adverse economic impact on State governments or any other entity since it does not establish any new requirements or burdens. Based on these facts, it is certified that the final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (Pub. L. 95-354, 94 Stat. 1164, September 19, 1980). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule does not constitute a significant rule under the Department of Transportation regulatory policies and procedures. To the degree that any Federal funding may become available to State governments subsequent to adoption of this regulation, the final rule may have some minimal economic impact. However, that economic impact is so minimal that it does not warrant a regulatory evaluation under the terms of Executive Order 12291.

In consideration of the foregoing, 49 CFR Part 212 is revised to read as follows:

PART 212—STATE SAFETY PARTICIPATION REGULATIONS

Subpart A—General

- Sec.
212.1 Purpose and scope.
212.3 Definitions.
212.5 Filing.

Subpart B—State/Federal Roles

- 212.101 Program principles.
212.103 Investigative and surveillance authority.
212.105 Agreements.
212.107 Certification.
212.109 Joint planning of inspections.
212.111 Monitoring and other inspections.
212.113 Program termination.
212.115 Enforcement actions.

Subpart C—State Inspection Personnel

- 212.201 General qualification of state inspection personnel.
212.203 Track inspector.
212.205 Apprentice track inspector.
212.207 Signal and train control inspector.
212.209 Train control inspector.
212.211 Apprentice signal and train control inspector.
212.213 Motive power and equipment (MP&E) inspector.
212.215 Locomotive inspector.
212.217 Car inspector.
212.219 Apprentice MP&E inspector.
212.221 Operating practices inspector.
212.223 Operating practices compliance inspector.
212.225 Apprentice operating practices inspector.
212.227 Inapplicable qualification requirements.

Subpart D—Grants in Aid

- 212.301 Grant authority.
212.303 Annual funding process.
212.305 Reports.
212.307 Maximum reimbursement levels.

Appendix A—Track Safety Standards—level of inspection effort and reimbursement

Appendix B—Freight Car Safety Standards—level of inspection effort and reimbursement

Appendix C—Railroad Operating Practices—level of inspection effort and reimbursement

Authority: Sections 202, 205, 206, and 207; Pub. L. No. 91-458, 84 Stat. 971 *et seq.*, as amended by sections 4 and 5; Pub. L. No. 96-423, 94 Stat. 1812 (45 U.S.C. 431, 434, 435, 436).

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.

§ 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); and

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

(e) "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.

§ 212.5 Filing.

Each State agency desiring to conduct investigative and surveillance activities must submit to the Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, the documentation which contains the information prescribed by §§ 212.105 and 212.107.

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 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 and operating practices for the railroads.

(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 conditions and practices relevant to safety by conducting inspections and investigations throughout the national railroad system in coordination 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 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.

§ 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 section 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.

(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 delegation 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 safety practices applicable to railroad facilities, equipment, rolling stock, and operations in that State;

(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.

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

(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.

§ 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.

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

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

§ 212.109 *Joint planning of inspections.*

Prior to 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 Railroad Safety for 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 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 of Railroad Safety cannot agree on an annual work plan, the Associate Administrator shall review the matter.

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

§ 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.

(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 participating 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, D.C. 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 companies, and standard railroad 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, compliance inspector, and apprentice inspector shall meet the applicable requirements of §§ 212.203–212.225 of this subpart.

§ 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 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 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 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 (40 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

(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.

§ 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, 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.

§ 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) Rear End Marking Device Regulations (49 CFR Part 221);

(3) Railroad accidents/incidents: reports classification and investigations (49 CFR Part 225); and

(4) 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.

§ 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 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.

Subpart D—Grants in Aid

§ 212.301 Grant authority.

The FRA is authorized to pay, out of funds appropriated for the purpose, up to 50 percent of the cost of the personnel, equipment, and activities reasonably required for a State agency to carry out investigative and surveillance activities prescribed by the FRA as necessary for enforcement of the Federal railroad safety laws and regulations.

§ 212.303 Annual funding process.

(a) A State agency that is participating in investigative and surveillance and related administrative or supervisory activities under this part by agreement or certification, or any State agency making application for such participation, may apply for funding under this subpart. An application for funding for a full fiscal year should be submitted to the Associate Administrator not later than sixty (60) days prior to commencement of that fiscal year. Applications for funding may be submitted at any time during a fiscal year by a State agency that is initially commencing investigative and surveillance activities for the remainder of that fiscal year.

(b) An application shall contain:

(1) Assurance satisfactory to the Associate Administrator that:

(i) The State agency will provide the remaining cost of the safety program conducted with respect to the agreement or certification entered into under this part; and

(ii) The aggregate expenditure of funds of the State, exclusive of Federal grants, for the safety program conducted with respect to the agreement or certification entered into under this part will be maintained at a level which does not fall below the average level of equivalent expenditures by the States for the two fiscal years preceding October 16, 1970.

(2) A description of the State safety program conducted with respect to the agreement or certification entered into under this part, including a description of the personnel, equipment and activities to be involved in the State program; and

(3) A summary of estimated program costs for the fiscal year.

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

(c) Approval of a funding application, in whole or in part, constitutes a conditional obligation of funds in the approved amount. Payment is made in reimbursement of allowable costs actually incurred, not to exceed the approved amount.

(d) The Associate Administrator determines the apportionment of Federal funds to be paid to each State agency which submits a funding application under this subpart.

§ 212.305 Reports.

Each State agency receiving funding under this subpart shall submit periodic reports of investigative and surveillance activities, and expenses incurred in relation to those activities, as required by the States Participation Program Manual.

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

§ 212.307 Maximum reimbursement levels.

(a) *Agreement.* (1) The maximum level of inspection effort for which funding will be authorized with respect to a State agency participating by agreement is determined by the Associate Administrator, subject to paragraph (a)(2) of this section. In determining the maximum level of effort that will be funded, the Associate Administrator considers:

(i) The number of inspection points or miles of track requiring coverage;

(ii) Traffic levels of railroads operating in the State;

(iii) Accident history and accident potential of railroads in the State;

(iv) Any undertakings by the State agency to provide investigative and surveillance activities under the laws set forth at § 212.3(d)(2)-(6) of this part;

(v) The deployment of FRA personnel; and

(vi) Other relevant factors, including available obligational authority.

(2) Upon the request of a State agency providing all planned compliance inspections under the Federal Railroad Safety Act of 1970 and consistent with the provisions of this part, the minimum level of effort that FRA will authorize for funding is not less than that set forth in Appendices A, B and C to this part.

(b) *Certification.* (1) Except as provided in paragraph (b)(2) of this section, the maximum level of inspection effort for which reimbursement may be authorized with respect to a State agency participating by certification is set forth in Appendices A, B and C to this part.

(2) The Associate Administrator may authorize an increase in the maximum level of inspection effort for which reimbursement will be permitted under paragraph (a) of this section. This increase may not exceed more than double the maximum levels prescribed in Appendices A, B and C to this part and must be based on a showing by the State agency that special circumstances necessitate additional investigative and surveillance activities.

(c) *Allocation.* The FRA reserves the right to allocate available obligational authority among participating States in the event insufficient funds are appropriated to provide the full 50 percent Federal contribution authorized by the Federal Railroad Safety Act of 1970.

(d) *Additional participation.* A State agency participating by agreement or certification may elect to provide increments of inspection effort beyond the level established for purposes of maximum funding under this subpart. However, all investigative and surveillance activities conducted by a participating State agency must be carried out through personnel qualified under Subpart C of this part.

Appendix A.—Track Safety Standards—Level Of Inspection Effort And Reimbursement

As provided in this part, the minimum level of investigative and surveillance effort for a State agency participating by certification and the maximum reimbursement level for the Federal share of such activities with respect to the Track Safety Standards are specified for each State and are expressed in terms of man-years of effort.

State	Minimum inspection effort	Maximum reimbursement level
Alabama.....	1.66	2
Arizona.....	.88	1
Arkansas.....	1.19	2
California.....	3.38	4
Colorado.....	1.2	2
Connecticut.....	.21	1
Delaware.....	.1	1
Florida.....	1.41	2
Georgia.....	1.96	2
Idaho.....	.93	1
Illinois.....	5.30	6
Indiana.....	2.62	3
Iowa.....	2.54	3
Kansas.....	2.79	3
Kentucky.....	1.53	2
Louisiana.....	1.43	2
Maine.....	.58	1
Maryland.....	.47	1
Massachusetts.....	.48	1

State	Minimum inspection effort	Maximum reimbursement level
Michigan	.48	1
Minnesota	2.40	3
Mississippi	2.40	3
Missouri	1.18	2
Montana	2.36	3
Nebraska	1.59	2
Nevada	1.80	2
New Hampshire	.50	1
New Jersey	.23	1
New Mexico	.76	1
New York	.80	1
North Carolina	2.15	3
North Dakota	1.32	2
Ohio	1.64	2
Oklahoma	3.34	4
Oregon	1.65	2
Pennsylvania	1.07	2
Rhode Island	3.94	4
South Carolina	.05	1
South Dakota	1.03	2
Tennessee	.99	1
Texas	1.24	2
Utah	4.94	5
Vermont	.59	1
Virginia	.24	1
Washington	1.52	2
West Virginia	1.92	2
Wisconsin	1.54	2
Wyoming	1.85	2
	.70	1

Appendix B.—Freight Car Safety Standards—Level of Inspection Effort and Reimbursement

As provided in this part, the minimum level of investigative and surveillance effort for a State agency participating by certification and the maximum reimbursement level for the Federal share of such activities with respect to the Freight Car Safety Standards are specified for each State and expressed in terms of man-years of effort:

State	Minimum inspection effort	Maximum reimbursement level
Alabama	1.24	2
Arizona	.28	1
Arkansas	.50	1
California	1.76	2
Colorado	.51	1
Connecticut	.20	1
Delaware	.14	1

State	Minimum inspection effort	Maximum reimbursement level
Florida	1.82	2
Georgia	1.19	2
Idaho	.41	1
Illinois	3.49	4
Indiana	1.77	2
Iowa	1.82	2
Kansas	.74	1
Kentucky	1.35	2
Louisiana	1.02	2
Maine	.33	1
Maryland	.54	1
Massachusetts	.40	1
Michigan	1.54	2
Minnesota	1.66	2
Mississippi	.47	1
Missouri	.99	1
Montana	.67	1
Nebraska	.54	1
Nevada	.13	1
New Hampshire	.07	1
New Jersey	.77	1
New Mexico	.18	1
New York	1.86	2
North Carolina	.79	1
North Dakota	.23	1
Ohio	4.67	5
Oklahoma	.49	1
Oregon	.66	1
Pennsylvania	3.47	4
Rhode Island	.04	1
South Carolina	.44	1
South Dakota	.15	1
Tennessee	.82	1
Texas	2.94	3
Utah	.85	1
Vermont	.10	1
Virginia	1.66	2
Washington	1.90	2
West Virginia	1.40	2
Wisconsin	1.16	2
Wyoming	.40	1

Appendix C.—Railroad Operating Practices—Level Of Inspection Effort And Reimbursement

As provided in this part, the minimum level of investigative surveillance effort for a State agency participating by certification and the maximum reimbursement level for the Federal share of such activities with respect to the Operating Practices Standards are specified for each State and expressed in terms of man years of effort:

State	Minimum inspection effort	Maximum reimbursement level
Alabama	0.63	1
Arizona	.29	1
Arkansas	.59	1
California	2.69	3
Colorado	.59	1
Connecticut	.29	1
Delaware	.16	1
Florida	.90	1
Georgia	1.16	2
Idaho	.29	1
Illinois	3.99	4
Indiana	1.27	2
Iowa	.79	1
Kansas	1.24	2
Kentucky	1.41	2
Louisiana	.66	1
Maine	.18	1
Maryland	.80	1
Massachusetts	.43	1
Michigan	1.35	2
Minnesota	1.24	2
Mississippi	.35	1
Missouri	1.45	2
Montana	.61	1
Nebraska	1.39	2
Nevada	.14	1
New Hampshire	.03	1
New Jersey	.67	1
New Mexico	.26	1
New York	2.27	3
North Carolina	.59	1
North Dakota	.28	1
Ohio	2.55	3
Oklahoma	.36	1
Oregon	.60	1
Pennsylvania	3.60	4
Rhode Island	.06	1
South Carolina	.34	1
South Dakota	.10	1
Tennessee	.89	1
Texas	2.54	3
Utah	.39	1
Vermont	.03	1
Virginia	1.19	2
Washington	.86	1
West Virginia	.74	1
Wisconsin	.90	1
Wyoming	.36	1

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(Secs. 202, 205, 206 and 207, Pub. L. No. 91-458, 84 Stat. 971 et seq., as amended by sections 4 and 5, Pub. L. 96-423, 94 Stat. 1812 (45 U.S.C. 431, 434, 435, 436))

Robert W. Blanchette,
Administrator.

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