



US Department
of Transportation
Federal Railroad
Administration

*C.C. Kutch
Specialists
Chief Inspectors
OP Inspectors
MP+E Inspectors
Each Office Circulate
& Return*

Memorandum

Date **AUG 26 1993**

Reply to Attn of **OP-93-11**
MP&E-93-48

Subject **Protection of Utility Employees**

Edward R. English
From: **Edward R. English**
Director, Office of Safety Enforcement

To: **Regional Directors**

Attached is the Federal Register of August 16, 1993, containing the Agency's final rule regarding the Protection of Utility Employees. It goes into effect on September 15, 1993.

Please ensure that all appropriate Specialists and Inspectors are provided a copy of this new regulation.

Thank you.

#



U.S. Department of
Transportation —

News:

Office of the Assistant Secretary for Public Affairs
Washington, D.C. 20590

FOR IMMEDIATE RELEASE

Wednesday, August 11, 1993

FRA 04-93

Contact: John F. Fitzpatrick

Tel.: (202) 366-0881

FRA AMENDS RULE FOR UTILITY
TRAIN SERVICE EMPLOYEES

The Federal Railroad Administration (FRA) today amended current safety requirements to ensure protection of certain railroad employees and at the same time eliminate unnecessary costs and inefficiency.

Today's action establishes the conditions under which certain railroad employees, designated as utility train service workers, may augment a train or yard crew for a limited time period, such as brief switching operations, without traditional "blue-signal" regulations. It is based on the premise that utility workers can safely work under the same conditions as other train or yard crew members provided appropriate safety standards are established and maintained.

The "blue signal" regulation, established in 1976, prescribes special safety requirements for protection of railroad employees, other than train and yard crews, engaged in the inspection, testing, repair and servicing of railroad rolling equipment. Train and yard crews are not subject to this regulation when they work as a unit, in communication with the locomotive engineer, on equipment they are assigned to operate.

FRA's rule has the potential to save the industry \$55 million in the first year and could also generate approximately 200 new jobs for utility train service employees. This action allows a safe way for railroads to increase the efficiency of their operations.

Due to technological changes and collective bargaining, the typical size of train and yard crews has been reduced over the years. According to FRA, the safety of railroad employees and train operations is better served by permitting the use of utility workers to supplement today's smaller crews. This action will not affect the collective bargaining agreements between rail management and rail labor organizations, nor will it affect the traditional division of work among railroad crafts.

The amendment, which will be published in the Federal Register, does not change current "blue signal" regulations applicable to mechanical employees.

#####

8-16-93
Vol. 58

No. 156

federal register

Monday
August 16, 1993

United States
Government
Printing Office

SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, \$300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6328)

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR-11, Notice No. 3]

RIN 2130-AA77

Protection of Utility Employees

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

ACTION: Final rule.

SUMMARY: FRA regulations prescribe minimum requirements for certain railroad operating rules and practices, including blue signal protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. Such activities may require employees to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from blue signal protection, unless assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. FRA is revising the exclusionary language to allow augmentation of a crew with a "utility" employee, and creating alternate safety procedures to prevent injury to these employees.

EFFECTIVE DATE: These rules will become effective 30 days after the date of publication.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street SW., room 8201, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James T. Schultz, Office of Safety, FRA, RRS-11, Washington, DC 20590 (telephone: 202-366-9252), or Kyle M. Mulhall, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202-366-0443).

SUPPLEMENTARY INFORMATION:

Background

The "blue signal" provisions of FRA's railroad operating practices regulation (49 CFR part 218, subpart B) were promulgated to prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment whose activities require them to work on, under, or between such equipment and subjects them to the danger of personal injury posed by any movement of such equipment. Examples of activities requiring blue signal protection include, but are not limited to, the following: Breaking or making steam and air hose connections (including connection by coupling irons), connecting or disconnecting electric control cables between equipment, replacing broken coach windows, making repairs beneath the car to blower motors or steam regulators, making electric pantograph inspections, repairing or replacing a rear end marker or telemetry device, and conducting initial terminal air brake tests when employees are required to go on, under, or between rolling equipment.

A person requiring blue signal protection is referred to as a "workman." 49 CFR 218.5(a). Train and yard crews are excluded from blue signal requirements except when assigned to perform such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate. The rationale for this exclusion is that the crew, working with their assigned engineer in control of the locomotive, has complete control and can prevent the unanticipated movement of the equipment on which crew members are working.

Since promulgation of the regulation, the size of train and yard crews has been significantly reduced through the collective bargaining process and increased operating efficiencies. Implementation of the recommendations of Presidential Emergency Board No. 219 ("PEB 219") (see Pub. L. No. 102-29, 1991) is greatly accelerating this process of change. Through this and prior processes, crews that once consisted of a locomotive engineer, fireman, conductor, and two trainmen, have in many cases been reduced to a locomotive engineer and conductor only.

Role of the Utility Employee

Before and after the PEB 219 process, railroads have used utility employees to assist the train or yard crew on a

temporary basis. A recent FRA investigation indicated that at least seven Class I railroads and three regional railroads are experimenting with the use of utility employees to supplement train and yard assignments. This practice has involved at least two hundred employees from the train service ranks at more than sixty-five locations. The following are examples of functions that are being performed by utility employees:

- Operating manual switches in yard or terminal areas or at industrial sidings and sending or receiving hand or radio communications with respect to such switching movements;
- Working with the regular train or yard crew to assemble trains from pre-tested and pre-inspected blocks of cars by preparing couplings between rail cars, coupling air hoses, and assisting switching movements;
- Participating in power brake inspections at initial terminals or intermediate terminals (49 CFR 232.12, 232.13);
- Participating in Freight Car Safety Standards inspections at initial terminals or elsewhere when cars are placed in a train (49 CFR 215.13); and
- Installing, testing, or replacing rear end marking devices (and/or telemetry devices) (see 49 CFR 221.16).

The blue signal regulations have, in the view of the railroads, constituted an impediment to the efficient use of these additional employees. The conflict between regulatory requirements and efficient utilization of personnel reached a critical level which prompted FRA to propose a new rule. In proposing this rule, FRA believed that there might be conditions under which train and yard crews could be temporarily augmented without a diminution of safety.

The Final Rule

The final rule defines the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. This rule is based on the premise that the utility employee should be able to work under essentially the same conditions as other yard or train crew members of the crew with which that employee is associated, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "worker" requiring blue signal protection.

Current regulations require blue signal protection when workers other than train and engine crews are required to go on, under, or between moving equipment. It was determined that train and yard crews could safely perform their tasks without blue signal protection because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communication with each other. The engineer at the controls of the locomotive is aware of other crew members working on the train and can prevent movement of the equipment while any of the crew are in a danger zone. The engineer also is in contact with other trains in the vicinity and can prevent unexpected couplings while crew members are in jeopardy.

Under the present regulation, however, the train and yard crew exclusion does not extend to utility employees. Many railroads believed that the exclusion did cover utility employees working with train and yard crews. FRA evaluated the position of those railroads and disagreed. The utility employee is not covered in the exclusion principally because he or she is not called for a tour of duty as a member of the cohesive working unit, but joins the unit for a brief period and then leaves, or is left by the work unit when the joint activity is completed. In other words, the utility employee is not called to operate the railroad rolling equipment assigned to the cohesive work unit known as the train or yard crew. Utility employees are required to establish full blue signal protection prior to performing any work on, under, or between the equipment. To avoid that necessity, the railroad can instead assign a brakeman to a crew for an entire tour of duty, even though that person's services are only required for a small portion of the duty tour. These assignments, however, thwart railroad efforts to efficiently deploy personnel.

Where the utility employee is working independently of the crew, the requirement for full blue signal protection is justified, since that employee lacks those characteristics that afford alternative protection. However, when the utility employee actually becomes an integral part of the crew, even temporarily, it is difficult from a safety perspective to justify the different regulatory treatment of that employee from other crew members. FRA therefore published a notice of proposed rulemaking (NPRM) to allow utility employees to be excluded from blue signal protection when working as a member of a train or yard crew.

Response to the NPRM**Need for Regulatory Change**

A number of commenters took issue with the need for this rule change. Railroad management took the position that the current rule does not preclude utility employees from taking advantage of the exclusion from blue signal protection. Representatives of rail labor objected, generally, that the rule expanded the exclusion at the cost of reduced safety for utility employees, and that the current blue signal rule does not provide adequate protection for train and yard crews.

As noted earlier, FRA disagrees with the railroads concerning the applicability of the current rule. Conversely, FRA believes that the current blue signal rule, in this aspect, is restrictive without benefiting safety. As it now exists, the rule unduly impedes the railroad industry's efforts to improve the efficiency of its operations. As to the concerns expressed by rail labor, FRA does not believe that according a utility employee the same level of protection historically provided to the train and yard crews constitutes a significant diminution of the utility employee's safety. As discussed below, FRA's accident data do not support the view that train crews are currently experiencing repeated injuries ascribable to unexpected train movement. Therefore, while there may be a theoretical cost to safety due to the absence of blue signal protection, FRA does not believe any real safety compromise will occur. Accordingly, FRA is amending the regulation to allow a utility employee to become a member of a train or yard crew (and thus entitled to the exclusion from blue signal requirements) under circumstances where safety will not be compromised.

The rule establishes the appropriate safeguards under which a utility employee may safely function as a "part of the train or yard movement" for a limited period. The rule is founded on the belief that the utility employee can work under the same conditions as the members of the yard or train crew to which the employee is assigned, provided appropriate communication is established and maintained. It remains essential that any employee who is not assigned to a train or yard crew, but who inspects, tests, repairs, or services rolling equipment and is on, under, or between that equipment, continues to be a "workman" (or "worker," as provided under the gender-neutral amendment that would be made by this proposal) requiring blue signal protection.

NPRM Restrictions

Several commenters from the railroad industry objected to the notice of proposed rulemaking because they believed the procedures for a utility employee to join a crew were too burdensome. The principal objection from both rail labor and rail management was designation of the locomotive engineer as the point of contact for the utility employee with the crew, which increased the burden of responsibility on the engineer. FRA response to this concern is contained below in the section-by-section analysis.

These commenters were also concerned that the communication requirements of the rule would add to radio congestion in major terminals. The reason for the blue signal exclusion for train and yard crews is that the very nature of their work requires a near constant communication with other crew members. As a result, crew members are kept so aware of each others activities that the notice provided by blue signals is redundant. This level of communication is essential to safety, and normally should not cause more communication than occurred when large train crews performed these tasks. FRA believes the resulting burden from these procedural requirements is minor when compared to the need to safeguard the level of communication necessary for the safety of the crew and the utility employee.

Safety Concerns

Some commenters urgently argued that unexpected movement of equipment due to the actions of other train crews could pose serious hazards for utility employees. If this is the case one would expect to find such injuries occurring today among regular brakemen and conductors working in the same environment. To examine this issue, FRA conducted a review of accident/incident records for the past five years concerning fatal and nonfatal injuries incurred by train and yard crews, including any utility employees, that could have resulted from faulty communication between working units (i.e., caused by unexpected equipment movement). Potential incidents were identified from our data base, and then each incident was assigned to an FRA inspector for investigation. FRA was able to identify only two incidents of employees suffering injury as a result of other members of the injured employee's crew causing unexpected movement of the equipment they were called to operate. FRA was not able to identify any case that involved

employee injury caused by another crew unexpectedly moving the equipment.

FRA also investigated a 1992 incident in which a brakeman was fatally injured during switching activities of another crew involved in assembling rail cars for his train. Evidence indicates that the brakeman was between rail cars during switching operations without adequate notice to the other crew. This unfortunate incident was avoidable had the brakeman communicated his intentions to the other crew, or fully understood the activities of the other crew.

Considering this information, and the anecdotal testimony provided by the commenters, FRA believes it is clear that a risk does exist if proper communication is not established and maintained between the train and yard crews and utility employees assisting those crews. FRA believes there is adequate justification in the record to propose future rulemaking to establish minimum safety standards for the protection of all train and yard crew members and utility employees from actions of other crews. FRA's review of the limited safety data available also serves to show, however, that there is no substantial injury record for utility employees when working with train or yard crews after establishing adequate communication and understanding of the work assignments, nor is there any crisis with respect to the much larger number of train and yard crew members who are potentially affected by the actions of other crews, such that utility employees would be exposed to unusual risk under the conditions specified in this final rule.

Craft Lines

Comments from rail labor argued that this rule would result in an expansion of train and yard crew functions at the cost of car repair employees. Rail management argued that no such change is planned or would occur. FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions, with the exception of train and yard crews. For instance, if supervisors perform duties that constitute inspecting, testing, repairing, or servicing, and that cause them to go on, under, or between the equipment, they are not excused from blue signal requirements by virtue of their supervisory occupation, unless that person was a member of a crew. Moreover, it must be noted that Congress, in excluding train and yard crews from blue signal requirements, took into consideration the types of duties traditionally performed by those crews and employed craft-based

language to exclude train and yard crew work from the statutory requirement for blue signal protection.

FRA does not intend that this rule cause a material expansion of the tasks performed by train and yard crews without blue signal protection that would decrease the level of safety, particularly for repair and servicing activities. As further discussed below, the final rule addresses these concerns in express language to the effect that only train and yard service duties may be performed without blue signal protection. FRA does not believe that the final rule will materially affect the type of work normally assigned to train or yard crews. Accordingly, it is unlikely to have a major impact on the availability of maintenance of equipment personnel across the national rail system. Any incidental impact can properly be addressed within the scope of other rulemaking activities, if necessary for safety.

FRA believes that many of the comments received in response to this NPRM were beyond the scope of the notice of this rulemaking. As a result, FRA cannot address them in this rule.

In addition, FRA received several late filed comments which were added to the docket. These comments came from rail labor and management. Some commenters urged adoption of the NPRM, withdrawing earlier objections, and one renewed its opposition. FRA considered these comments as much as was possible in such a late stage of the rulemaking process.

Section-by-Section Analysis

Section 218.5 (Definitions) is amended to reorder the existing definitions alphabetically, add new definitions of "controlling locomotive," "ranking crew member," "train and yard crew," "utility employee," and "worker" (in lieu of "workman," in order to make the rule gender-neutral). Under the definition, a "ranking crew member" is an individual responsible for overall supervision of a railroad operating crew and for coordinating the work the crew performs. The ranking crew member is normally specified in the railroad's operating rules, and is typically identified as a Conductor, Yard Engine Foreman, or Locomotive Engineer. If a railroad does not designate who is the ranking crew member, the rule assigns that role to the locomotive engineer since the engineer will have immediate control over movement of the assigned equipment.

Commenters representing rail labor have raised the issue that this rule may encourage the transfer of work from "workers," who require blue signal

protection, to "train or yard crews" who do not require such protection. In the final rule, a definition for "train or yard crew" is added. A train or yard crew, a term used in the 1976 amendment to federal railroad safety laws, 45 U.S.C. 431(g)(1), is being defined in order to clarify which railroad employees may be excluded from blue signal protection. FRA has highlighted the limits of the class of employees, the equipment they may be called to operate, and the nature of work that can be safely performed under the exclusion provided in this section. FRA considers the work that was normally performed by train and yard crews under the craft boundaries which existed at the time that the first blue signal regulation was adopted in 1970 to be work excluded from blue signal protection. Generally, train or yard crew members were permitted to work on, under, or between railroad rolling equipment without blue signal protection in order to set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail car couplers for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and positioning retaining valves; and, permit a locomotive engineer to conduct daily visual inspections of the locomotive consist for which he or she was called to operate. Additionally, train or yard crews may inspect, test, install, remove or replace a rear end marking device or end of train device without blue signal protection on their equipment. FRA has long held the belief that any other inspections, tests, services or repairs would be conducted under blue signal protection, even when performed by train or yard service employees. FRA received a number of conflicting comments on this issue. Since these comments were beyond the scope of the notice of the NPRM, FRA believes it will be necessary to revisit this topic in a future rulemaking.

Under the definition, a "utility employee" is an individual assigned to and functioning as a part of a train or yard crew who is subject to both the railroad's operating rules, the Hours of Service Act, and federal drug and alcohol regulations. These defining elements are necessary to ensure that the utility employee is legitimately engaged in service subject to the statutory exclusion and understands and can function safely in the operating environment.

Section 218.22 (Utility employee protection) is a new revised provision which defines the circumstances under which the utility employee may be permitted to function as a member of a

train or yard crew without the benefit of the protection provided by the blue signal regulations. It is not anticipated that this section will affect activity within locomotive servicing or car shop areas. FRA requested comments as to whether latitude should have been extended to such areas, but none were received.

Section (a) requires that before a utility employee becomes a temporary member of a train or yard crew, that employee must be subject to the same program of instruction for train and yard crews, and the requirements of §§ 217.9 and 217.11 of this chapter, the drug and alcohol control requirements of part 219, the Hours of Service Act, and the hours of service recording requirements.

Section 217.11 requires that railroads periodically instruct employees on the railroad's operating rules in accordance with its program. FRA expects railroads to amend their programs, if necessary, to ensure that utility employees are thoroughly trained in applicable operating rules. In addition, § 217.9 requires that railroads periodically conduct operational tests and inspections (efficiency tests) to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with its program. FRA expects the railroads to amend their programs, if necessary, to ensure that utility employees are included in the required testing and inspections.

A utility employee who is assigned to a train or yard crew is considered to be involved in the movement of a train for hours of service purposes under section 2 of the Hours of Service Act. The "commingled service" provision would of course be applicable if the utility employee engages in any other service for the railroad. Utility employees performing service covered by the Hours of Service Act are also considered to be in safety sensitive service and subject to FRA drug and alcohol control regulations.

In subsection (b), FRA limits the assignment of the utility employee to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crew member to one train for an entire tour of duty, that employee may not, while awaiting departure from the yard, be temporarily assigned to a second train crew to help them prepare to depart. On the other hand, a member of an inbound train crew at a crew change point,

whose assignment to the train is essentially completed, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train (assuming, of course, that hours of service limitations are not exceeded). Furthermore, an employee could not simultaneously perform duties on two different trains. For the exclusion to apply, a utility employee would have to be indistinguishable in duties and location from any other train crew member.

Subsections (c) and (e) establish the procedures for the utility employee to join a train or yard crew. FRA requires that the crew's locomotive engineer will have taken control of the assigned locomotive before a utility employee performs duties with the crew which will place him in the zone of danger. The presence and vigilance of the engineer at the controls (or, at the very least, in the cab) of the controlling locomotive is essential. Not only can the engineer, by his presence, prevent another employee from moving the equipment, but he or she can further guard against failure of the equipment (e.g., the air brakes) that may lead to unexpected movement, and can also guard against dangers posed by oncoming equipment. The presence of the engineer at the controls was a central factor in FRA's decision that train and yard crews can be safely excluded from blue signal protection.

Notwithstanding FRA's views, several comments were received regarding the presence of the engineer in the cab. These comments follow conflicting themes: first, that the engineer's presence was not essential to protection of the crew; and second, that the engineer's presence provides insufficient protection for the crew. Should the engineer leave the cab, that protection is lost. FRA recognizes that operational expediency may require the locomotive engineer to leave the cab. FRA believes the temporary replacement of the locomotive engineer by a member of his or her own crew provides an equivalent level of safety for any utility employee assigned to the crew.

A single locomotive engineer in helper service, or a single hostler may not take advantage of the exclusion from blue signal protection unless joined by a utility employee. Absent a crew member to monitor the locomotive, blue signal protection is required. The contribution to safety provided by the presence of a crew member in the cab, together with the other requirements of this rule, provide sufficient protection for train and yard crews and utility employees. FRA also limits the utility

employee's exclusion from blue signal protection to activities historically excluded when performed by train and yard service employees.

FRA recognizes that communication and coordination among the entire crew, including the utility employee, is crucial to the safety of the utility employee. When assigned to a train or yard crew and on arriving at the place where work is to be performed, the utility employee must establish personal contact with the ranking crew member. The utility employee must be made fully aware of the tasks to be performed while assigned as a member of that crew. While the assignment of a utility employee to a train or yard crew could be made by oral or written communication initiated by railroad supervision, the utility employee would be required to establish personal contact with the ranking crew member by a face-to-face discussion, telephone, radio or other telecommunication. The ranking crew member is required to inform all crew members about the addition of the utility employee; and communication must be established in the manner normally used by the operating crew. Communication of the identity of the utility employee is necessary to prevent confusion, particularly in the event more than one utility employee is assigned to a particular crew or more than one crew is working in the vicinity.

In subsections (d) and (e) FRA requires that the release of the utility employee cannot occur before all crew members are informed that the utility employee has ceased work with the crew. The notice to the crew members must be conveyed in the same manner as when the utility employee joined the crew. If these procedures are not strictly followed, the potential for misunderstanding and failure to properly account for all employees within the zone of danger would be unacceptably high. When fulfilling the proposed communication requirements by radio, strict adherence to proper procedures under 49 CFR part 220 is essential.

FRA received comments from railroad management questioning the necessity of establishing the maximum number of utility employees assigned to a particular train and the corresponding affect on maximum crew size. FRA believes the level of safety provided by the above communication requirements might be compromised in some circumstances if more than three utility employees were concurrently assigned to a crew. As the number of utility employees increases, the ability of the ranking crew member or locomotive

engineer to monitor the location and activity of each crew member would diminish. After considering these opinions, FRA determined that the addition of three utility employees to a post-PEB 219 crew would not compromise safety and still permit an adequate number of employees to accomplish the normal work assignment. Industry practice observed by FRA, shows that five is a manageable number of crew members (a locomotive engineer, a conductor or yard foreman, and three brakemen or switchmen). Under subsection (f), therefore, FRA anticipates that a railroad would rarely need to assign more than two utility employees to a crew in order to create an effective work unit. Adding more than three employees could tax unit cohesion at a risk to safety.

In subsection (g) FRA clearly emphasizes that the exclusion for train or yard crew members is only extended to include utility employees who have met the requirements of this rule. Furthermore, the exclusion for train and yard crews continues to apply only to railroad employees who are assigned to a crew and working on, under, or between rolling equipment they have been called or assigned to operate.

In subsection (h) FRA has clarified that this final rule does not change the provisions of § 221.16. FRA received comments concerning the requirements of § 221.16, but found the issue beyond the scope of the notice provided by the NPRM.

Regulatory Impact Analysis

This rule has been evaluated in accordance with existing policies and procedures and is considered to be major under Executive Order 12291 and significant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FRA has prepared and placed in the rulemaking docket a regulatory evaluation addressing the economic impact of this rule. It may be inspected and copied in room 8201, 400 Seventh Street, SW., Washington, DC 20590. Copies may be obtained by submitting written request to the FRA Docket Clerk at that same address. FRA estimates that the rule will yield a total of approximately \$600 million in discounted benefits over 10 years. The potential benefits are about \$183 million a year. FRA expects the industry to realize only 30 percent of that amount in the first year and 75 percent of the potential annual benefit in the tenth year.

FRA does not believe this rule will have any direct, adverse economic impact. It is possible that some indirect costs may be associated with the final

rule. FRA estimates that railroads may elect to purchase radio equipment costing \$130,000 in discounted costs over ten years. This cost is not imposed by the rule, but railroads may make the expenditure in order to take advantage of the rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. FRA believes that this final rule will have a beneficial economic impact on a substantial number of small entities, and did not receive comments proposing this impact be adjusted. A Regulatory Flexibility Analysis has been placed in the docket and copies may be obtained by contacting the FRA Docket Clerk. FRA's analysis found that the rule will allow railroads to operate more efficiently because of increased flexibility in assigning employees. For example, railroads will not have to employ additional crew members for an entire shift if those employees are only needed for yard operations. The reduced time needed to place and remove end-of-train markers should also produce a benefit.

Federalism Implications

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, FRA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism assessment.

Paperwork Reduction Act

There are no new information collection requirements in these FRA regulations. Consequently, no estimate of a public reporting burden is required.

Environmental Impact

These rule revisions will not have any identifiable environmental impact.

The Rule

In consideration of the foregoing, FRA amends part 218 of title 49, Code of Federal Regulations as follows:

PART 218—[AMENDED]

1. The authority for part 218 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

2. Amend the part by removing the term "workman" wherever it appears and by inserting in its place "worker," and by removing the term "workmen" wherever it appears and by inserting in its place "workers."

3. Revise § 218.5 to read as follows:

§ 218.5 Definitions.

Absolute block means a block in which no train is permitted to enter while it is occupied by another train.

Blue signal means a clearly distinguishable blue flag or blue light by day and a blue light at night. When attached to the operating controls of a locomotive, it need not be lighted if the inside of the cab area of the locomotive is sufficiently lighted so as to make the blue signal clearly distinguishable.

Camp car means any on-track vehicle, including outfit, camp, or bunk cars or modular homes mounted on flat cars used to house rail employees. It does not include wreck trains.

Car shop repair track area means one or more tracks within an area in which the testing, servicing, repair, inspection, or rebuilding of railroad rolling equipment is under the exclusive control of mechanical department personnel.

Controlling Locomotive means a locomotive arranged as having the only controls over all electrical, mechanical and pneumatic functions for one or more locomotives, including controls transmitted by radio signals if so equipped. It does not include two or more locomotives coupled in multiple which can be moved from more than one set of locomotive controls.

Effective locking device when used in relation to a manually operated switch or a derail means one which is:

- (1) Vandal resistant;
- (2) Tamper resistant; and
- (3) Capable of being locked and unlocked only by the class, craft or group of employees for whom the protection is being provided.

Flagman's signals means a red flag by day and a white light at night, and a specified number of torpedoes and fusees as prescribed in the railroad's operating rules.

Group of workers means two or more workers of the same or different crafts assigned to work together as a unit under a common authority and who are in communication with each other while the work is being done.

Interlocking limits means the tracks between the opposing home signals of an interlocking.

Locomotive means a self-propelled unit of equipment designed for moving other railroad rolling equipment in revenue service including a self-

propelled unit designed to carry freight or passenger traffic, or both, and may consist of one or more units operated from a single control.

Main track means a track, other than an auxiliary track, extending through yards or between stations, upon which trains are operated by timetable or train order or both, or the use of which is governed by a signal system.

Ranking crew member means an individual in whom the general charge of the train or yard crew is vested in accordance with the railroad's operating rules. Unless otherwise designated by the railroad, the ranking crew member will be the assigned locomotive engineer.

Rolling equipment includes locomotives, railroad cars, and one or more locomotives coupled to one or more cars.

Switch providing access means a switch which if traversed by rolling equipment could permit that rolling equipment to couple to the equipment being protected.

Train or yard crew means one or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member; called to perform service covered by Section 2 of the Hours of Service Act; involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew; reporting and working together as a unit that remains in close contact if more than one employee; and subject to the railroad operating rules and program of operational tests and inspections required in §§ 217.9 and 217.11 of this chapter.

Utility employee means a railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew in the assembly, disassembly or classification of rail cars, or operation of trains (subject to the conditions set forth in § 218.22 of this chapter).

Worker means any railroad employee assigned to inspect, test, repair, or service railroad rolling equipment, or their components, including brake systems. Members of train and yard crews are excluded except when assigned such work on railroad rolling equipment that is not part of the train or yard movement they have been called to operate (or been assigned to as "utility employees"). Utility employees assigned to and functioning as temporary members of a specific train or yard crew (subject to the conditions set forth in § 218.22 of this chapter), are excluded only when so assigned and functioning.

Note: Servicing does not include supplying cabooses, locomotives, or passenger cars with items such as ice, drinking water, tools, sanitary supplies, stationery, or flagging equipment.

Testing does not include (i) visual observations made by an employee positioned on or alongside a caboose, locomotive, or passenger car; or (ii) marker inspections made in accordance with the provisions of § 221.16(b) of this chapter.

4. Add a new § 218.22 to read as follows:

§ 218.22 Utility employee.

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer of that crew;

(2) The locomotive engineer is in the cab of the controlling locomotive, or, while the locomotive is stationary be replaced in the cab by another member of the same crew;

(3) The utility employee established communication with the crew by contacting the ranking crew member on arriving at the train (as defined for the purpose of this section as one or more locomotives coupled, with or without cars) and before commencing any duties with the crew.

(4) Before each utility employee commences duties, the ranking crew member shall provide notice to each crew member of the presence and identity of the utility employee. Once all crew members have acknowledged this notice, the ranking crew member shall advise the utility employee that he or she is authorized to work as part of the crew. Thereafter, communication shall be maintained in such a manner that each member of the train or yard crew understands the duties to be performed and whether those duties will cause any crew member to go on, under, or between the rolling equipment; and

(5) The utility employee is performing one or more of the following functions: set or release hand brakes; couple or

uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(d) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall notify the ranking crew member. The ranking crew member shall then provide notice to each crew member that the utility employee is being released from the crew. Once each crew member has acknowledged the notice, the ranking crew member shall then notify the utility employee that he is released from the train or yard crew.

(e) Communications required by § 218.22(c)(4) and (d) shall be conducted between the utility employee and the ranking crew member. This communications shall be conducted either through direct verbal contact, by radio in compliance with part 220 of this chapter, or by oral telecommunication of equivalent integrity.

(f) No more than three utility employees may be attached to one train or yard crew at any given time.

(g) Any railroad employee who is not assigned to a train or yard crew, or authorized to work with a crew under the conditions set forth by paragraph (b) of this section, is a worker required to be provided blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

(h) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.

5. In Appendix A to Part 218—Schedule of Civil Penalties, a new section is added in numerical order to the penalty schedule as follows:

Appendix A to Part 218—Schedule of Civil Penalties

Section	Violation	Willful violation
Subpart B—Blue Signal Protection of workers:		
218.22 Utility employees:		
(a) Employee qualifications	\$5,000	\$7,500
(b) Concurrent service	\$5,000	\$7,500
(c) Assignment conditions:		
(1) No controlling locomotive	\$5,000	\$7,500
(2) Empty cab	\$5,000	\$7,500
(3)(4) Improper communication ..	\$5,000	\$7,500
(5) Performing functions not listed	\$2,000	\$4,000
(d) Improper release of utility employee	\$2,000	\$4,000
(f) More than three utility employees with one crew	\$2,000	\$4,000

Appendix C [Redesignated from Appendix B]

6. Appendix B to part 218 is redesignated as Appendix C, and the title is revised to read as follows: "Statement of Agency Enforcement Policy on Tampering".

7. A new appendix B to part 218 is added to read as follows:

Appendix B to part 218—Statement of Agency Enforcement Policy on Blue Signal Protection for Utility Employees

The following examples of the application of the train or yard crew exclusion from required blue signal protection for utility employees are provided to clarify FRA's enforcement policy. In the first four examples, the utility employee is properly attached to and functioning as member of a train or yard crew and is excluded from blue signal protection, provided all the conditions specified in § 218.22 are met:

Example 1: A utility employee assists a train crew by adding or reducing railroad cars to or from the train. The utility employee may perform any duties which would normally be conducted by members of the train crew, i.e., setting or releasing handbrakes, coupling air hoses and other connections, prepare rail cars for coupling, and perform air brake tests.

Example 2: A utility employee is assigned to assist a yard crew for the purpose of classifying and assembling railroad cars. The yard crew onboard their locomotive arrives at the location in the yard where the work is to be performed. At that time, the utility employee may attach himself to the yard crew and commence duties as a member of that yard crew.

Example 3: A utility employee is assigned to inspect, test, remove and replace if necessary, a combination rear end marking device/end of train device on a through freight train. The utility employee attaches himself to the train crew after the arrival of the train and its crew at the location where this work is to be conducted. He may then perform duties as a member of that crew.

Example 4: A railroad manager who properly attaches himself as a utility employee to a train or yard crew, in accordance with § 218.22, may then function as a member of the train or yard crew under the exclusion provided for train and yard crews.

Note: In the last four examples, any railroad employee, including regularly assigned crew members, would need blue signal protection to perform the described function.

Example 5: Prior to the arrival of a through freight train, a utility employee installs an end-of-train device on one end of a block of railroad cars that are scheduled to be picked up by the freight train.

Example 6: A railroad employee attaches himself to a train or yard crew while the crew is in the ready room preparing to take charge of their train. Prior to the train crew leaving the ready room and taking charge of the equipment, the employee couples air hoses and other connections between the locomotives.

Example 7: A railroad employee is attached to a train crew after the train crew has taken charge of the train. It is necessary for the employee to perform a repair on a rail car, such as replacing a brake shoe, in addition to those duties normally performed by train or yard crew members.

Example 8: A train or yard crew, supplemented by three utility employees, has an assigned locomotive and train. The regular crew, including the engineer, has left the train to eat lunch. The utility employees have remained with the train and are coupling air hoses between rail cars in the train.

Issued in Washington, DC, on August 5, 1993.

S. Mark Lindsay,

Acting Federal Railroad Administrator.

[FR Doc. 93-19484 Filed 8-13-93; 8:45 am]

BILLING CODE 4810-06-P