
Office of the Inspector General

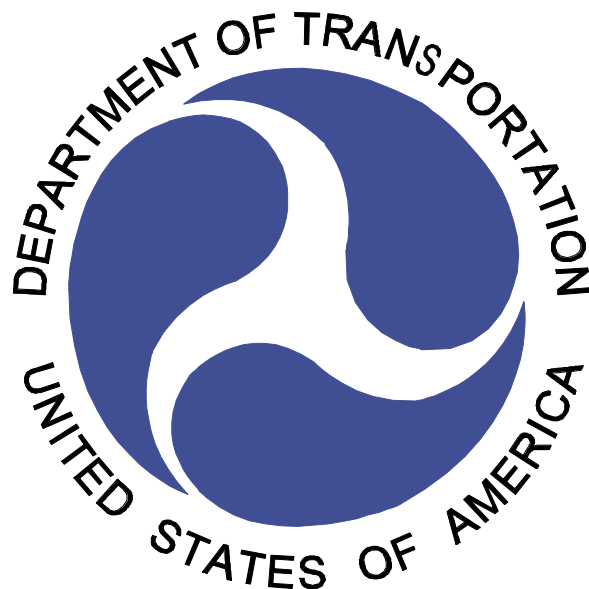
Audit Report

Railroad Safety Program

Federal Railroad Administration

Report Number : R9-FR-7-003

Date Issued: December 19, 1996





Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation

Office of Inspector General

Subject: ACTION: Report on Railroad Safety
Program, Report No. R9-FR-7-003

Date: December 19, 1996

From: Joyce N. Fleischman
Acting Inspector General

Reply to
Attn of: Weintrob:x61992

To: Federal Railroad Administrator

I am providing this report for your information and use. Your October 11, 1996, comments to our September 13, 1996, draft report were considered in preparing this report. A synopsis of the report follows this memorandum.

In your comments to our draft report, you concluded that because the Office of Inspector General (OIG) audit preceded implementation of the Federal Railroad Administration's (FRA) Safety Assurance and Compliance Program (SACP), the report was not relevant to the way FRA currently does business. However, you agreed several of the audit recommendations made good sense, and you concluded the most substantial OIG concerns were being addressed through the SACP. Additionally, you stated ". . . to ensure national consistency and respond to OIG recommendations, FRA will either reemphasize existing relevant instructions or provide new guidance to the field inspectors with a written memorandum. We will do this to ensure that all of our guidance to field inspectors is complete, up to date, usable, and consistently applied. We plan to issue the field instructions relevant to the OIG report by December 1, 1996. "

Our report accurately reflects the state of FRA's Inspection Program at the time of our audit. We have, however, reviewed the SACP and program results as presented in your comments to our draft report. The SACP, and additional FRA actions planned as outlined in your comments, when fully implemented, have the potential of becoming an

effective Railroad Safety Program. Accordingly, our recommendations are considered resolved subject to the followup provisions of Department of Transportation Order 8000.1 C. As we discussed, in order to provide FRA timely feedback regarding the effectiveness of the SACP, OIG intends to begin an audit of SACP in late Fiscal Year 1997.

I appreciate the courtesies and cooperation extended to the auditors by FRA managers and inspectors. If I can answer any questions or be of further assistance, please feel free to contact me on x61959 or Lawrence H. Weintrob, Assistant Inspector General for Auditing, on x61992.

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U.S. Department of
Transportation

Office of the Inspector General

Railroad Safety Program

Federal Railroad Administration

Report No. R9-FR-7-003

December 19, 1996

Objective

The objective of the audit was to assess the effectiveness of the Federal Railroad Administration's (FRA) inspection and enforcement of Federal railroad safety standards.

Conclusions

FRA's inspection and enforcement of Federal railroad safety standards were not effective and did not ensure railroads complied with safety standards. We found FRA inspectors did not cover areas necessary to ensure compliance with safety standards and did not make followup inspections when a higher than average number of deficiencies existed. Railroads cited for safety violations frequently did not certify to FRA that remedial action was taken to correct identified violations. Also, FRA did not recommend civil penalties to the maximum extent allowable for serious safety violations. These conditions occurred because FRA inspectors, and their managers, did not comply with FRA established policies and procedures. Furthermore, FRA managers did not adequately monitor the work of inspectors and left inspection techniques and enforcement decisions to the discretion of individual inspectors.

Monetary Impact

No monetary impact was estimated for the safety-related issues discussed in this report.

Recommendations

We recommended the FRA Administrator ensure inspection coverage is sufficient to promote compliance with safety standards; ensure railroads report remedial action taken to correct safety violations; and increase enforcement severity for those railroads that continually do not comply with Federal safety standards, including using violations earlier in the inspection cycle to discourage repeat conditions and assessing civil penalties to the maximum extent allowable.



U.S. Department of
Transportation

Office of the Inspector General

Management Position

FRA agreed that several of the audit recommendations made good sense, and stated its Safety Assurance and Compliance Program, implemented in March 1995, will address the most significant Office of Inspector General (OIG) concerns. Additionally, FRA stated it will either reemphasize existing relevant instructions or provide new guidance to the field inspectors with a written memorandum. FRA will ensure all guidance to field inspectors is complete, up to date, usable, and consistently applied. FRA plans to issue the field instructions relevant to the OIG report by December 1, 1996.

Office of Inspector General Comments

FRA's planned actions are considered responsive to our recommendations. Therefore the recommendations are considered resolved, subject to the followup provisions of Department of Transportation Order 8000.1C.

SYNOPSIS

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I. INTRODUCTION

Background

The Federal Railroad Safety Act of 1970 provided authority to the Federal Railroad Administration (FRA) to conduct surveillance and investigative activities at railroads for the purpose of determining compliance with safety regulations and orders. The act provided the first comprehensive legislation addressing railroad safety. Subsequent legislative authority was provided to FRA by the Rail Safety Improvement Acts of 1974 and 1988, and the Rail Safety Enforcement and Review Act of 1992.

The primary mission of the FRA is to promulgate and enforce rail safety regulations. The goal of FRA's Railroad Safety Program is to promote safe railroad operations by reducing train accidents, deaths and injuries to railroad employees and the public, and property damage due to noncompliance with safety regulations and rules. During the 6-month period, October 1995 through March 1996, the railroad industry nationwide suffered seven serious accidents in which 25 people were killed and 35 people were injured.

During Fiscal Year (FY) 1996, FRA had 396 inspectors assigned to eight regions. These inspectors were responsible for rail safety in the disciplines of hazardous materials (HAZMAT), motive power and equipment (MP&E), operating practices (OP), signal and train control (S&TC), and track. In addition, 135 inspectors in 31 states participated with FRA under cooperative agreements to monitor railroads' compliance with the safety regulations.

For FYs 1995 and 1996, the FRA budget for railroad safety was \$47.8 million and \$49.6 million, respectively. FRA's inspection universe includes 300,000 miles of railroad track; 1.2 million freight and passenger cars; 26,000 locomotives; 89,000 miles of S&TC systems; and 60,000 grade crossing signal installations.

Regulations applicable to the Railroad Safety Program are contained in Title 49, Parts 200-240, of the Code of Federal Regulations (CFR). These regulations prescribe the minimum Federal safety standards for locomotives and freight cars, railroad operating rules and practices, signal and train control, and track. FRA's Enforcement Manuals set forth the methods and procedures to be used by their safety inspectors to enforce rail carrier compliance with Federal safety standards.

In March 1995, FRA began changing its inspection and enforcement strategy to a systems-oriented approach, with less emphasis on individual inspections. Under its new Safety Assurance and Compliance Program (SACP), FRA will conduct safety audits to evaluate the railroads' safety processes, identify root causes of noncompliance, and help solve systemic problems. FRA intends to consult with management and labor from each major railroad to identify systemic problems. The railroads will be required to develop annual system safety plans for resolving these problems. FRA intends to review and approve the plans and allocate its inspector resources to monitor outcomes. FRA will then focus its enforcement activities on railroads' performance against mutually agreed upon plans.

During FY 1995, FRA completed railroad safety audits, under its new SACP, on the Southern Pacific Transportation Company (SP) and Conrail. Safety standard noncompliance was identified in the following areas: railroad operating practices, freight car and locomotive inspections, freight car and locomotive repairs, hazardous material shipping documentation, and employee safety. As of August 20, 1996, FRA had completed 16 of 26 audits scheduled for FY 1996.

Objective, Scope, and Methodology

The objective of the audit was to assess the effectiveness of FRA's inspection and enforcement of Federal railroad safety standards.

The audit covered Railroad Safety Program activities (excluding hazardous material program activities which were the subject of a previous Office of Inspector General (OIG) audit, Report No. R9-FR-5-006) during the period January 1992 through June 1995. Although the audit was conducted during the period May 1994 through June 1995, we updated our audit through December 1995.

We visited FRA regional offices in Vancouver, Washington (Region 8), and Sacramento, California (Region 7); FRA's Office of Safety Enforcement and Office of Safety Analysis in Washington, D.C.; and the Oregon Public Utilities Commission in Salem, Oregon. We accompanied FRA and state inspectors on 75 inspections (26 MP&E, 20 OP, 18 S&TC, and 11 track) at railroad facilities in Arizona, California, Nevada, Oregon, South Dakota, Utah, and Wyoming.

We reviewed laws, regulations, operating manuals, and pertinent instructions; reviewed inspection and enforcement policies and procedures for the MP&E, OP, S&TC, and track inspection disciplines; analyzed inspection and enforcement records including prior inspection results; interviewed FRA and railroad industry officials; and observed inspectors while conducting inspections.

We did not evaluate the effectiveness of FRA's new SACP because it was only in the early implementation stage at the time we were completing our audit field work. After it has had time to mature, we will evaluate it.

Our audit was performed in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States. The audit included such tests of procedures and records as were considered necessary in the circumstances.

Management Controls

We identified and evaluated policies, procedures, and practices applicable to railroad safety inspection and enforcement program activities. The audit included a review of management controls applicable to planning and conducting inspections, and enforcing regulations. We evaluated procedures for documenting inspections and enforcement actions, the extent of supervision and management oversight, program review techniques, and systems for reporting program activities and results.

Prior Audit Coverage

In the past 5 years, the OIG issued three reports relating to FRA's safety programs:

- The audit of Certification of Locomotive Engineers, Report No. R6-FR-5-013, dated April 11, 1995, found about 70 percent of railroads had not screened engineers against the National Driver Register to identify driving accidents involving controlled substances or alcohol, as required by regulation.
- The audit of Hazardous Materials Program, FRA Region 7,

high-risk shippers for inspections, or (4) reviewed four important safety areas during inspections of railroads and shippers.

- The audit of Railroad Accident Reporting System, Report No. AS-FR-5-011, dated March 10, 1995, found railroad accident reports lacked required explanations for not reporting (1) alcohol or drug impairment as primary or contributing causes in cases where employees tested positive, and (2) all causes in multiple railroad accidents.

In the past 5 years, the General Accounting Office (GAO) issued one report relating to FRA's safety programs:

- Railroad Safety: Continued Emphasis Needed for an Effective Track Safety Inspection Program, Report No. RCED-94-56, dated April 22, 1994. GAO found FRA had improved its Track Inspection Program and had a sound strategy for correcting weaknesses identified in earlier GAO reports. To further strengthen rail safety, FRA needed to incorporate site-specific data on passenger and hazardous materials traffic in its inspection plan, and improve the reliability of accident and injury data.

II. FINDING AND RECOMMENDATIONS

Finding. Inspection and Enforcement of Safety Standards

FRA's inspection and enforcement of Federal safety standards were not effective and did not ensure railroads comply with safety standards. We found FRA inspectors did not cover areas necessary to ensure compliance with safety standards and did not make followup inspections when a higher than average number of deficiencies existed. Furthermore, railroads cited for safety violations frequently did not certify to FRA that remedial action was taken to correct those violations. Also, FRA did not recommend the maximum allowable civil penalties for serious safety violations. These conditions occurred because FRA inspectors, and their managers, did not comply with FRA established policies and procedures. Furthermore, FRA managers did not adequately monitor the work of inspectors and left inspection techniques and enforcement decisions to the discretion of individual inspectors.

Discussion

Safety Inspections. Regular inspections coverage did not ensure compliance with FRA established safety standards. As a result, unsafe conditions that could cause accidents or derailments went undetected. In accordance with FRA's Enforcement Manuals, monitoring railroad compliance through regular inspections is the major activity of inspectors. For example, the FRA's Track Enforcement Manual states ". . . the major portion of an inspector's enforcement activities will be spent in monitoring of railroad compliance performance through regular inspection activity." Regular inspections are designed to provide broad representative coverage of the safety conditions at the railroads.

We accompanied FRA inspectors on 75 safety inspections (26 MP&E, 20 OP, 18 S&TC and 11 track) and found they did not consistently (1) review the railroads' inspection records prior to commencing, during, or subsequent to their inspections; (2) review the railroads' records of personnel designated as qualified inspectors; (3) ensure railroads took remedial action when major safety defects were found; and (4) perform complete inspections of freight cars.

Inspection Records - Title 49, CFR, Parts 213, 215, 219, 229, and 236 require railroads to maintain records of inspections performed under Federal safety standards, and make those records available to FRA inspectors. For

example, Title 49 CFR Part 213, Subpart F, Section 213.241, entitled "Inspection Records," requires:

(a) Each owner of track to which this part applies shall keep a record of each inspection required to be performed on that track under this subpart. . . . (d) Each owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administrator.

Similar requirements apply to records for freight car and locomotive inspections, alcohol and drug testing, and signal and train control inspections.

According to FRA Enforcement Manuals, railroad inspection records are a valuable source of information to assist FRA inspectors in determining (1) the railroad's level of compliance with the Federal safety standards, (2) the quality of the railroad's inspections, and (3) the adequacy of remedial or corrective action taken to comply with Federal safety standards. In fact, FRA's Operating Practices Enforcement Manual states:

Records inspection is more than simply to determine compliance/noncompliance. This effort provides in-depth insights into the commitments and comprehensiveness of all safety programs.

During 74 of the 75 inspections we observed, inspectors did not review the railroads' inspection records prior to commencing, during, or subsequent to their inspections, even when violations and serious safety defects were identified by the inspectors. For example, at the SP's Roseville Yard (Yard), California, two serious track safety defects were found by the inspector (4-foot vertical split head and a broken joint bar) that should have been detected and corrected by SP inspectors during monthly track inspections. However, SP's track specialist, present during FRA's inspection, told us monthly inspections were not conducted, and the Yard track had not been inspected in the last 50 days. The specialist explained that inspections were not being performed monthly because the Yard was scheduled for extensive track rehabilitation in the following months.

A review of SP's inspection records by the FRA inspector, during or immediately following the inspection, would have confirmed that SP was in violation of Title 49 CFR Part 213 for the frequency and manner of

inspecting track. Also, a review of SP's inspection records by the inspector would have determined SP's level of compliance with Title 49 CFR Part 213 safety standards for (1) the frequency and manner of inspecting track, (2) recording track inspection results, and (3) maintaining track inspection records. Based on this review, the inspector could select specific areas in the Yard for re-inspection to determine the adequacy of remedial or corrective action taken by SP.

FRA specialists and inspectors told us a review of railroad inspection records was not always practical, because of limited inspection time, and unavailability of records. However, during inspections we observed, we found that a review of the railroad's inspection records was (1) not time consuming because the scope of review was limited to the railroad's most current inspection results (weekly, monthly or quarterly), and (2) possible because the railroad's inspection records were available at locations inspected.

Qualified Railroad Inspectors - Title 49 CFR Parts 213, 215, and 229 require railroads to designate qualified persons to conduct inspections for compliance with Federal safety standards, and maintain written records of each designation in effect and the basis for each designation. For example, Title 49 CFR Part 213, Subpart A, Section 213.7, entitled "Designation of qualified persons to supervise certain renewals and inspect track" requires:

- (a) Each track owner to which this part applies shall designate qualified persons to supervise restorations and renewals of track . . .
- (b) Each track owner to which this part applies shall designate qualified persons to inspect track for defects . . .
- (c) With respect to designations under paragraphs (a) and (b) of this section, each track owner must maintain written records of (1) Each designation in effect; (2) The basis for each designation. . . . These records must be kept available for inspection or copying by the Federal Railroad Administrator during regular business hours.

Similar requirements apply under freight car and locomotive safety standards.

During 37 of the 75 inspections we observed (26 MP&E and 11 track), inspectors did not review the railroads' records of personnel designated as qualified inspectors or the basis for each designation, even when it was evident that railroad personnel were not qualified. For example, at SP's

Eugene Yard, Oregon, seven employees who had been designated as qualified locomotive inspectors did not have formal training to perform their assigned duties. These employees were performing inspections outside their crafts. In one case, a carman (freight car mechanic) was performing the duties of a locomotive shop foreman. This carman had neither the formal training in performing locomotive inspections, nor the background and experience for supervising locomotive inspections and repairs. In our discussions with this carman, he told us he was not comfortable signing locomotive inspection and repair reports because he was not confident inspections and repairs were performed properly.

FRA inspectors were aware that SP's employees were not qualified to perform locomotive inspections outside their craft. In fact, FRA specialists and inspectors told us a review of railroads' records of personnel designated as qualified inspectors was not realistic, since FRA did not have the authority to challenge the designation. FRA specialists also told us labor unions' collective bargaining agreements allow personnel in one craft to bid on jobs in another craft based strictly on seniority.

FRA has the authority under Title 49 CFR Parts 213, 215, and 229 to challenge designations and the basis on which the designations were made. Under these parts, the criteria for making designations is quite specific. For example, Title 49 CFR Part 213, Subpart A, Section 213.7, entitled "Designation of qualified persons to supervise certain renewals and inspect track" requires a designated qualified person that inspects track for defects must have:

- (1) At least (i) one year experience in railroad track inspection; or (ii) A combination of experience in track inspection and training from a course in track inspection or from a college level educational program related to track inspection;
- (2) Demonstrated to the owner that he (i) Knows and understands the requirements of this part; (ii) Can detect deviations from those requirements; and (iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations;
- and (3) Written authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

Similar requirements apply to designated qualified persons that inspect freight cars and locomotives.

Also, the purpose of reviewing the railroad's records of personnel designated as qualified inspectors is to (1) monitor the railroads' compliance with the Federal safety standards including maintaining written records of each designation and the basis for the designation; and (2) determine whether or not the designee understands his/her responsibilities and requirements under Federal safety standards.

Defective Units - Title 49 CFR Parts 213, 215, 229, and 236 require railroads to comply with special conditions and restrictions in the movement and use of defective units. For example, Title 49 CFR Part 215, Subpart A, Section 215.9, entitled "Movement of defective cars for repair" requires:

(a)(3) A tag or card bearing the words "bad order" or "home shop for repairs" and containing the following information, shall be securely attached to each side of the car . . . (c) Movement of a freight car paragraph (a) of this section may be made only for the purpose of effecting repairs. . . .

Similar requirements apply to locomotives, signals, and track.

During 8 of 75 inspections we observed (6 MP&E, 1 S&TC, and 1 track), inspectors did not ensure railroads took remedial action on units where serious safety defects, including violations, were found. The 8 encompassed 9 FRA inspectors, covering 3 railroads at 7 locations. We noted cases where safety defects could have caused an accident or derailment, if not immediately corrected. For example, on September 20, 1994, at Union Pacific's (UP) Albina Yard, Oregon, a freight car was found with a defect so serious in nature--missing side bearing block--that the car could sway and derail in transit. The defect was serious enough that the FRA inspector should have issued a special notice of repair, informing the railroad in writing that the freight car was not in a serviceable condition and should be removed from service until repaired. However, the inspector neither issued a special notice of repair nor ensured UP "bad ordered" the freight car and removed it from service. Further, the FRA inspector did not subsequently query UP to verify if and when the freight car was repaired.

Our followup on UP's corrective action found the nature of the defect more serious than when originally inspected by FRA. Specifically, UP discovered during repair that side bearing blocks had never been installed on either side of the freight car. Review of the freight car's movement history disclosed

that since July 27, 1994 (the release date from the freight car manufacturer), up to the date of FRA's inspection, the freight car had traveled back and forth between the west and midwest. The freight car stopped several times at UP yards where the freight car should have been inspected and the missing side bearing blocks detected and corrected.

FRA specialists and inspectors told us that FRA policy does not require inspectors, at the completion of an inspection, to followup on the railroad's remedial action taken on defective units. They also told us, in most cases, the railroads take remedial action during the course of the inspection. In addition, specialists and inspectors told us that railroads usually return to FRA their copy of the inspection report indicating the remedial action taken on defective units.

During inspections observed, we noted that in some cases railroads would correct the defect at the time the defect was identified by the FRA inspector, such as tightening a loose bolt or replacing a missing cotter pin. However, at the time of our visits, we did not observe the railroad taking remedial action on defects that required more extensive repair. Also, our examination of inspection reports returned by the railroads to FRA disclosed that railroads were merely annotating remedial action taken with "repaired or corrected," dating and initialing the railroad followup section of the inspection report. Railroads were not required to submit to FRA their copy of the inspection report annotating actual remedial action taken to correct the defective condition. Without such information, it is difficult for FRA to know what, if any, action was actually taken. For example, during one MP&E inspection observed, we witnessed the railroad continued operating defective locomotives even when a violation was issued. At the Chicago and North Western (CNW) depot in Bill, Wyoming, on one locomotive, a violation was written against the railroad for failure to perform a 92-day locomotive inspection. On another locomotive, a defect was written for an exhaust leak at the manifold base gasket. The exhaust leak should have been repaired to prevent entry of products of combustion into the operating locomotive cab or other compartments. Both locomotives left the depot without being repaired, or prepared for movement in accordance with the conditions and restrictions outlined in locomotive safety standards. Title 49 CFR Part 229, Subpart A, Section 229.9, entitled "Movement of non-complying locomotives" requires:

- (a)(1) A qualified person shall determine (i) That it is safe to move the locomotive, and (ii) The maximum speed and other restrictions necessary for safely conducting the

movement . . . (a)(2)(i) The engineer in charge of the locomotive shall be notified in writing and inform all other crew members in the cab of the presence of the noncomplying locomotive and the maximum speed and other restrictions determined under paragraph (a)(1)(ii) of this section . . . (a)(3) A tag bearing the words "noncomplying locomotive" and containing the following information, shall be securely attached to the control stand on each MU [multiple unit] or control cab locomotive and to the isolation switch or near the engine start switch on every other type of locomotive. . . .

The MP&E inspector did not verify what remedial action was taken prior or subsequent to the locomotives departing the depot immediately following the MP&E inspection.

Freight Car Inspections - FRA's MP&E Enforcement Manual requires ". . . the entire [freight] car must be inspected for compliance with [49, CFR], 215, 231 and 232." MP&E specialists told us inspectors must inspect the entire freight car without the assistance of railroad employees.

During 8 of 26 MP&E inspections we observed, only one side of the freight cars was inspected by the MP&E inspectors. This practice seriously limited FRA's ability to evaluate the safety of the entire car and significantly diminished the value and effectiveness of the inspection. When other inspectors learned that we were taking exception to that practice, it was discontinued. However, some MP&E inspectors told us it was standard practice among inspectors to inspect only one side of the freight car, and to rely on the railroads to inspect the other side. Inspectors also told us this practice avoided delaying movement of outbound trains. However, during the inspections we observed, at no time would a train have been delayed had the inspectors inspected both sides of the freight cars; the trains did not depart until 2 or 3 hours after the inspections. The MP&E specialist in Region 8 told us he was not aware his inspectors were inspecting only one side of freight cars, and he did not approve of the practice.

We also found that when railroad employees inspected one side of the freight car, they were reluctant to identify safety defects. The employees believed if they found defects, it would reflect poorly on the inspection practices of the railroad since the cars had been previously inspected by the railroad. For example, at UP's Albina Yard, Oregon, only after completing inspection of one side on a series of freight cars did the railroad employee disclose to the FRA inspector that a major defect existed on one of the cars.

The defect was so serious in nature--missing side bearing blocks--that it could cause the car to sway and derail.

A primary duty of the MP&E inspector is to monitor railroad compliance with freight car safety standards and inspect freight cars to appraise their condition. MP&E specialists agreed this was not accomplished by inspecting one side of the freight car, or by allowing the railroad to assist in the inspection. In our opinion, this type of inspection practice is both inadequate and ineffective in detecting noncompliance with safety standards, and increases the risk that railroads are operating freight cars in unsafe conditions that may cause accidents or derailments.

Followup Inspections. Followup inspections at 10 of 16 locations were not conducted when a higher than average number of defects existed. Furthermore, railroads cited for safety violations did not certify to FRA that remedial action was taken to correct 171 of 183 safety violations reviewed.

FRA's S&TC Enforcement Manual requires followup inspections "... where the previous inspections have found a higher than average number of defective conditions."

In Calendar Year (CY) 1994, S&TC inspections found 16 locations with a higher than average number of defects. FRA's S&TC_Enforcement Manual requires a followup inspection within 60 days. However, followup inspections were not conducted at 10 of the 16 locations.

Beginning January 1995, Title 49 CFR Part 209, Subpart E, entitled "Reporting of Remedial Actions" requires:

... that if an FRA Safety Inspector notifies a railroad both that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, the railroad shall report to the FRA Safety Inspector, within 30 days after the end of the calendar month in which such notification is received, actions taken to remedy that failure.

To facilitate compliance, FRA revised its Form FRA F 6180.96, Inspection Report, to include instructions to the railroads on Title 49 CFR Part 209, Subpart E requirements.

FRA also issued instructions to its inspectors on how to process inspection reports when railroads are cited for violations. Following receipt of the railroad's certification of corrective action, the inspector is to review the action, and then submit the report to FRA Headquarters.

We found FRA had not established controls to ensure (1) railroads certify corrective action was taken for violations and (2) inspectors submitted inspection reports to FRA Headquarters. As of April 1996, Region 7 inspectors had not processed 58 inspection reports with 183 recorded safety violations for inspections identified in CY 1995. For 51 of the inspection reports, covering 171 violations, inspectors could not provide us with evidence the railroads had certified that remedial action had been taken. For the other seven inspection reports, covering 12 violations, inspectors had not submitted the railroads' certifications to Headquarters.

FRA Region 7 specialists told us monitoring railroad compliance with Title 49 CFR Part 209, Subpart E requirements is the responsibility of each inspector. However, without adequate controls to ensure railroads comply with Title 49 CFR Part 209, Subpart E, FRA has no assurance railroads are correcting unsafe conditions.

Enforcement Actions. Enforcement actions taken by FRA have not been sufficient to encourage railroads to improve compliance with Federal safety standards.

Compliance with Federal safety standards is the responsibility of the railroads. When FRA inspection reveals noncompliance with Federal safety standards, the conditions are listed as defects on the inspection report. When a defect poses an immediate safety hazard, or when noncompliance persists, the inspector prepares a violation report. FRA inspectors have a range of enforcement actions they may take. Title 49 CFR identifies Special Notices of Repairs, Compliance Orders, Emergency Orders, and monetary civil penalties.

In FRA Region 7, we selected nine railroad inspection locations with a high number of recorded defects and violations during CYs 1992 through 1995. We found FRA's enforcement actions at six locations had negligible effect on the railroads' level of compliance with Federal safety standards. For example, over the course of 57 MP&E inspections at SP's Tucson Yard, Arizona, inspectors identified a total of 691 locomotive safety defects, including 73 violations. For each inspection, the same or similar

types of defects were identified. In each of the 4 years, over 47 percent of the locomotives inspected were defective.

FRA specialists and inspectors told us that the number of inspection and violation reports issued are not always the most important indicators of a railroad's level of compliance with Federal safety standards. They indicated that the number and/or frequency of train accidents or personal injuries resulting from train accidents was more important.

In our opinion, the number, frequency, and seriousness of violations are indicative of a railroad's noncompliance with established safety requirements. FRA specialists should use the full range of enforcement actions to encourage and elicit compliance with safety rules and regulations. When noncompliance persists, FRA needs to take progressively more severe enforcement action against railroads.

Civil Penalties. Civil penalties were not recommended to the maximum extent allowable for serious safety violations in 39 of the 75 violation reports we reviewed. As a result, civil penalties did not have the desired effect of bringing about compliance with Federal safety standards or penalizing noncompliance with standards.

Title 49 United States Code Annotated Section 21301 (a) (1) states:

Subject to section 21304 of this title, a person violating a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of the subsection. A separate violation occurs for each day the violation continues.

In FRA Region 7, for CYs 1993 through 1995, there were 740 violation reports filed against Class 1 railroads. We selected 75 of these violations where FRA recommended a 1 day civil penalty. In 39 of the 75 violation reports, there was evidence the violation had existed for more than 1 day. For example, a March 1993 T-10 track geometry inspection on SP's mainline track between San Luis Obispo and Salinas, California, identified three track violations that, if not corrected, could contribute to train derailments. Daily AMTRAK passenger service and freight trains operate on this mainline track. Three separate followup inspections in April 1993, found the same three track violations. FRA Region 7 recommended three,

1 day civil penalties totaling \$15,000. However, a maximum civil penalty of \$450,000 could have been recommended since the defects remained uncorrected from 22 to 44 days (1 Violation x \$5,000 x 22 Days; 1 Violation x \$5,000 x 24 Days; and 1 Violation x \$5,000 x 44 Days).

Safety Assurance and Compliance Program. As previously stated in this report, in March 1995, FRA began changing its inspection and enforcement strategy to a systems-oriented approach, with less emphasis on regular inspections. Under its new SACP, FRA will conduct safety audits to evaluate railroads' safety processes, identify noncompliance, and help solve systemic problems. This new program can be effective in increasing railroad safety if FRA maintains the requirements it has established to inspect railroads for compliance with existing safety standards. It is commendable that FRA has successfully brought together railroads, unions, and railroad employees in an effort to increase railroad safety. The success of FRA's new program is still dependent on:

- Regular inspections as a critical source of safety information; including identifying systemic problems and targeting high-risk areas for safety audits.
- The skill levels of the inspectors conducting the safety audits. Safety audits will require a greater degree of uniformity, consistency and consensus among inspectors versus the independent nature of regular inspections.
- FRA enforcing safety regulations. More severe enforcement actions, including larger civil penalties, should be taken against railroads which (1) continue to be in noncompliance with Federal safety standards, or (2) refuse to cooperate in achieving effective safety performance based on safety plans.

Recommendations

We recommend the FRA Administrator assure its inspectors comply with established inspection policies and procedures by:

1. Directing inspectors to:
 - (a) review the railroads' inspection records prior to commencing, during, or subsequent to inspections, especially when violations and serious safety defects are identified;

- (b) review the railroads' records of personnel designated as qualified inspectors;
 - (c) ensure railroads take remedial action when serious safety defects are found; and
 - (d) inspect the entire freight car for compliance with safety standards, and do so independent of railroad personnel.
2. Establishing controls to ensure the railroads report remedial action taken to correct safety violations and serious defects; and conducting followup inspections where previous inspections have found a higher than average number of defective conditions.
 3. Increasing the enforcement severity, using the full range of enforcement actions, on those railroads that are continually not in compliance with Federal safety standards; including using violations earlier in the inspection cycle to discourage repeat conditions, and recommending maximum civil penalties where warranted.

Management Response

In the October 11, 1996, response to our September 13, 1996, draft report, FRA concurred with Recommendations 1(a), 1(c), 1(d), and 2; and partially concurred with Recommendations 1(b) and 3. FRA agreed to either reemphasize existing relevant instructions or provide new guidance to the field inspectors with a written memorandum. FRA will ensure all guidance to field inspectors is complete, up to date, usable, and consistently applied. FRA plans to issue the field instructions relevant to the OIG report by December 1, 1996.

For Recommendation 1(a), FRA will reemphasize the need to make proper use of railroad inspection records. However, FRA will not require inspectors to review records in connection with every regular inspection. Instead, the SACP incorporates a thorough review of railroad records. Under the SACP, FRA may include comprehensive reviews of railroad records as part of the inspection process.

For Recommendation 1(b), FRA did not believe it would be productive to review these records unless there is some reason to question the inspectors' qualifications. FRA will, however, reemphasize the need to review these records as circumstances warrant.

For Recommendation 1(c), FRA will reemphasize to its inspectors the need to ensure the repair of imminently hazardous conditions. However, FRA stated its policy does not require, and resources do not permit, FRA inspectors to verify remedial action taken on each and every unit of defective equipment. Instead, the SACP contains safeguards to enhance FRA's oversight of the remedial action process for major defects.

For Recommendation 1(d), FRA will reemphasize instructions to inspectors to clarify proper inspection practices.

For Recommendation 2, FRA will reemphasize instructions to inspectors to ensure railroads report corrective action taken in response to inspections, and this information gets submitted to FRA headquarters. FRA stated the SACP was designed to assure railroads take remedial action on major systemic problems. FRA will also reemphasize the importance of follow-up inspection where inspectors find defects of unusual quantity or severity.

For Recommendation 3, FRA disagreed that its enforcement actions have not been sufficient to encourage railroads to improve compliance.

However, FRA stated the OIG's recommendation was in line with FRA's policy under the SACP, which calls for progressively more severe enforcement action where serious violations persist. FRA will issue guidance to its inspector and other enforcement personnel to underscore the need to take progressively more severe enforcement action where safety violations persist. Also, where violations persist for multiple days, FRA enforcement personnel will weigh the seriousness of the violations and other relevant factors in deciding whether to assess multiple-day penalties.

FRA's complete response to the draft report is included as an appendix to this report.

Office of Inspector General Comments

FRA's planned actions are responsive to our finding and recommendations. Therefore, the recommendations are considered resolved, subject to the followup provisions of Department of Transportation Order 8000.1C.

During our evaluation of FRA's comments to our draft report, we reconfirmed the support for statements in our report.

AUDIT TEAM MEMBERS

The following auditors conducted the audit of the Railroad Safety Program in the Federal Railroad Administration.

Robin K. Dorn	Regional Audit Manager
Larry E. Arata	Project Manager
Scott K. Macey	Auditor-in-Charge
Linda R. Major	Auditor-in-Charge
Judy W. Nadel	Auditor
Humberto U. Melara	Auditor
Larry D. Plate	Auditor
Susan M. Lier	Auditor
Fred Oshalim	Auditor



U.S Department
of Transportation
Federal Railroad
Administration

Memorandum

Date: OCT 11 1996 Reply to Attn. of:

Subject: **RESPONSE: Report on the Railroad Safety Program**
Project No. 494-002-9000

From: Jolene M. Molitoris *Jolene*
Federal Railroad Administrator

To: Joyce Fleishman
Acting Inspector General

Attached is the response of the Federal Railroad Administration (FRA) to the revised draft report dated September 13, 1996. We agree in principle with certain portions of the recommendations made in the report.

In March 1995 (just before the end of the OIG audit period), FRA on its own initiative embarked on a comprehensive reinvention of its inspection and enforcement approach, the *Safety Assurance and Compliance Program* (SACP). Unfortunately, because the OIG audit predated implementation of this basic change in how FRA does business, as explained in detail in our response, the 'report does not reflect the ways that the SACP addresses the larger OIG concerns. In addition, FRA objects to the characterization of FRA's entire safety program as "ineffective," given FRA's reinvention of its safety program which we believe has contributed to the substantial improvements in rail safety nationwide during 1994 and 1995, the latter part of the audit period.

Nevertheless, as a result of our ongoing efforts to improve our processes, we agree that several of the recommendations make good sense and comport with our present policy. In these instances, FRA will reemphasize existing relevant instructions in written memo to all inspectors by December 1.

I ask that you not publish the report until we can meet to review our concerns. Thank you for your consideration and I await your positive response.

##

Attachment

**FEDERAL RAILROAD ADMINISTRATION RESPONSE TO
DRAFT REPORT OF THE OFFICE OF INSPECTOR GENERAL ON
THE RAILROAD SAFETY PROGRAM**

Introduction

The Office of the Inspector General (OIG) provided the Federal Railroad Administration (FRA) with a draft report on FRA's railroad safety program. The report examines FRA's program in two regions covering the western United States during the period January 1992 through June 1995. Based on OIG'S observation of 75 safety inspections in the various disciplines of railroad safety, the report raises some valid concerns about certain procedures employed in some of those inspections.

FRA does not agree with all of the report's findings and recommendations, as explained fully below. We have already addressed the most substantial OIG concerns through implementation of a new strategy for safety management, the *Safely Assurance and Compliance Program* (SACP). Accordingly, the OIG'S report is out of date, and is too narrowly focused.

FRA agrees, however, that several OIG recommendations make good sense, at least in part, and actually comport with our present policy. On those issues, to ensure national consistency and respond to OIG recommendations, FRA will either reemphasize existing relevant instructions or provide new guidance to the field inspectors with a written memorandum. We will do this to ensure that all of our guidance to field inspectors is complete, up to date, usable, and consistently applied. We plan to issue the field instructions relevant to the OIG report by December 1, 1996. In addition, over and above the OIG report, we will undertake a larger effort to complete a more comprehensive review of our field guidance by June 1997. We plan to include OIG in these efforts.

FRA emphasizes that in March 1995 ('just before the end of the OIG audit period), we embarked on our own initiative on a comprehensive reinvention of our inspection and enforcement program. Our new program, the SACP, builds on FRA's traditional program, which relied on site-specific inspections. SACP is based on our independent determination that FRA needed to evolve its safety program to achieve railroad-wide safety solutions, thereby achieving better leverage of our limited resources and ever greater levels of safety to reach our "zero tolerance" goal. In fact, the changes FRA initiated in the program cover a more comprehensive set of issues than the OIG recommendations address. Unfortunately, because the OIG audit predated implementation of this basic change in how FRA does business, the report does not reflect the ways that the SACP addresses the most substantial OIG concerns.

Some of the conclusions in the OIG report are stated so generally as to apply to the whole program without a foundation of data to support agency-wide conclusions. Chief among these are the conclusions that FRA's inspection and enforcement program is not effective and that its purported weaknesses may increase the risk to people who work or ride on trains, or who live or work near railroad operations. Despite being based on very limited and dated observations, the

report clearly implies that these conclusions apply on a national scale and at the present time. We believe the safety statistics from 1994 and 1995 clearly demonstrate the effectiveness of FRA's safety program. The report's continued negative characterization of the entire safety program does not accurately reflect the program itself and the hundreds of FRA and state safety professionals associated with it. We strongly urge that these overly broad conclusions be removed from the OIG'S final report.

FM's Safety Program IS Effective

The report does not set forth measures of effectiveness and then apply them to the program in an orderly manner. Instead, the report merely catalogues several instances where FRA inspectors did not use the inspection procedures OIG believes should be standard practice, points out a few examples of regulatory noncompliance that occurred after FRA inspections, and leaps to the conclusion that the whole system does not work effectively.

In contrast, FRA believes that one valid measure of a program designed to reduce accidents, deaths, and injuries associated with railroading is the number and rate of such events over time. The Government Performance and Results Act underscores the intent of Congress that all federal agencies measure performance in terms of such real-world results. As part of his regulatory reinvention initiative announced in March 1995, President Clinton made clear that regulatory agencies must assess their performance by measurable results that each agency hopes to achieve through its regulatory program. When the relevant safety performance statistics are taken into account, the report's most disturbing conclusions that "FRA's inspection and enforcement of Federal safety standards were not effective" and that the perceived flaws in the program maybe increasing safety risks seem inappropriately drawn considering the measurable safety data available.

Any complete analysis of FRA's effectiveness during the period in which OIG observed FRA inspections (1994- 1995) must take into account these safety improvements over those two years--the safest years in railroad history--including:

- rail-related fatality rates down by 17.8 percent;
- train accident rates down by 13.9 percent;
- rail passenger fatality/injury rates down by 7.9 percent;
- rail employee fatality/injury rates down by 30.3 percent;
- grade crossing accident rates down by 24.4 percent; and
- hazardous material release rates down by 24.4 percent.

We are continually looking for ways to enhance our program so that these safety measures can improve even more radically in the future. FRA recognizes that the daily actions of the railroads, railroad employees, motorists who use highway-rail grade crossings, and hazardous materials shippers, are crucial factors affecting these statistics, and that FRA's program alone does not determine these numbers and rates. However, because FRA's safety program addresses these very kinds of events, the resulting improvements must flow from the effectiveness of that program. The report ignores these all-important measures of FRA's effectiveness.

The extremely limited data on which the report is based cannot rationally support the report's broad conclusions. OIG observed 75 inspections in the period May 1994 through June 1995. FRA conducts scores of thousands of inspections every year. In 1995, for example, FRA conducted more than 54,000 inspections. Over the period studied by OIG(1992 through 1995), FRA conducted nearly 264,000 inspections. Thus, OIG observed .000284 (or about three hundredths of one percent) of the total number of inspections FRA performed in the audit period, yet made conclusions about the entire program. Moreover, some of the FRA practices to which OIG objects were detected in only a small portion of these 75 inspections. For example, FRA inspectors did not take the action OIG thought should be taken to ensure remedial action by railroads in 8 of the 75 inspections. Drawing universal, unqualified conclusions based on such minuscule data and without establishing measurement criteria seems contrary to sound analytical practice. Accordingly, whatever the merits of some of OIG'S comments on the finer points of inspection practice in the relative handful of inspections OIG observed, the report's general conclusions about FRA's effectiveness lack foundation.

The Period Studied by OIG Predates the Safety Assurance and Compliance Program

OIG'S report fails to take into account FRA's fundamental change in its inspection program, which is designed to address systemic safety issues and eliminate root causes of persistent safety problems. In March 1995, FRA announced the SACP, an enhanced approach to safety inspection and encouraging compliance that builds on and supplements the more traditional site-specific inspection program. The SACP was developed by FRA after a year of meetings, listening sessions, and discussions with our safety professionals within FRA and the states, and with our external rail industry customers labor, management, suppliers, and contractors, who brought their concerns and ideas to the table for us to hear. The OIG report states that it does not evaluate the effectiveness of the SACP because it was in its early implementation phase when the OIG auditors were completing their field work. Because the principles of the SACP are the heart of FRA's current safety program, a report that does not address them cannot hope to accurately analyze today's program.

The cornerstone of the SACP is its methodology for detecting and focusing on the root causes of systemic safety problems, especially on large railroad systems. Developing systemic solutions to systemic problems greatly leverages FRA's limited inspection resources. This approach involves

using teams that cut across regional boundaries to audit and develop safety profiles of the major railroads. The railroad, its employees, and their labor representatives are involved in developing that profile and formulating issues. If systemic problems are found, they are conveyed directly to the railroad's senior managers in a face-to-face meeting that includes employee representatives.

The railroad, together with their employees and labor organizations, must then develop an action plan addressing the identified problems in a manner and within time limits satisfactory to FRA. FRA monitors implementation of the action plan. To provide incentives for full cooperation and promote a spirit of partnership, FRA exercises a certain amount of forbearance in terms of imposing enforcement remedies as long as the railroad is cooperative. Of course, FRA stands ready to take aggressive enforcement action where cooperation on the identified issues does not emerge or wanes.

FRA has already initiated 27 SACP reviews of railroads. These reviews have led to implementation of action plans that have resulted in many concrete improvements to safety. SACP'S emphasis on solutions to systemic problems has clearly demonstrated its effectiveness. One illustration is the achievement of a comprehensive solution to track and signal problems on a major railroad. FRA's SACP team discovered a large number of track and signal defects at switches, insulated rail joints, and turnouts. The major root causes of the defects were poor drainage of the track structure and a lack of coordination between the track and signal departments. As part of its action plan, the railroad undertook to renew all of the turnouts and replace all defective rail joints on the line in question, and established a system of joint inspection of switches by track and signal inspectors. The SACP audit produced a comprehensive remedy to a systemic problem.

Another element of the SACP is what FRA calls "focused enforcement." This concept applies both in system audits of railroads and in regular inspection activity, and focuses enforcement efforts on the types of violations most likely to cause a train accident or injury. FRA's accident/injury database provides a wealth of information on what these leading causes of accidents and injuries are. Focused enforcement concentrates FRA's compliance efforts on those areas where improvements in compliance are most likely to produce the broadest safety gains.

SACP directly addresses some of larger OIG concerns:

- The report criticizes FRA for a lack of follow-up inspections where a higher-than-average number of defects are found. SACP embodies a philosophy of organized, systemic follow-up to ensure identified problems are remedied. Once FRA has approved a railroad's action plan, the SACP team develops a follow-up plan to monitor implementation of the action plan. FRA's project manager and team leaders ensure that the follow-up occurs.

- OIG is concerned that FRA inspectors do not inspect railroad inspection records during every safety inspection. While FRA inspectors need to spend most of their limited time determining actual safety conditions on the ground, review of a railroad's inspection records can provide a useful overview of the railroad's safety practices. The systematic inspection of railroad records and data is an important element of the SACP process. Team inspections allow FRA to inspect railroad records, which are often kept at a central location a great distance from the inspection sites, with greater efficiency than the individual site-specific inspection approach.
- The report calls for increasing enforcement severity against railroads that are continually in noncompliance with the safety laws. Focused enforcement under the SACP is in full accord with this recommendation. Under that concept, the greater the seriousness of the violations (as measured primarily by the likelihood of their causing an accident or injury) and the more persistent the noncompliance, the more aggressive is FRA's enforcement approach. Although SACP calls for a non-adversarial approach where railroads meet FRA's compliance expectations, it also entails progressively more severe enforcement where the absence of cooperation leads to violations of an inherently serious nature.

Of course, as the report points out, regular inspections are still an important part of FRA's safety program and are integral to ascertaining information both before and after SACP audits.

Specific Findings and Recommendations

The report makes several recommendations about FRA's inspection practices that, if implemented with respect to every inspection, would consume enormous amounts of time without materially advancing safety. At the same time, the recommended 'practices make sense and are already employed by FRA where appropriate to ensure safety. Accordingly, FRA disagrees with the recommendations but will re-emphasize to its inspectors the importance of "employing these practices in certain circumstances, as follows:

Inspection Records

OIG Finding: FRA inspectors did not consistently review the railroads' inspection records prior to commencing, during, or subsequent to their inspections; FRA should direct its inspectors to do so, especially where there are violations and serious defects.

FRA RESPONSE: FRA's SACP process incorporates procedures for the comprehensive, systematic review of inspection records and other relevant data. Furthermore, FRA does not believe that safety would be enhanced by requiring its inspectors to review railroad inspection records in connection with every FRA inspection.

FRA concurs with the intent of this recommendation to ensure that railroad inspection records are reviewed as part of the overall inspection process in accordance with FRA policies. FRA

inspected more than a million railroad records during the period of the OIG audit. Recognizing the inherent difficulties in ensuring sufficient records inspection under the site specific approach, FRA made certain that SACP incorporated a thorough review of railroad records. Under SACP, FRA may include comprehensive reviews of railroad records, along with accident and injury data, and on-the-ground monitoring, as part of the inspection process.

The report recommends that FRA should direct its inspectors to review the railroads' inspection records prior to, during, or subsequent to their inspections. The report states that FRA failed to review railroad inspection records in connection with 74 of the 75 inspections OIG observed. Of course, with respect to certain subjects, no railroad inspection records exist. For example, in some operating practice areas (e.g., radio communications standards) railroads do not maintain records as such. Therefore, in many of the inspections OIG observed, there may have been no railroad inspection records for FRA to review.

As noted above, system wide audits of railroads under SACP provide a means of efficiently examining a railroad's own inspection records in an organized, comprehensive manner. With regard to regular inspections, however, a review of railroad records is only one tool of inspection. The report provides no support for OIG'S implicit assumption that reviewing substantially more records would enhance safety. FRA's most important inspection goals are to determine and affect actual conditions on the ground. Those conditions, not inspection records, are the best evidence of a railroad's compliance. Accordingly, we spend the majority of our inspection time observing such conditions and making use of railroad records as a supplement when they are likely to provide information we need.

While FRA will re-emphasize the need to make proper use of railroad inspection records, we will not require that inspectors review such records in connection with every regular inspection (which is clearly the implication of the report's recommendation). Especially in light of the enhanced use of such records under SACP, a blanket requirement to review such records would reduce the amount of time available to inspect for actual unsafe conditions.

Records of Designation of Railroad Inspection Personnel

OIG Finding: FRA inspectors did not consistently review the railroads' records of personnel designated as qualified inspectors; FRA should direct its inspectors to do so.

FRA RESPONSE: FRA does not believe it would be productive to review the records of decimation of railroad inspection personnel unless there is some reason to question their qualifications: FRA will re-emphasize the need to do so in such situations.

The OIG would have FRA inspectors review the records of personnel designated as qualified railroad inspectors on a routine basis. The report states that in 37 track and equipment inspections FRA did not review such records. The report cites examples of mechanical employees assigned to inspect locomotives. The report incorrectly states that FRA has very

specific requirements for designating locomotive inspectors similar to those for track inspectors. This incorrect assumption colors much of the report's discussion of this issue.

FRA reviews the records of designated railroad inspection personnel when there is some reason to question their qualifications. For example, if a track inspector demonstrates in discussions with FRA personnel that he or she does not fully understand the track safety standards, FRA will follow-up with the railroad to ensure the inspector receives additional training. That is a rare event. FRA will re-emphasize the need to review records of the railroad's designation of inspectors in such circumstances. When FRA finds noncompliance, it is not often the result of a railroad inspector's lack of knowledge. Where a lack of qualifications is apparent, FRA acts to correct it, often by participating with rail management and labor in the training or restraining of railroad employees on regulatory compliance.

Ensuring Remedial Action on Major Defects

OIG Finding: FRA inspectors did not consistently ensure railroads took remedial action when major safety defects were found; FRA should direct its inspectors to do so.

FRA RESPONSE: FRA's new safety enforcement initiative contains strong safeguards that enhance FRA oversight of the remedial action process for major defects. Furthermore, FRA's policy does not require nor do our resources permit FRA to verify remedial action taken on each and every unit of defective equipment.

FRA concurs with the intent of this recommendation to ensure that railroads take remedial action when major systemic defects are found pursuant to FRA regulations and policies. The new SACP process places a strong emphasis on the use of remedial action plans. Under the SACP, a railroad must submit a safety action plan to FRA which details both long and short term remedial actions to address safety problems identified by FRA.

Furthermore, a railroad must complete remedial actions for major systemic defects in accordance with a time schedule that has been approved by FRA. FM's SACP inspection teams then conduct systematic follow-up inspections to ensure that the required remedial actions for major systemic defects have been accomplished and that these actions have been successful in remedying the safety problems and concerns which prompted them. Thus the SACP better assures remedial action for major systemic problems and relies more on a remedial action plan approved by FM's SACP team and project manager.

In a small fraction (8 out of 75) of the inspections OIG observed, FRA did not take action satisfactory to OIG to ensure that a defect considered serious by OIG was eventually repaired. The report recommends that FRA direct its inspectors to ensure that railroads take remedial action whenever "major" defects are found. The report does not define "major."

By training, experience, and policy direction, FRA inspectors would not allow major conditions to continue without ensuring that the condition is eliminated. Equipment inspectors have specific regulatory authority to order unsafe equipment out of service. Nevertheless, to ensure that there is no misunderstanding on this important point, FRA will re-emphasize to its inspectors the need to ensure the repair of imminently hazardous conditions such as broken rails or signal defects that could produce a false proceed indication.

For many conditions FRA cites as violations, the law requires that the railroad provide documentation of repair (see below). For defects of a lesser nature that are detected by FRA, experience suggests they are nearly always promptly repaired. Should FRA find a railroad using defective equipment after FRA had noted the defect to the railroad, FRA takes strong enforcement action against the railroad and/or individuals involved. However, FRA does not intend to monitor the repair of every piece of equipment it finds defective. The railroad has that clear responsibility. Chasing down the repair histories of thousands of pieces of equipment annually would divert FRA from using its inspection and enforcement tools to address compliance on a broader scale across the railroad.

The OIG report is simply incorrect factually with respect to one of the specific instances it relies on as an illustration of FRA's failure to ensure remedial action. The report (at 11) states that two locomotives left a depot at Bill, Wyoming after FRA notified the railroad of defects and without repairs being made or the appropriate actions taken to move the units for repair. In fact, prior to moving those locomotives from the depot, the railroad repaired one and took appropriate actions to move the other one for repair..

In some areas, while the OIG'S findings may not be fully accurate, the recommendation itself makes good sense. FRA will re-emphasize instructions to its field in these areas:

Controls on Remedial Action Reporting

OIG Finding: FRA lacked controls to ensure that railroads certified that correction action was taken on violations and that such certifications are submitted to FRA headquarters; FRA should establish controls with regard to serious defects and violations.

FRA RESPONSE: The SACP is designed to assure that railroads take remedial action on major systemic problems. Also, FRA will re-emphasize the need to ensure that railroads have reported that corrective action taken in response to site specific inspections, and that such reports are submitted to FRA headquarters.

FRA concurs with the intent of this recommendation. Indeed, FRA recognized the need for effective controls to ensure that railroads report remedial actions to report safety violations and serious defects when it revised its inspection program by developing the SACP. As

previously noted, SACP incorporates railroad safety action plans and the SACP team follow-up inspections as two central elements of the program. These two control mechanisms assure that railroads report remedial actions taken to correct major safety violations and defects,

By requiring railroads to submit action plans to FRA, with the input of their employees and labor representatives, which outline remedial actions and a time line for their completion, and by having SACP teams devise follow-up inspection programs to verify the railroad's remedial actions, and monitor those actions to determine the impact on improving railroad safety, FRA believes that it already has effective controls to ensure that railroads complete and report necessary remedial activities. Under the SACP, verification of remedial action reporting is not left to the discretion of the individual inspector, but instead it proceeds according to a plan administered the SACP team leaders and project manager.

Where FRA cites the railroad for a violation that can be remedied specifically, regulations require that the railroad report the remedial action it took to repair the defect. Under 49 CFR Part 209, Subpart E, the railroad must submit such a report of remedial action only when told to do so on the relevant inspection report. FRA does not so instruct the railroad if the violation is one that cannot specifically be remedied, such as an instance of excess service. The OIG report does not state whether, in all the instances it cites involving the absence of remedial action notifications, the railroad had been instructed to file such reports.

Nevertheless, the report points out that FRA needs to have better controls to ensure that railroads file these remedial action, reports, where required, and that the reports make it to FRA headquarters for entry in the inspection data base. FRA will re-emphasize its relevant instructions to inspectors involved with site specific inspections.

Inspecting the Entire Freight Car

OIG Finding: FRA inspectors did not consistently perform complete inspections of freight cars; FRA should direct its inspectors to do so.

FRA RESPONSE: FRA will re-emphasize instructions to inspectors to inspect both sides of freight cars.

In some of the equipment inspections OIG observed, FRA inspectors did not inspect both sides of a freight car. FRA agrees that its inspectors should inspect both sides. We will re-emphasize instructions to inspectors to clarify that this is the proper inspection practice.

Enforcement Actions

OIG Finding: FM's enforcement actions have not been sufficient to encourage railroads to improve compliance; FRA needs to take progressively more severe enforcement action where noncompliance persists; including using violations earlier in the inspection cycle to discourage repeat violations

FRA RESPONSE: Although FRA disagrees with the conclusion that its enforcement actions have not been sufficient to encourage railroads to improve compliance. FRA's enforcement policy under SACP emphasizes corrective action versus penalty assessment and calls for progressively more severe enforcement action where serious violations persist.

FRA disagrees with the conclusion that its enforcement actions have not been sufficient to encourage railroads to improve compliance. FRA believes that civil penalties and other enforcement tools are certainly appropriate in many instances of noncompliance. We have been aggressive in assessing penalties and other remedies when necessary. However, FRA has recognized that penalties alone are not sufficient to ensure compliance. That is why the SACP focuses more on pursuing corrective measures to address the root causes of safety defects through the development and implementation of safety action plans. However, when serious violations persist despite an action plan, enforcement under SACP calls for progressively more severe enforcement action.

OIG'S recommendation is in line with FRA's policy under SACP. Persistent noncompliance calls for a progressively severe enforcement response. Under the SACP policy of "focused enforcement," the seriousness of a violation (its likelihood of causing an accident or injury) is the primary criterion in determining the need for enforcement action.

The report does not state what enforcement actions FRA took in situations where OIG found such actions to be ineffective. It is not clear whether OIG is saying that violations were cited too infrequently to affect compliance or that, even though violations were cited, compliance did not improve.

In any event, as explained above, OIG'S recommendation supports FRA's policy under SACP. Persistent noncompliance calls for a progressively severe enforcement response. Under SACP'S policy of "focused enforcement," the seriousness of a violation (its likelihood of causing an accident or injury) is the primary criterion in determining the need for enforcement action. We assume OIG would concur that FRA should not expend its finite resources on the least significant kinds of violations.

While FRA has provided training at regional conferences concerning focused enforcement, FRA will issue guidance to its inspectors and other enforcement personnel to underscore the need to take progressively more severe enforcement action where serious safety violations persist.

The report makes some findings that did not directly lead to a corresponding recommendation. While FRA disagrees with either the factual finding or the conclusion reached by OIG, FRA will nevertheless re-emphasize relevant instructions to its enforcement personnel in these areas:

Follow-up Inspections

OIG Finding: FRA inspectors did not perform follow-up inspections when a higher-than-average number of defects was found.

FRA RESPONSE: Under SACP, organized follow-up on major systemic safety problems is a central element; however, FRA will re-emphasize the importance of follow-up inspections where inspectors find defects of unusual quantity or severity.

FRA agrees that follow-up inspections are extremely important to ensure compliance with federal regulations. With systematic FRA follow-up to major safety concerns a central tenet of the SACP process, FRA has sharpened assurance of appropriate follow-up on identified major safety problems.

Two key elements of the SACP process are the carrier's safety action plan, which describes remedial actions to address safety concerns, and an FRA plan for systematic follow-up inspections to monitor the implementation and effectiveness of the carrier safety action plan. Once FRA approves a carrier's safety action plan, each SACP inspection team develops a follow-up inspection program to monitor the plan. These follow-up inspections serve two objectives: First, to ascertain that railroads complete all necessary remedial actions according to a time schedule specified in the plan; and second, to monitor the effectiveness of the remedial actions in improving the safety of railroad operations.

The follow-up inspection program or audit devised by the SACP team specifies when and where follow-up inspections will occur and the frequency of follow-up inspections for both the near and long term. The SACP team must also establish specific milestones with measurable objectives that can help gage the effectiveness of the remedial actions that have been undertaken.

Although we agree with OIG'S general point about the need for effective follow-up inspections, we think the report is factually wrong in its discussion of this issue, leading to an incorrect impression as to the existence of a problem on this score. The OIG report cites an absence of follow-up inspections at 10 of 16 "locations" where FRA had found a higher than average number of signal and train control defects on its first visit. FRA's enforcement manual does not call for follow-up inspections at the precise location as the original defects in such situations. Instead, it mandates follow-up inspections of the area in which the defects were discovered, which could be at any of a number of different inspection sites in that area. By following up at different locations in the same area the inspector can determine whether the high rate of defects extends to an entire maintenance area, subdivision, division, or region. This permits the inspector to determine the appropriate level at which to address the problem.

Civil Penalties

OIG Finding: The field did not recommend the maximum civil penalties where violations persisted for multiple days.

FRA RESPONSE: Where violations persist for multiple days. FRA enforcement personnel should continue to weigh the seriousness of the violations and other relevant factors in deciding whether to assess a penalty for each day.

The report faults FRA field personnel for not always recommending civil penalties for each day that a violation persisted. Citing a railroad for separate penalties for all of the separate days that a violation continued requires proof that the violation did exist on each of those days. In a track case, for example, FRA would have to demonstrate that the same violation existed over those days and that the railroad used the track on each day for which it is cited.

Assuming such proof exists, FRA may decide not to assess penalties for each day of the violation, just as it may decide not to cite the violation at all. The inspector who makes the recommendation for the penalty and the FRA attorney who reviews it will look at the seriousness of the violation and other relevant circumstances (e.g., whether the violations were typical of the railroad's current performance or an aberration) in making the determination. As part of our overall review of guidance to the field, we will ensure that we have provided inspectors with sufficient guidance to ensure that their recommendations on whether to assess penalties for multiple days are consistent and logical.

Conclusion

In response to the OIG report's recommendations and because of our commitment to continually improve the safety program, FRA will re-emphasize in writing certain instructions to our field inspectors about inspection practices noted in the report and, where necessary, provide new written guidance. However, based on an extremely limited set of observations now more than eighteen months old, the OIG report gives the false impression that FRA's safety program is ineffective. Safety statistics demonstrate that safety improved in all major categories during the period studied. FRA began implementation of its new inspection and enforcement program, the Safety Assurance and Compliance Program, at the end of the OIG field work. SACP is providing even greater effectiveness, since it focuses on the root causes of systemic safety problems. In light of the demonstrated effectiveness of the program and steps it is taking to improve that effectiveness, FRA objects strongly to the report's misleading characterization of its safety program, which unfairly diminishes the extremely effective work of FRA's corps of safety professionals.

October 11, 1996