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226820

April 15, 2010



Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

FILED

APR 15 2010

**SURFACE
TRANSPORTATION BOARD**

Re: Docket No.
North America Freight Car Association v. Union Pacific
Railroad Company

Dear Secretary Quinlan:

Enclosed for filing is a signed original and 10 copies of a Formal Complaint Alleging Unreasonable Practices and Violation of Common Carrier Obligation in the above-captioned case. Also enclosed is a check in the amount of \$21,100.00 as filing fee for the same.

Please utilize the extra copy of this letter and the Complaint to file stamp and return to our messenger.

ENTERED
Office of Proceedings
APR 15 2010
Part of
Public Record

Sincerely,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for
North America Freight Car Association

Enclosures

FEE RECEIVED

APR 15 2010

**SURFACE
TRANSPORTATION BOARD**

ORIGINAL

226820



BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42119

NORTH AMERICA FREIGHT CAR ASSOCIATION

v.

UNION PACIFIC RAILROAD COMPANY

FILED
APR 15 2010
SURFACE
TRANSPORTATION BOARD

FORMAL COMPLAINT ALLEGING UNREASONABLE PRACTICES AND
VIOLATION OF COMMON CARRIER OBLIGATION

ENTERED
Office of Proceedings
APR 15 2010
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Public Record

FEE RECEIVED
APR 15 2010
SURFACE
TRANSPORTATION BOARD

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Attorneys for
North America Freight Car Association

Dated: April 15, 2010

I. IDENTITY OF THE PARTIES

1. North America Freight Car Association (“NAFCA” or “Complainant”) is an unincorporated association comprised of companies that manufacture, lease, rent, own, or operate private freight cars. The shipper members of NAFCA operate private freight cars that move from time to time over the lines of Defendant Union Pacific Railroad Company (“UP”). Freight cars manufactured or leased by other NAFCA members similarly move over UP lines from time to time, as do railroad-owned cars used by shippers who are NAFCA members. Many such movements are subject to the provisions of Item 200-A of UP Freight Tariff 6004 Series (the “Tariff”) and NAFCA members are potentially liable for violations of the Tariff.

2. UP is a common carrier by rail subject to the jurisdiction of the Board. NAFCA representatives have communicated with UP in an effort to resolve the issues raised in this Complaint but were unsuccessful.

II. DESCRIPTION OF ITEM 200-A

3. The complete text of Item 200-A is attached as Appendix A hereto. It provides, *inter alia*, that any “party releasing a loaded or empty railcar to Union Pacific Railroad Company (UP) is solely responsible for insuring that the railcar wheels and all safety appliances (ladders, grabirons, brake handles, catwalks, etc.) are clean from any commodity residue and that all valves and discharge ports are properly secured and sealed to prevent leakage during rail movement.”

4. The Tariff provides further that if, “after having been removed from the loading or unloading facility, or while sitting on UP tracks, UP personnel discover that the railcar has any of the above contamination, leakage or unsafe conditions, the car will

be returned to the loading or unloading facility and the consignor, consignee or agent respectively responsible for releasing the railcar to UP may be assessed a \$650.00 per car surcharge. Consignor or consignee shall further indemnify and hold harmless the carrier from all costs associated with any spill, release, response, mitigation, cleanup and ultimate disposal resulting from failure to comply with this item.” Additionally, handling and switch charges published in UP tariffs may be assessed.

5. According to the Tariff, “a railcar that is found to meet any of the above contamination or unsafe conditions while in transit over UP’s lines will be stopped and transported to the first appropriate and available location for decontamination, cleaning, repair or securement. The consignor, consignee, or third party acting as agent will be responsible, at its own cost, for the expenses associated with returning the railcar to a clean and safe condition, as well as properly disposing of any and all residue or debris resulting from this cleaning or decontamination. The consignor, consignee, or agent respectively responsible for tendering the railcar to UP may be assessed a \$650.00 per car surcharge.”

6. The Tariff further provides that “Assessment and or payment of any of the foregoing surcharges will not relieve the consignor, consignee, or its designated agent of its responsibility for property damage, environmental contamination and cleanup, personal injury or death attributable to or resulting from the tendering of a contaminated or leaking railcar to UP. Acceptance of a railcar in interchange by UP that is later determined to be contaminated or unsafe will in no way relieve Customer of its obligation herein, and shall not constitute a waiver by UP of consignor’s, consignee’s, or its designated agent’s obligations hereunder to tender a clean and safe railcar to UP for its handling.”

III. THE RESULTS OF ITEM 200-A

7. Item 200-A is unlawful and unreasonable for numerous reasons. Initially, it represents an effort by UP to evade its legal responsibilities, and to shift to UP customers significant costs and burdens in connection with the movement of railcars.

8. Railroads have a common carrier duty to furnish clean and safe cars, adequate for their intended use. Failure to do so is a violation of 49 U.S.C. Sections 11101 and 11121.¹

9. Item 200-A seeks to relieve UP of its obligations under Federal Railroad Administration regulations, including 49 C.F.R. Part 215, Sections 215.11 and 215.13, attached as Appendix B hereto (the “FRA Rules”). Those regulations require railroads to conduct pre-departure inspections of all cars before they depart in a train or are received in interchange. The Tariff, on the other hand, transfers to consignors and consignees the responsibility and economic consequences of tendering a car that is not “clean and safe” for shipment. If cars are not clean from commodity residue, the consignor or consignee tendering loaded or unloaded cars will incur a monetary penalty of \$650.00 per car plus other potentially severe liability and indemnity exposure even if it had no responsibility for or knowledge of the alleged residue or debris. These provisions apply whether or not UP inspects the car as required by FRA rules.

10. The consignor or consignee can avoid this exposure only by assuming new burdens. First they will have to try to thoroughly inspect the cars prior to placement in a

¹ Although railroads have argued that shippers loading cars have a duty to “look down” into the cars for foreign matter, and although shippers cannot ignore plainly obvious defects in a car, the duty to provide safe and clean cars rests with the carrier. *Liability for Contaminated Covered Hopper Cars*, 10 I.C.C. 2nd 154 (1994). “Adequate service” (as opposed to just “service”) is not in the language of Section 11101, but it is part of the general definition of common carrier obligation. *Granite State Concrete v. STB*, 417 F.3rd 85 (1st Cir. 2005).

UP train, thus assuming burdens and costs assigned to UP or UP's connections by FRA rules. Second, they must ascertain the nature of any "dirt" on the cars and try to decide if it is residue or debris within the meaning of the Tariff, and whether it is so extensive as to affect safety. Nothing in the Tariff provides standards for the shipper to follow. These are determinations better made by UP and its personnel trained to follow FRA rules than by most consignors and consignees. Consignors and consignees do not have the expertise to assume these new duties and are given no guidance by the Tariff. There is no explanation of whether a mere scintilla of residue is "unsafe" or if something more is required. There is no explanation of the extensiveness of residue necessary to make a car safe. Would, for example, residue on one of the eight car wheels produce an unsafe car? Two wheels? Four wheels? Third, if safety might be affected, consignors and consignees must either clean the cars off and "properly" dispose of all residues, regardless of whether they caused the residues, or else they must set the cars aside to await inspection by UP. This is a costly and operationally disruptive process for shippers, and is legally objectionable where existing law requires railroads, not consignees or consignors, to furnish cars suitable for loading and to conduct pre-departure inspections.

11. Many dry bulk commodities, and virtually all dry bulk agricultural commodities, are loaded and unloaded in an open atmosphere where commodity dust may settle on the exterior and wheels of railcars. If a consignee releases an empty car in such condition to UP or a connecting carrier for empty return to the next loading point, and neither UP nor another railroad inspects the car before it is moved in a train, the new consignor is automatically impressed by the Tariff with the cost of cleaning that car even

though it may not be responsible for the “contaminating” residue, or else the car must be taken out of service.

12. Despite repeated reference to “safety” concerns in Item 200-A, the Item would not promote safety. Railroad employees do not use “safety appliances” such as the full length of ladders leading to the top of a car or the walkways on the car top used to load or unload cars. Many freight cars are loaded or unloaded in the open, especially at grain elevators. Railroads, including UP, penalize shippers who fail to load or unload a car within a limited number of hours, and adding inspections and car cleaning to shipper burdens increases the difficulty of meeting railroad-imposed time limits without incurring demurrage. In addition, consignors and consignees often are required to have their crews work at night in order to meet railroad deadlines set by UP to meet its own operating needs. It is, of course, difficult to examine a car at night for prior load residue, so there are circumstances in which a shipper hoping to avoid the Item 200-A penalties would have to hold the car until daylight subject to demurrage or clean the entire car at night. Most grain elevators are not equipped with sophisticated car-cleaning equipment, and would attempt to remove residue with a water hose. In the winter, the ladders and top ramps of the car would become iced from such a treatment, and shipper employees would be placed in greater jeopardy as they are required to move about an icy car.

13. Pre-departure inspections are aimed at safety. Where a railroad has employees thoroughly qualified to make the safety pre-departure inspections required by law, it should use those employees for that purpose. On the other hand, if specially qualified personnel are not available before a car is first moved in a train, the pre-departure inspection can be made by a less qualified employee. 49 C.F.R. Sections 215.11 and

215.13. The safety inspection tasks for which a railroad employee is responsible include a list of specific conditions and concludes with the duty to withhold a car from service for:

(6) Any other apparent safety hazard likely to cause an accident or casualty before the train arrives at its destination.

49 C.F.R. Part 215, Appendix D (included in Appendix B hereto). Thus, whether a pre-departure inspection is made by a specially qualified railroad employee or a less qualified railroad employee, such as an engineer or conductor, the car should not be moved in a train if the car is “unsafe.” Each railroad, such as UP, has its own internal standards to determine the extent “residue” must reach before it is deemed “unsafe,” and rail customers do not know those standards.

14. Upon information and belief, there are no government rules uniformly requiring freight cars to be “clean.” If commodity residue causes *unsafe* transportation conditions, the UP should inspect for those conditions before moving cars in a train.² If UP inspected cars, loaded or empty, before placing them in a train, and found any condition deemed to be “unsafe,” including residue from prior loads, UP should not move the car. That UP may seek to bypass pre-departure or post-interchange inspections in violation of FRA Rules and its own common carrier obligation should not transfer new liability to shippers.

15. The indemnification requirements of Item 200-A are written so broadly as to include not merely indemnification for the costs of cleaning residue from a car, but also for any loss of life, personal injury, or property damage attributable to the “unsafe”

² FRA has specific regulations in 49 C.F.R. Part 209, App. B addressing valves and discharge ports on tank cars to make sure they are properly secured and sealed to prevent leakage, with the power to impose penalties of up to \$15,000 for violations. See, e.g., 49 C.F.R. 173.31(d). UP does not need to impose its own \$650.00 penalty for a condition that is policed by FRA fines and penalties.

car. By neglecting to inspect the car before it is first placed in the train, UP reserves the right to handle the car over an unlimited segment of its system and then claim a violation of Item 200-A. Should any form of mishap occur during the movement of the car, indemnification is required. This obligates the consignor not merely to make UP whole, but to permit UP to resolve any third party claims at the expense of the consignor and even to demand indemnification if there is loss or damage to the cargo, as otherwise would be recognized as a claim under the Carmack Amendment, 49 U.S.C. 10706.

IV. VIOLATIONS OF LAW BY UP

Count I

49 U.S.C. Section 10702 requires railroads to maintain reasonable practices with respect to the transportation they hold out to perform. Complainant hereby incorporates paragraphs 1-15 of this Complaint and alleges that the facts and circumstances described therein constitute one or more unreasonable practices by UP in violation of Section 10702.

Count II

49 U.S.C. Section 11121 requires railroads to furnish safe and adequate car service and to maintain reasonable rules and practices concerning car service. Complainant hereby incorporates paragraphs 1-15 of this Complaint, and alleges that the facts and circumstances described therein represent unreasonable car service rules and practices by UP in violation of Section 11121.

Count III

49 U.S.C. Section 11706 makes a carrier liable for the actual damages incurred by a shipper as a result of loss or damage to freight. Complainant hereby incorporates the

provisions of paragraphs 1-15 of this Complaint and alleges that the indemnification provisions of the Tariff violate Section 11706 by requiring indemnification of UP where UP's refusal to perform pre-departure inspections as required by law is a contributing factor to loss or damage of goods transported by UP.

Count IV

The UP Tariff requiring indemnification of the carrier is an unreasonable practice where remedies at civil law are available to the carrier to recover from shippers under the law of negligence. Indemnification is an over-broad remedy that does not require proof of negligence or any other misdeed by the shipper, but only proof of loss by the carrier. UP's Tariff provisions imposing no-fault liability on shippers are an unreasonable practice in violation of Section 11702.

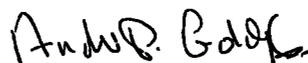
Count V

Railroads have a common carrier duty to furnish safe and clean cars. The Tariff permits UP to accept an empty car from a consignee without inspection and furnish the car to a consignor for loading even if the car has undefined "unsafe" residue which, according to UP, renders the car unsuitable for transportation. In this respect, the Tariff violates Sections 11101 and 11121.

V. RELIEF REQUESTED

Complainant requests the Board to enter an order requiring UP to cease and desist from publishing Item 200-A of the Tariff or continuing to publish that Item with the unlawful provisions described above, and to grant such other relief as may be appropriate in the circumstances.

Respectfully submitted,

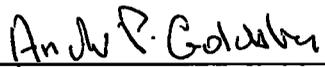


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Attorneys for
North America Freight Car Association

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of April 2010, served a copy of the foregoing Formal Complaint Alleging Unreasonable Practices and Violation of Common Carrier Obligation by first class mail, postage prepaid, on counsel for Union Pacific Railroad Company.



Andrew P. Goldstein

S:\mcd\NAFCA UP Complaint



UP 6004-C

Item: 200-A
EXTERIOR RAILCAR CONTAMINATION

Railcar Contamination Surcharge

Any party releasing a loaded or empty railcar to Union Pacific Railroad Company (UP) is solely responsible for ensuring that the railcar wheels and all safety appliances (ladders, grabirons, brake handles, catwalks, etc) are clean from any commodity residue and that all valves and discharge ports are properly secured and sealed to prevent leakage during rail movement. Failure to adhere to these requirements may result in a per car surcharge and potential delays to shipments

1. **Origin or Destination:** In the event, after having been removed from the loading or unloading facility, or while sitting on UP tracks, UP personnel discover that the railcar has any of the above contamination, leakage, or unsafe conditions, the car will be returned to the loading or unloading facility and the consignor, consignee or agent respectively responsible for releasing the railcar to UP may be assessed a **\$650.00** per car surcharge. Consignor or consignee shall further indemnify and hold harmless the carrier from all costs associated with any spill, release, response, mitigation, clean up and ultimate disposal resulting from failure to comply with this item. Furthermore, in addition to the above surcharge, applicable handling/switch charges as published in UP Tariff 6004-series may be assessed.
2. **In Transit:** A railcar that is found to meet any of the above contamination or unsafe conditions while in transit over UP's lines will be stopped and transported to the first appropriate and available location for decontamination, cleaning, repair or securement. The consignor, consignee or third party acting as an agent will be responsible, at its own cost, for the expenses associated with returning the railcar to a clean or safe condition, as well as properly disposing of any and all residue or debris resulting from this cleaning, decontamination or securement. The consignor, consignee or agent respectively responsible for tendering the railcar to UP may be assessed a **\$650.00** per car surcharge.

Assessment and or payment of the foregoing surcharges will not relieve the consignor, consignee or its designated agent of its responsibility for property damage, environmental contamination and cleanup, personal injury or death attributable to or resulting from the tendering of a contaminated or leaking railcar to UP. Acceptance of a railcar in interchange by UP that is later determined to be contaminated or unsafe will in no way relieve Customer of its obligation herein, and shall not constitute waiver by UP of consignor's, consignee's or its designated agent's obligations hereunder to tender a clean and safe railcar to UP for its handling.

Federal Railroad Administration, DOT

§215.3

Section	Violation	Willful
(c)(1)-(4) Failure to meet requirements for operating on-track roadway maintenance machine with non-complying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	2,500	5,000
(c)(5) Failure to repair or replace defective or missing operator's seat within required time period	5,000	10,000
214.529 In-service failure of primary braking system	5,000	10,000
214.531 Schedule of repairs; general	2,500	5,000
214.533 Schedule of repairs subject to availability of parts		
(a)-(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	2,500	5,000
(d) Failure to maintain record or make record available to FRA	2,000	4,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[57 FR 28127, June 24, 1992, as amended at 61 FR 65981, Dec. 16, 1996; 63 FR 11620, Mar. 10, 1998; 68 FR 44412, July 28, 2003; 69 FR 8839, Feb. 26, 2004; 69 FR 30593, May 28, 2004]

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

Subpart A—General

Sec.

- 215.1 Scope of part.
- 215.3 Application.
- 215.5 Definitions.
- 215.7 Prohibited acts.
- 215.9 Movement of defective cars for repair.
- 215.11 Designated inspectors.
- 215.13 Pre-departure inspection.
- 215.15 Periodic inspection.

Subpart B—Freight Car Components

- 215.101 Scope.

SUSPENSION SYSTEM

- 215.103 Defective wheel.
- 215.105 Defective axle.
- 215.107 Defective plain bearing box: General.
- 215.109 Defective plain bearing box: Journal lubrication system.
- 215.111 Defective plain bearing.
- 215.113 Defective plain bearing wedge.
- 215.115 Defective roller bearing.
- 215.117 Defective roller bearing adapter.
- 215.119 Defective freight car truck.

CAR BODIES

- 215.121 Defective car body.

DRAFT SYSTEM

- 215.123 Defective couplers.
- 215.125 Defective uncoupling device.
- 215.127 Defective draft arrangement.
- 215.129 Defective cushioning device.

Subpart C—Restricted Equipment

- 215.201 Scope.
- 215.203 Restricted cars.

Subpart D—Stenciling

- 215.301 General.
 - 215.303 Stenciling of restricted cars.
 - 215.305 Stenciling of maintenance-of-way equipment.
- APPENDIX A TO PART 215—RAILROAD FREIGHT CAR COMPONENTS
- APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES
- APPENDIX C TO PART 215—FRA FREIGHT CAR STANDARDS DEFECT CODE
- APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

AUTHORITY: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 44 FR 77340, Dec. 31, 1979, unless otherwise noted.

Subpart A—General

§ 215.1 Scope of part.

This part prescribes minimum Federal safety standards for railroad freight cars.

§ 215.3 Application.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to each railroad freight car in service on:

(1) Standard gage track of a railroad; or

(2) Any other standard gage track while the car is being operated by, or is otherwise under the control of, a railroad.

(b) Sections 215.15 and 215.303 of this part do not apply to any car:

(1) Owned by a Canadian or Mexican Railroad; and

(2) Having a Canadian or Mexican reporting mark and car number.

(c) This part does not apply to a railroad freight car that is:

- (1) Operated solely on track inside an industrial or other non-railroad installation; or
- (2) Used exclusively in dedicated service as defined in § 215.5(d) of this part; or
- (3) Maintenance-of-way equipment (including self-propelled maintenance-of-way equipment) if that equipment is not used in revenue service and is stenciled in accordance with § 215.305 of this part.
- (4) Operated in a passenger train and that is inspected, tested, maintained, and operated pursuant to the requirements contained in part 238 of this chapter.

[44 FR 77340, Dec. 31, 1979, as amended at 65 FR 41305, July 3, 2000]

§ 215.5 Definitions.

As used in this part:

(a) *Break* means a fracture resulting in complete separation into parts;

(b) *Cracked* means fractured without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be "cracked";

(c) *Railroad freight car* means a car designed to carry freight, or railroad personnel, by rail and includes a:

- (1) Box car;
- (2) Refrigerator car;
- (3) Ventilator car;
- (4) Stock car;
- (5) Gondola car;
- (6) Hopper car;
- (7) Flat car;
- (8) Special car;
- (9) Caboose car;
- (10) Tank car; and
- (11) Yard car.

(d) *Dedicated service* means the exclusive assignment of cars to the transportation of freight between specified points under the following conditions:

- (1) The cars are operated—
 - (i) Primarily on track that is inside an industrial or other non-railroad installation; and
 - (ii) Only occasionally over track of a railroad;
- (2) The cars are not operated—
 - (i) At speeds of more than 15 miles per hour; and

(ii) Over track of a railroad—

- (A) For more than 30 miles in one direction; or
- (B) On a round trip of more than 60 miles;
- (3) The cars are not freely interchanged among railroads;
- (4) The words "Dedicated Service" are stenciled, or otherwise displayed, in clearly legible letters on each side of the car body;
- (5) The cars have been examined and found safe to operate in dedicated service; and
- (6) The railroad must—
 - (i) Notify the FRA in writing that the cars are to be operated in dedicated service;

(ii) Identify in that notice—

- (A) The railroads affected;
- (B) The number and type of cars involved;
- (C) The commodities being carried; and
- (D) The territorial and speed limits within which the cars will be operated; and

(iii) File the notice required by this paragraph not less than 30 days before the cars operate in dedicated service;

(e) *In service* when used in connection with a railroad freight car, means each railroad freight car subject to this part unless the car:

- (1) Has a "bad order" or "home shop for repairs" tag or card containing the prescribed information attached to each side of the car and is being handled in accordance with § 215.9 of this part;
- (2) Is in a repair shop or on a repair track;
- (3) Is on a storage track and is empty; or
- (4) Has been delivered in interchange but has not been accepted by the receiving carrier.

(f) *Railroad* means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations

made only for the purpose of effecting repairs. If the car is empty, it may not be placed for loading. If the car is loaded, it may not be placed for unloading unless unloading is consistent with determinations made and restrictions imposed under paragraph (a)(1) of this section and—

(1) The car is consigned for a destination on the line of haul between the point where the car was found defective and the point where repairs are made; or

(2) Unloading is necessary for the safe repair of the car.

(d) Nothing in this section authorizes the movement of a freight car subject to a Special Notice for Repairs unless the movement is made in accordance with the restrictions contained in the Special Notice.

[44 FR 77340, Dec. 31, 1979; 45 FR 26710, Apr. 21, 1980]

§ 215.11 Designated inspectors.

(a) Each railroad that operates railroad freight cars to which this part applies shall designate persons qualified to inspect railroad freight cars for compliance with this part and to make the determinations required by § 215.9 of this part.

(b) Each person designated under this section shall have demonstrated to the railroad a knowledge and ability to inspect railroad freight cars for compliance with the requirements of this part and to make the determinations required by § 215.9 of this part.

(c) With respect to designations under this section, each railroad shall maintain written records of:

- (1) Each designation in effect; and
- (2) The basis for each designation.

[45 FR 26710, Apr. 21, 1980]

§ 215.13 Pre-departure inspection.

(a) At each location where a freight car is placed in a train, the freight car shall be inspected before the train departs. This inspection may be made before or after the car is placed in the train.

(b) At a location where an inspector designated under § 215.11 is on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a) of this section shall be made by

that inspector to determine whether the car is in compliance with this part.

(c) At a location where a person designated under § 215.11 is not on duty for the purpose of inspecting freight cars, the inspection required by paragraph (a) shall, as a minimum, be made for those conditions set forth in appendix D to this part.

(d) Performance of the inspection prescribed by this section does not relieve a railroad of its liability under § 215.7 for failure to comply with any other provision of this part.

[45 FR 26710, Apr. 21, 1980]

§ 215.15 Periodic inspection.

(a) After June 30, 1980, a railroad may not place or continue in service a freight car that has not received an initial periodic inspection in accordance with 49 CFR 215.25, as in effect on October 6, 1976 (41 FR 44044), unless—

(1) The car is a high utilization car built or reconditioned after December 31, 1977; or

(2) The car is a non-high utilization car built or reconditioned after December 31, 1971.

(b) A freight car that has received an initial periodic inspection under paragraph (a) of this section shall be stenciled to so indicate in accordance with 49 CFR 215.11 and appendix C of this part, as in effect on October 6, 1976 (41 FR 44044). This stenciling need not be retained on the car after June 30, 1981.

(c) As used in this section, "high utilization car" means a car—

(1) Specifically equipped to carry trucks, automobiles, containers, trailers, or removable trailer bodies for the transportation of freight; or

(2) Assigned to a train that operates in a continuous round trip cycle between the same two points.

Subpart B—Freight Car Components

§ 215.101 Scope.

This subpart contains safety requirements prohibiting a railroad from placing or continuing in service a freight car that has certain defective components.

Pt. 215, App. D

49 CFR Ch. II (10-1-07 Edition)

- (1) Any portion missing;
- (2) Broken or cracked as defined in this part.
- (F) Broken side sills, crossbars or body bolster.
- 215.123 Defective couplers.
 - (A) Coupler shank bent.
 - (B) Coupler cracked in highly stressed area of head and shank.
 - (C) Coupler knuckle broken.
 - (D) Coupler knuckle pin or knuckle throw:
 - (1) Missing;
 - (2) Inoperative.
 - (E) Coupler retainer pin lock:
 - (1) Missing;
 - (2) Broken.
 - (F)(1) Coupler locklift is inoperative;
 - (2) No anti-creep protection;
 - (3) Coupler lock is (i) missing, (ii) inoperative, (iii) bent, (iv) cracked, or (v) broken.
- 215.125 Defective uncoupling device.
 - (A) Fouling on curve.
 - (B) Unintentional uncoupling.
- 215.127 Defective draft arrangement.
 - (A) Draft gear inoperative.
 - (B) Broken yoke.
 - (C) End of car cushioning unit:
 - (1) Leaking;
 - (2) Inoperative.
 - (D) Vertical coupler pin retainer plate:
 - (1) Missing;
 - (2) Has missing fastener.
 - (E) Draft key or key retainer:
 - (1) Inoperative;
 - (2) Missing.
 - (F) Follower plate missing or broken.
- 215.129 Defective cushioning device unless effectively immobilized.
 - (A) Broken.
 - (B) Inoperative.
 - (C) Missing parts.
- 215.203 Operating a restricted car, except under conditions approved by FRA.

Stenciling

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

APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

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

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

[45 FR 26711, Apr. 21, 1980]

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

Subpart A—General

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

Subpart B—Special Notice for Repairs

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

Subpart C—Emergency Order—Track

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

AUTHORITY: 49 U.S.C. 20102-20104, 20107, 20111, 20133; 20701-20702, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 41 FR 16657, May 6, 1976, unless otherwise noted.

Subpart A—General

§ 216.1 Application.

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

- (1) Any portion missing;
 - (2) Broken or cracked as defined in this part.
 - (F) Broken side sills, crossbars or body bolster.
- 215.123 Defective couplers.
- (A) Coupler shank bent.
 - (B) Coupler cracked in highly stressed area of head and shank.
 - (C) Coupler knuckle broken.
 - (D) Coupler knuckle pin or knuckle throw:
 - (1) Missing;
 - (2) Inoperative.
 - (E) Coupler retainer pin lock:
 - (1) Missing;
 - (2) Broken.
 - (F)(1) Coupler locklift is inoperative;
 - (2) No anti-creep protection;
 - (3) Coupler lock is (i) missing, (ii) inoperative, (iii) bent, (iv) cracked or (v) broken.
- 215.125 Defective uncoupling device.
- (A) Fouling on curve.
 - (B) Unintentional uncoupling.
- 215.127 Defective draft arrangement.
- (A) Draft gear inoperative.
 - (B) Broken yoke.
 - (C) End of car cushioning unit:
 - (1) Leaking;
 - (2) Inoperative.
 - (D) Vertical coupler pin retainer plate:
 - (1) Missing;
 - (2) Has missing fastener.
 - (E) Draft key or key retainer:
 - (1) Inoperative;
 - (2) Missing.
 - (F) Follower plate missing or broken.
- 215.129 Defective cushioning device unless effectively immobilized.
- (A) Broken.
 - (B) Inoperative.
 - (C) Missing parts.
- 215.203 Operating a restricted car, except under conditions approved by FRA.

Stenciling

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APPENDIX D TO PART 215—PRE-DEPARTURE INSPECTION PROCEDURE

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

Subpart A—General

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

Subpart B—Special Notice for Repairs

- 216.11 Special notice for repairs—railroad freight car.
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Subpart A—General

§ 216.1 Application.

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