

Questions and Answers Regarding Emergency Order No. 24
November 4, 2005

1. *Why did FRA issue this Q&A document?*

FRA has received comments from railroads and labor organizations requesting guidance on and relief from Emergency Order No. 24 (EO). 70 Fed. Reg. 61496 (Oct. 24, 2005). In response to these comments, FRA has decided to provide the railroads and employees additional flexibility in complying with the EO, and a notice will be published in the Federal Register that will reflect the relief granted. As FRA will be granting additional flexibility to the railroads and the employees, we are not changing the November 22, 2005 effective date of the EO. The following information, in a question and answer format, reflects the relief to be granted in the EO's second notice as well as further explanation of the existing EO requirements. In order to disseminate this information as quickly as possible, FRA is providing this Q&A document prior to publication of the second notice.

2. *Do all railroads have a duty to act under the EO?*

All railroads that have employees or contractor employees who operate hand-operated main track switches in non-signaled territory or dispatch trains in that type of territory have duties under this EO unless specific relief has been granted. 70 Fed. Reg. at 61500. Tourist railroads, or other railroads, that are unsure of whether FRA exercises jurisdiction over them should reference FRA's published statement on the extent and exercise of FRA's safety jurisdiction. 49 C.F.R. Part 209, app. A. If a railroad is still unsure on this issue, please contact FRA's Office of Chief Counsel at (202) 493-6038.

3. *What is the manner of initial and periodic instruction on the EO and the relevant railroad operating rules?*

Given that this is an emergency situation requiring railroads to quickly and effectively instruct employees, FRA's expectation is that the minimum initial instruction and distribution of the EO would include one face-to-face on-the-job briefing covering the requirements of this EO and the operating rules to which they relate. In order to be effective, this job briefing must include examples or real time applications of the EO, as well as a reasonable opportunity for employees to ask questions. Regarding periodic instruction,

railroads will include this instruction as part of their program of instruction pursuant to 49 C.F.R. § 217.11.

4. *Does a railroad have to instruct its employees again if it already has applicable operating rules that comply with this EO and has recently instructed its employees?*

Yes. FRA has identified an emergency situation and wants to raise the level of awareness for all employees who operate hand-operated switches in non-signaled territory or who dispatch trains in that type of territory. In addition, it is significant for affected employees to understand that the Federal government will be able to assess civil penalties of up to \$27,000 for a violation of the EO by any person. That said, FRA does not expect railroads to entirely discount prior instruction as this new instruction can build upon the prior instruction; in other words, prior instruction on an unchanged operating rule does not need to be as in-depth as it would be if the employees were being instructed on the relevant operating rules for the first time.

5. *Why is there a requirement for a written receipt of the EO by employees?*

Because of the critical importance of this order and the individual accountability inherent therein, FRA must be assured that employees have received their own paper copy of the EO.

6. *Can a railroad retain an electronic receipt or acknowledgment, as an alternative to a written receipt or acknowledgment, for each employee affected by the EO that indicates that the employee was provided with a copy of the EO?*

Yes. FRA did not intend to preclude the creation or retention of the receipt or keeping of the acknowledgment electronically. As long as the receipt or acknowledgment is a permanent record that is kept for each affected employee and can be searched and printed for FRA upon request, electronic recordkeeping is acceptable. The electronic recordkeeping system should have system integrity, to prevent fraudulent entries, and may be added onto existing systems, e.g., those systems that already track attendance at railroad operating rules classes. If those systems do not allow employees to enter an acknowledgment, the attendance sheet at the class of instruction on the EO should reflect that the attendee's signature reflects both attendance and receipt of a copy of the EO.

7. ***What is the safety benefit of the dispatcher confirming that both the conductor and engineer have initialed the switch position awareness form (SPAF)?***

It is a final confirmation that both the engineer and conductor have properly recorded on the SPAF the position of all switches operated prior to releasing their authority.

8. ***How does the EO apply to an employee, other than a crewmember, lining a switch for a train?***

Each employee operating a switch for a train must complete a SPAF for all switches operated.

9. ***What date should be entered on the SPAF if the tour of duty goes beyond midnight?***

The date entered is the date that the tour of duty began.

10. ***Why should the engineer initial each entry, as opposed to only the final entry?***

It encourages intra-crew communication while employees are still at each switch.

11. ***Can automatic relief be granted to a railroad where operating rules require trains to approach all facing point hand-operated switches prepared to stop on a line segment basis, rather than a system basis?***

Yes, when the relief is predicated on a permanent application of the relevant operating rules and special instructions for the territory involved.

Employees or dispatchers involved with more than one line segment may require instruction if one of the other line segments does not meet any of the conditions for relief. 70 Fed. Reg. at 61500.

12. ***What does the term “releasing the limits of a main track authority” mean in connection with the EO?***

The term means releasing all or a portion of the limits (i.e., rolling up the limits) of an existing main track authority.

13. ***If a train crew is relieved on line-of-road, must the crew being relieved take the SPAF with them?***

The purpose of the EO is to establish responsibility, shared among the crew

and the dispatcher, for confirmation that all switches have been restored before the authority is released. A subsequent crew will not have actual knowledge of the position of switches in the track segment(s) utilized by the relieved crew. Further, the declarations made on the SPAF are personal to each employee participating, and it is not possible for subsequent crew members to verify information about which they did not have contemporaneous knowledge. Accordingly, to accomplish the purpose of this EO, the crew being relieved should contact the dispatcher and confirm the position of switches handled, at the same time releasing (rolling up) any portion of the authority not required by the relieving crew. The crew going off duty would finalize their SPAF at that time. The relieving crew would then initiate a new SPAF.

14. *Can an employee responsible for on-track safety, e.g., an employee in charge (EIC), complete the SPAF for all employees working under their jurisdiction?*

Yes. The employee responsible for on-track safety, as per the requirements of 49 CFR, Part 214, Subpart C, may maintain the SPAF in lieu of the individual worker(s) operating switches.

15. *If an EIC of on-track safety permits a train into the EIC's authority limits and there are switches operated by that train crew, what are the SPAF responsibilities in relation to the train?*

Both the EIC and the train crew must complete a SPAF.

16. *If trains are operating through the limits of an authority and the EIC instructs all trains to operate at restricted speed, does this provide relief for the EIC from completing the SPAF?*

No. This is a temporary application of the relevant operating rules for the territory involved.

17. *What are the requirements if the limits of a main track authority are rolled up behind a train or on-track-equipment (OTE) by the dispatcher without the train's or OTE's knowledge?*

In addition to determining the train's or OTE's location, the dispatcher must also confirm the position of all switches operated by the employees within the limits being rolled up before the limits are rolled up.

18. ***If OTE is moving to a work location, what are the SPAF requirements?***
The employee that receives the authority will complete the SPAF for all switches operated while under that authority.
19. ***Do roadway workers who operate a switch have to be qualified on the relevant operating rules for operating a switch, even if they are not the employee completing a SPAF?***
Yes.
20. ***If an employee operates a switch when it is not necessary to receive permission from a dispatcher, is a SPAF required?***
Yes.
21. ***What if a railroad does not identify the track segment by “subdivision”?***
The SPAF may show branch, secondary track, or other appropriate designation.
22. ***May employees use hand or whistle signals in lieu of the radio to communicate when a switch is operated?***
Yes. FRA will accept alternate methods of intra-crew communication when they afford an equivalent level of communication integrity relevant to the prevailing operating conditions.
23. ***Does the EO apply in Rule 251 or GCOR Rule 9.14 territory, i.e., current of traffic, signaled in one direction only?***
No.
24. ***Does the EO apply if the signal system for a track segment is suspended?***
Yes.
25. ***Does the EO apply if the track is out-of-service?***
Yes, unless the operating rules or special instructions require trains to approach all facing point hand-operated switches prepared to stop during the entire period the track is out-of-service.
26. ***What does the term “as soon as practicable” mean regarding entries required on the SPAF before employees leave the location of a switch?***
FRA’s expectations are that when employees are in close proximity, that the

required SPAF entries will be personally completed by the individual employees themselves before they actually leave the location of the switch.

However, FRA recognizes that there are operating conditions which would make recording the required entries on the SPAF before employees leave a location of a switch impracticable due to extreme physical separation. In circumstances such as this, where it is logistically unfeasible and in some situations unsafe to record the required entries on the SPAF before leaving the location of a switch, FRA would allow the crewmember completing the SPAF to make an appropriate entry on the SPAF. An appropriate entry would state that the necessary radio job briefing concerning the switch position was accomplished. Furthermore, the crewmember completing the SPAF should then enter the required employee's initials for that employee. At that time, FRA will consider the entries on the SPAF for that switch complete.

For example, a conductor reverses a main switch for an intended 100-car shoving movement into a 2-mile industrial lead. After lining the switch, the conductor begins the shoving movement, remaining on the leading end to protect the movement. When the engine clears the switch, the movement stops and the brakeman lines the main track switch to its normal position, and the shoving movement resumes, with the conductor still protecting the leading end of the movement. In this case, it would be impracticable to require the conductor to walk back 100 car-lengths to the engine in order to obtain the brakeman's initials on the SPAF, and then walk back 100 car-lengths to the leading end to continue protecting the movement.

27. *If an employee is not performing work that is considered covered service under the hours of service laws, can the act of filling out a SPAF require that the employee be covered?*

No, the act of filling out any portion of a SPAF does not by itself trigger covered service.

28. *For employees that are covered by the hours of service laws, is the act of filling out a SPAF commingled service that should be performed within the statutory period?*

Yes. Railroads and employees are responsible for completing all activities required of them within that period.

29. *How should the time associated with completion of the SPAF be recorded on the time return or in the hours of service electronic system?*

For employees otherwise subject to the hours of service laws, there is no requirement to make a separate entry of the time associated with completion of the form. It is intended that completion of the form be integral to the accomplishment of the work, so it may be considered as part of covered service for hours of service recordkeeping purposes.