

Gordon Robert (Joe)

From: Kendall Edward
Sent: Thursday, June 29, 2017 3:22 PM
To: Gordon Robert (Joe); Gura Cyril
Subject: FW: Responses to NTSB Request Graettinger DCA17MR007
Attachments: Sunshine AZ accident report.pdf; FAMES_Watchman_1.0.pdf

During this time NTSB had requested information from FRA on multiple accidents. The email subject line references Graettinger, DCA17FR007; however, the content of this email was in response to a request related to the Edgemont, SD accident, DCA17FR004.

Actually it is for Edgemont- see questions and answers bellows.

From: Moore, Aaron (FRA) [REDACTED]
Sent: Thursday, June 29, 2017 3:18 PM
To: Kendall Edward [REDACTED]
Cc: Moore, Aaron (FRA) [REDACTED]
Subject: Responses to NTSB Request Graettinger DCA17MR007

Hi Kendall,

Please see below and attached FRA's responses to NTSB's requests. Please let me know if you would like to discuss anything.

Thanks!!

1. [FRA Internal Database Violations for BNSF for the year 2016 \(BNSF/SD/County\) for § 214.329 defects/violations.](#)

Answer: [For the year 2016, FRA issued no defects or violations of § 214.329 to BNSF for Fall River County, South Dakota.](#)

2. [Copy of all FAMES reports involving train approach warning \(including one dated 01/06/2014\).](#)

Answer: [See attached the January 6, 2014 report.](#)

3. [Opinion from FRA legal staff as the definition of shall/will in § 214.329\(g\) for required roadway worker items.](#)

Answer: [Section 214.329\(g\) reads: "Every watchman/lookout shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform." The use of "shall" imposes a mandatory duty upon the employer to, as stated in FRA's Roadway Worker Protection Compliance Manual, "provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties. It is intended that a railroad's on-track safety program would specify the means to be used by watchmen/lookouts to communicate a warning, and that they be equipped according to that provision."](#)

4. [Copy of 01/2009 Sunshine Arizona accident report that involved BNSF.](#)

Answer: [Please see attached a copy of FRA's accident report. Per our phone conversation on June 14, 2017, please contact me if you need copies of the attachments to the accident report. If so, the attachments would then either have to be kept in the closed \(non-public\) docket due to containing personally identifiable information, or redacted.](#)

5. Any and all documents associated with a review of BNSF's Roadway Worker Program for the time period of 01/2009 through present pursuant to 49 C.F.R. 214.307(b). Has BNSF's Roadway Worker Protection program been reviewed, if so by what region, employees and what was the date of such review. Were there any exceptions taken with regard to such review. Please provide all relevant documents.

Answer: FRA reviewed BNSF's On-Track Safety Program pursuant to 49 C.F.R. 214.307(b) between 1998 and early 2000s, but does not have documents associated with that review. Per our phone conversation on June 14, 2017, FRA has reviewed relevant sections of BNSF's On-Track Safety program as part of certain accident investigations (including the Edgemont accident investigation) and as part of other enforcement activities since 01/2009. Please contact me if you would like documents related to those reviews.

6. Comments received by FRA for the original 1996/1997 Roadway Worker Program Rule as well as any comments that relate to amendments to the Roadway Worker Program Rules including but not limited to amendments to adjacent track requirements, miscellaneous revisions and revisions to the RWP program.

Answer: All comments to FRA's electronic dockets can be accessed on www.regulation.gov. Please search for docket number FRA-2008-0059 for the Adjacent Track rule (there were multiple publications over a period of a few years all associated with the same docket number) and FRA-2008-0086 for the Miscellaneous Revisions. The comments to the 1996 Rule were not in an electronic docket. FRA is still attempting to locate and gather copies of the comments to provide to NTSB.

7. Any and all documents related to post-accident audits of BNSF Roadway Worker Protection Programs undertaken by the FRA for the time period of January 2017 through April 6, 2017 that arose from the Edgemont Accident, whether voluntarily done by BNSF or completed by FRA.

Answer: FRA's investigation is ongoing at this time. With that said, following the Edgemont accident, as part of its investigation FRA reviewed the watchman/lookout provisions of BNSF's On-Track Safety Program and noted no exceptions.

Aaron M. Moore

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