

these jobs, as the petitioner seems to fear.

In addition, it should be understood that this rule does not replace existing collective bargaining agreements with respect to assignments of duties. This rule simply defines the limits of the duties a utility employee may perform without traditional blue signal protection. The existence of this rule, however, does not mean that these duties must be assigned to utility employees. But it should be noted that a utility employee must not be assigned responsibilities beyond those listed, without full blue signal protection, regardless of existing labor and management agreements.

5. *Radio Communication.* The rule provides a process for utility employees to join and quit a crew. Integral to this process is communication among crew members, most likely by radio as provided in § 218.22(e). One petitioner, Mr. Alan Thompson, objected to the reliance on radios because of the possibility that radios could malfunction. FRA, however, does not believe it is necessary to amend the communication provisions. A utility employee must not be excluded from blue signal protection unless effective communication is established. If a radio malfunction prevents the required crew notice, then the utility employee must be protected by blue signals unless required communication is achieved by talking in person or other equivalent forms of telecommunications.

6. *Adequate Recordkeeping.* FRA rejects the argument that additional recordkeeping requirements are needed to make the rule enforceable. As noted in the preamble to the Final Rule, railroads are required to maintain hours of service records, accident reports, records of attendance at railroad operating rules classes, and alcohol and drug testing records for all operating personnel, including utility employees. The agency believes these records are sufficient to determine an employee's status for enforcement purposes.

7. *Appendix Examples.* Rail management argued that the examples published in Appendix A to the rule should not include train and yard crews. FRA chose to include all operating employees, as well as utility employees, in the last four examples to highlight the extent of the blue signal regulation. FRA has found that railroads have occasionally utilized operating employees instead of maintenance-of-equipment employees to perform work which requires blue signal protection, under the mistaken impression that the exclusion from blue signal protection

for train and yard crews extends to all work assigned to these employees.

The examples contain no new requirements, but simply illustrate existing law. They are therefore not beyond the scope of this proceeding.

8. *Economic Analysis.* One petitioner, BRC, questioned the amount of the economic benefit FRA stated the rule should create. BRC argued that time spent completing required brake tests was improperly counted as time spent installing and removing end-of-train devices. BRC concluded, therefore, that the time FRA believed would be saved by using utility employees would still be spent performing brake tests. BRC argued, therefore, that there would be less cost savings created by the rule than FRA had estimated, because there would not be an improvement in time preparing a train for departure.

FRA based its savings calculations on the best information available to this agency. No participant, including BRC, provided contrary data. Moreover, contrary to BRC's assertion, FRA's economic analysis did not consider time spent on brake tests as an area where benefits could be created. FRA believes that its cost and benefit calculations accurately reflect the true impact of the final rule.

9. *Penalty Amounts.* One petitioner argued that the penalty amounts contained in an appendix to the rule were inadequate to encourage compliance. The penalty amounts are consistent with the civil penalties levied for other violations of federal railroad safety regulations. FRA does not believe that the penalties are insufficient to promote compliance. The penalty schedule makes clear that FRA has the authority to assess even higher amounts where the facts of a particular violation warrant.

FRA's monitoring of industry application of this rule over the next year will provide evidence of carrier compliance. If safety risks are created by the repeated failure to comply with the rule, FRA has other enforcement options, including compliance or emergency orders.

10. *Technical Correction.* The definition of "locomotive servicing track area" was unintentionally deleted from the Final Rule. That definition is now added to the list of definitions provided in § 218.5.

Regulatory Impact Analysis

This amendment to the final rule has been evaluated in accordance with existing policies and procedures and is considered "nonsignificant" under Executive Order 12866. It is not considered to be significant under

Department of Transportation policies and procedures. See 44 FR 11034. The amendment does not materially affect the benefit/cost analysis provided in the final rule.

The Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. This amendment will have no new direct or indirect economic impact on small units of government, business, or other organizations.

Federalism Implications

This amendment will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

There are no new information collection requirements associated with this amendment. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This amendment will not have any identifiable environmental impact.

List of Subjects in 49 CFR Part 218

Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Rule

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

PART 218—[AMENDED]

1. The authority for Part 218 is revised to read as follows:

Authority: 49 U.S.C. 20101 *et seq.*; and 49 CFR 1.49(m).

2. By amending § 218.5 to remove the definition "Ranking crew member" and to add the following definitions in alphabetical order to read as follows:

§ 218.5 Definitions.

* * * * *

Designated crew member means an individual designated under the railroad's operating rules as the point of contact between a train or yard crew