



U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

SEP 16 2008

The Honorable Mark V. Rosenker
Chairman
National Transportation Safety Board
490 L'Enfant Plaza East SW
Washington, DC 20594

Dear Mr. Rosenker:

Thank you for your April 10, 2008, letter to the Federal Railroad Administration (FRA) concerning the issuance of National Transportation Safety Board (NTSB) Safety Recommendations R-08-05, R-08-06, and R-08-07. These safety recommendations arose from the NTSB's investigation of the obstruction accident that occurred on January 9, 2007, on the Massachusetts Bay Commuter Railroad (MBCR), which involved the striking of a track maintenance vehicle by Massachusetts Bay Transportation Authority Commuter Train #322. An exclusive track occupancy authority had been removed without the consent of the roadway worker in charge of a maintenance-of-way work group. The commuter train, upon entering the work limits, impacted a roadway maintenance machine, fatally injuring two roadway workers. Another roadway worker was seriously injured, and three other workers sustained minor injuries. In addition, 10 passengers aboard Train #322 sustained minor injuries.

The FRA strongly supports the NTSB's interest in reducing the risk of similar accidents by addressing the underlying factors. As reflected in the NTSB's report, following the accident in question, FRA conducted an extensive audit of the railroad's Roadway Worker Protection (RWP) program and had the railroad enter into a Safety Compliance Agreement designed to help remedy deficiencies that the audit revealed.

The FRA has carefully reviewed the recommendations and offers the following responses:

Safety Recommendation R-08-05:

Advise railroads of the need to examine their train dispatching systems and procedures to ensure that appropriate safety redundancies are in place for establishing protection and preventing undesired removal of protection for roadway workers receiving track occupancy authority.

The FRA's RWP regulation (Title 49 Code of Federal Regulations (CFR) Part 214, Subpart C) requires that each railroad adopt and implement a program, including procedures to be used by each railroad for monitoring the effectiveness of and compliance with the program, that will afford on-track safety to all roadway workers. The regulation also requires that employers provide training on the on-track safety rules and procedures that the employees are required to follow, as well as an on-track safety job briefing before a roadway worker is permitted to foul a track and again at any time the on-track safety procedures change during the work period. Dispatchers controlling the movement of trains and issuing work authorities are also subject to provisions of Federal regulations regarding Railroad Communications (49 CFR Part 220) and Railroad Operating Rules (49 CFR Part 217).

Railroad rules and programs strive for redundancy. In terms of the accident giving rise to this recommendation, MBOR had made provision for the following layers of safety:

- A properly trained and rested dispatcher was responsible for issuing authorities and leaving those authorities in place until they could be safely removed. The dispatcher was responsible for setting control signals appropriately to keep trains out of the work zone until the dispatcher properly cancelled the authority or it was released by the roadway worker in charge.
- The railroad's computer-aided dispatching system was configured to accept a blocking feature, which would serve as a reminder to the dispatcher that an authority had been issued for that segment.
- The roadway work group was required to place shunts on the track protecting the work zone to guard against the possibility that the dispatcher might inadvertently remove the protection without first cancelling the authority in direct communication with the roadway worker in charge. As reflected in the NTSB's report, the shunting device included a metal flag as further warning.

Unfortunately, the dispatcher relied upon a faulty recollection, removed the blocking device, and allowed a train into the work zone. The roadway work group—functioning under what had become a *de facto* nullification of the shunting requirement and falsely comforted by the presence of lookouts to announce the passage of trains on the adjacent track—failed to place shunts on the track to protect the work zone. Compliance with existing program requirements would have prevented this event from occurring, even given the error by the dispatcher. Nevertheless, two coincident failures did allow a single, human error by the dispatcher to result in pulling down the authority and striking the train.

Accordingly, in keeping with the NTSB's request in regard to Safety Recommendation R-08-05, FRA will advise railroads of this incident and inform them of the dangers associated with granting and releasing exclusive track occupancies. FRA will formally do this through the issuance of a safety advisory and, thereafter, will emphasize the importance of redundant protection through presentations within the framework of the Railroad Safety Advisory Committee (RSAC) and, informally, through industry meetings.

FRA respectfully requests that the NTSB classify Safety Recommendation R-08-05 as “Closed-Acceptable Action.”

Safety Recommendation R-08-06:

Require redundant signal protection, such as shunting, for maintenance-of-way work crews who depend on the train dispatcher to provide signal protection.

MBCR System Timetable Instruction Number 133-S1 requires the following.

“When a track governed by a block system or interlocking rules is removed from service by Form D Line 4, the Foreman issued the Form D must ensure that each of the following safeguards are taken prior to beginning work:

1. A shunting barricade must be erected at each end of the work area within Line 4 limits and locked into position with a private lock.
2. It must be determined that the track at each end of the work area is shunted.
3. If the work area cannot be protected by panel Blocking Devices, a [Communications and Signal] employee must de-energize the track circuits for the work area.”

The roadway worker in charge of the roadway work group failed to adhere to the MBCR’s established operating rules and instructions, which are designed to provide protection for roadway work groups and trains.

The FRA recently concluded its RSAC meetings for RWP, and FRA is in the process of preparing the Notice of Proposed Rulemaking (NPRM). During the NPRM process, FRA will analyze the options that would allow redundant signal protection for maintenance-of-way work crews. FRA understands that these types of procedures can be intrusive to signal systems and, in some circumstances, are not feasible. However, FRA is aware of alternative means of redundant protection, such as placement of flags in advance of and at the work site. FRA will analyze all available options and include language for industry comment in the upcoming RWP NPRM. If a reasonable procedure is found, FRA will consider full implementation of this recommendation.

FRA respectfully requests that the NTSB classify Safety Recommendation R-08-06 as “Open-Acceptable Response.”

Safety Recommendation R-08-07:

Revise the definition of “covered employee” under 49 CFR Part 219 for purposes of congressionally mandated alcohol and controlled substances testing programs to encompass all employees and agents performing safety sensitive functions, as described in 49 CFR Sections 209.301 and 209.303.”

The FRA generally concurs with the intent of this recommendation. Since the inception of the railroad alcohol/drug program in 1986, FRA has required testing of any railroad

employee involved in a train incident or train accident, regardless of craft. This program and carrier testing programs have yielded significant evidence that some maintenance-of-way employees in particular are affected by drug-use problems. Although establishing causality in the realm of human factors is always difficult, it does appear likely that the safety of roadway work groups and train operations is compromised by drug use among the employee population.

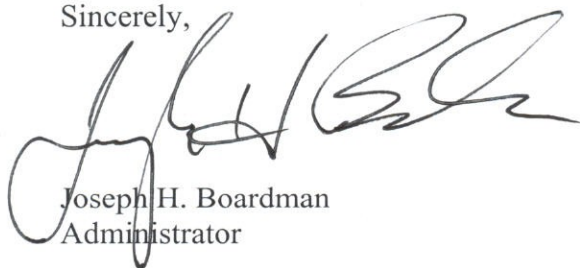
The FRA is concerned that the scope of implementing this safety recommendation involves other crafts for which there is little to no historical safety data. It is not clear, for instance, whether safety would be materially improved by adding shop crafts or bridge and building employees to the program. Even in the case of maintenance-of-way employees, it may be wise to consider testing only those employees who exercise responsibilities related to the safety of others (e.g., roadway workers in charge), rather than attempting to address all laborers. Further, we need to consider the overlap between Federal Motor Carrier Safety Administration requirements for employees holding commercial motor vehicle licenses and any FRA action. These sorts of questions are more readily posed than resolved.

In any event, this recommendation asks that FRA initiate a significant rulemaking. The current presidential administration has already finalized its designations of significant rulemakings that will be initiated or completed, and the new administration taking office in January should have the ability to determine the course of action it will take. However, FRA has started to study this recommendation and to mine data, where possible. Upon completion of a comprehensive study and review, safety staff will make a recommendation to the new administration as to whether to publish an NPRM. An implementation schedule has been enclosed for your review.

Until such time as FRA is able to fully analyze and address this safety recommendation, FRA respectfully requests that NTSB classify Safety Recommendation R-08-07 as "Open-Acceptable Response."

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Boardman", written over the printed name and title.

Joseph H. Boardman
Administrator

Enclosure

FRA Implementation Schedule (R-08-05, -06, -07)

R-08-05 (POC James Schwichtenberg, Track and Structures Division)

Introduce issue at full RSAC	9/10/2008
Publish Safety Advisory	11/15/2008
Present at Industry Meetings	Ongoing

R-08-06 (POC James Schwichtenberg, Track and Structures Division)

Publish NPRM	6/1/2009
Review comments in RSAC	12/1/2009
Issue final rule	TBD

R-08-07 (POC Lamar Allen, Alcohol/Drug Program Manager)

Complete issue paper for new Administrator	1/20/2009
Policy decision on how to proceed	TBD