



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: June 15, 1998

Reply to Att. of: MP&E 98-36

Subject: Judgement in the Enforcement of the Safety Appliance Standards -
(49 CFR Part 231)

From: Edward R. English
Director, Office of Safety Assurance and Compliance

To: Regional Administrators, Deputy Regional Administrators,
Motive Power & Equipment Specialists and Inspectors

Recently, FRA inspectors took exception to minimal deviations from the measurements specified in the Safety Appliance Standards on cars that have been in service with this condition for a long period of time without any known incident or casualty. Although these civil penalty citations are valid from a strictly technical and legal point of view, from a common sense point of view the cars operated safely for years, so these minimal deviations did not materially reduce safety.

Inspectors tend to view the Safety Appliance Standards as requiring the issuance of civil penalty citations if strict adherence to each clearance, size, or placement dimension is not maintained (i.e., either the clearance, placement, or size of each safety appliance is within the exact dimensions required by the regulation, or it is not). Our world has changed and is no longer that simple. The railroad operating environment has drastically changed. Crews are smaller, flat switching is rare and the number run-through trains is much greater--all decreasing the use of safety appliances. In addition, the limited resources available to both FRA and the railroads require that care be taken to avoid the frivolous use of these resources pursuing minor infractions that do not materially reduce safety.

Most of the Safety Appliance Standards were developed nearly 100 years ago in a time when almost all cars were of a standard design. Application of the regulations to these cars was simple and required little if any judgment on the part of the inspector. Today most new cars are "Cars of special construction." See 49 CFR § 231.18. The Safety Appliance Standards for such cars must be determined from the "nearest approximate type" of a standard car. Id. As a result, the Safety Appliance Standards can not be applied directly to these cars without exercising good judgment.

Today, inspectors must exercise this judgment, not just take measurements and file exceptions for minimal deviations. An exception should be taken when the condition of the safety appliance materially reduces safety. For example, a safety appliance with a slight looseness that is still firmly fastened with all of the securing bolts in place, or a safety appliance with a slightly reduced clearance that is still more than adequate for its intended use does not materially reduce safety. However, one court found that a handhold moving as little as ½ inch was not "firmly fastened." See Roe v. Port Terminal R.R. Ass'n, 620 S.W. 2d. 870 (Tex. Civ. App. 1981). Therefore, exactly what materially reduces safety is not always clear--it is a judgment call often dependent on the unique set of conditions governing the operation at the time.

Some general guidance for exercising judgment in the enforcement of the Safety Appliance Standards is as follows: 1) Do not take exception to a non-complying design feature of a type of car that has a long and continuous, safe service history. However, if individual cars of that type or class have another non-complying condition, an exception may be taken. 2) If exertion of a significant force (a force greater than that which would be encountered in the normal use or operation of the appliance) is required to move a safety appliance, exception should generally not be taken. 3) On the other hand, if the safety appliance moves easily to the touch, exception certainly should be taken.

Although safety appliances remain an extremely important part of railroad safety and the standards pertaining to these appliances must continue to be enforced, the enforcement of the Standards needs to be determined through the exercise of good judgment so that scarce FRA and railroad resources are not consumed pursuing minor infractions that do not materially reduce safety.

A thorough sample-car inspection--performed in accordance with the procedures described on pages 3-6 of the Motive Power and Equipment Manual--is the proper time to enforce the Safety Appliance Standards strictly. An excellent sample-car inspection will ensure safety appliance compliance before that type of car is placed in service.

I request that Regional Directors and Regional MP&E Specialists pass this guidance along to all MP&E Inspectors.

#