

Result: Yard track number 6 loses its eligibility for designation as excepted track on January 1, 2014, and remains ineligible thereafter until the inspections required by § 213.4(c) begins. Starting January 1, 2014, the track becomes subject to all provisions of the TSS and remains subject to those requirements until such time as the inspections begin. Violation citations arising from inadvertent violations of the inspection requirement ordinarily should be issued only where safety was impaired or there is evidence of continued noncompliance.

In contrast to violations of the definitional (§ 213.4(a) to (d)) requirements, the unit of violation for noncompliance with the operational limitations is the train. We refer here to occasional and inadvertent noncompliance with operational limitations. A persistent and well-documented pattern of noncompliance with respect to a particular segment may cause the railroad to lose its privilege of designating the segment as excepted track (i.e., the track would no longer qualify for such designation), or force FRA to use more drastic enforcement remedies such as emergency orders. The following examples illustrate this concept.

Example Three. A railroad properly designates a track segment as excepted track, 10 days later it operates a freight train containing 10 placarded tank cars over the track segment.

Result: One violation of § 213.4(e)(3) by the railroad has occurred, not five, because the unit of violation is the train rather than each of the placarded cars exceeding the five car limit. The segment continues to be excepted track because a violation of an operational limitation does not render the track ineligible for excepted track status.

Example Four. Railroad A properly designates one of its track segments as excepted track. Railroad B's freight train 2425, using the segment pursuant to a trackage rights agreement with Railroad A, operates over the segment at a speed of 20 mph.

Result: One violation has occurred of § 213.4(e)(2) by Railroad A. The track owner is the responsible party for illegal operations over the excepted track. The segment continues to be excepted track.

### **§ 213.5 Responsibility for compliance**

*5(a) Except as provided in paragraph (b) of this section, any owner of track to which this part applies who knows or has notice that the track does not comply with the requirements of this part, shall -*

- (1) Bring the track into compliance;*
- (2) Halt operations over that track; or*
- (3) Operate under authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, subject to conditions set forth in this part.*

**Guidance:** This paragraph describes the action that must be taken by a railroad or track owner once they know or have notice (knowledge standard) that the track is not in compliance with the TSS. The track owner must:

- (1) Bring the track into compliance by either repairing the defects or imposing an appropriate speed restriction.
- (2) Remove the track from service, that is disallowing train operations.