

## §216.17

## 49 CFR Ch. II (10–1–04 Edition)

### §216.17 Appeals.

(a) Upon receipt of a Special Notice prescribed in §§216.11, 216.13, 216.14, or 216.15, a railroad may appeal the decision of the Inspector to the FRA Regional Administrator for the region in which the notice was given. The appeal shall be made by letter or telegram. The FRA Regional Administrator assigns an inspector, other than the inspector from whose decision the appeal is being taken, to reinspect the railroad freight car, locomotive, railroad passenger equipment, or track. The reinspection will be made immediately. If upon reinspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective. If on reinspection the decision of the original inspector is sustained, the FRA Regional Administrator notifies the railroad that the appeal has been denied.

(b) A railroad whose appeal to the FRA Regional Administrator has been denied may, within thirty (30) days from the denial, appeal to the Administrator. After affording an opportunity for informal oral hearing, the Administrator may affirm, set aside, or modify, in whole or in part, the action of the FRA Regional Administrator.

(c) The requirements of a Special Notice issued under this subpart shall remain in effect and be observed by a railroad pending appeal to the FRA Regional Administrator or to the Administrator.

[67 FR 19989, Apr. 23, 2002]

### Subpart C—Emergency Order— Track

#### §216.21 Notice of track conditions.

(a) When an FRA Track Inspector or State Track Inspector finds track conditions which may require the issuance of an Emergency order removing the track from service under section 203, Public Law No. 91-458, 84 Stat. 972 (45 U.S.C. 432), the Inspector may issue a

notice to the railroad owning the track. The notice sets out and describes the conditions found by the Inspector and specifies the location of defects on the affected track segment. The Inspector provides a copy to the FRA Regional Track Engineer and the FRA Regional Administrator.

(b) In the event the railroad immediately commences repairs on the affected track and so advises the FRA Regional Track Engineer, the Regional Track Engineer assigns an Inspector to reinspect the track immediately on the completion of repairs. If upon reinspection the Inspector determines that necessary repairs have been completed, he withdraws the Notice of Track Conditions.

#### §216.23 Consideration of recommendation.

Upon receipt of a Notice of Track Conditions issued under §216.21, the FRA Regional Administrator prepares a recommendation to the Administrator concerning the issuance of an Emergency order removing the affected track from service. In preparing this recommendation, the FRA Regional Administrator considers all written or other material bearing on the condition of the track received from the railroad within three (3) calendar days of the issuance of the Notice of Track Conditions and also considers the report of the FRA Regional Track Engineer.

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#### §216.25 Issuance and review of emergency order.

(a) Upon recommendation of the FRA Regional Administrator, the Administrator may issue an Emergency order removing from service track identified in the notice issued under §216.21.

(b) As specified in section 203, Public Law No. 91-458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of the Emergency order is provided in accordance with section 554 of title 5 of the U.S.C. Petitions for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements