



U.S. Department  
of Transportation

1200 New Jersey Ave., S.E.  
Washington, DC 20590

**Federal Railroad  
Administration**

Mr. Fred Dennin  
Fred Dennin & Associates, LLC  
26 Chief's Trail  
Sharpsburg, Georgia 30277

Re: Letter Requesting a Legal Interpretation on the Application of 49 C.F.R. § 213.3

Dear Mr. Dennin:

I am writing in response to your letter dated August 17, 2017, to the Office of Chief Counsel for the Federal Railroad Administration ("FRA"), requesting FRA's opinion on the interpretation of § 213.3(b) of FRA's Track Safety Standards (49 C.F.R. Part 213). Your letter poses six specific questions, each of which has been copied or summarized below and will be addressed individually.

Preliminarily, as you know, 49 C.F.R. § 213.3(b) states that Part 213 shall not apply to track "[l]ocated inside an installation that is not part of the general railroad system of transportation (i.e., a plant railroad)." It goes on to define a plant railroad and concludes by stating "this exclusion does not apply to track over which a general system railroad operates, even if that track is located within a plant railroad." Section 213.3(b) was drafted, and is interpreted, consistent with FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, 49 C.F.R. Part 209, Appendix A, which states in relevant part: "The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant." Emphasis added. *See also* 79 Fed. Reg. 4234, 4242 (Jan. 24, 2014) (citing this policy statement in the preamble to the final rule on Track Safety Standards; Improving Rail Integrity).

1. When "general system" railroads operate on track inside industrial plant facilities, including those that do not meet the definition of a plant railroad, must that track comply with 49 C.F.R. Part 213? If so, which sub-parts apply? If there are sub-parts that are not applicable, where are they listed?

Industrial plant facilities that do not meet the definition of a plant railroad and are

otherwise part of the general railroad system would, unless they met another exception listed in 49 C.F.R. § 213.3, be subject to Part 213 and would have to comply with all applicable subparts.

As noted above, for a facility that meets the definition of a “plant railroad,” the track over which the general system operates must comply with the requirements of Part 213 related to the condition of the track itself. Specifically, FRA would therefore expect the track over which the general railroad system operates to comply with Part 213, Subpart’s B, C, D, and E, which cover minimum requirements for the roadbed, track geometry, track structure, and track appliances. However, FRA would not expect compliance with Part 213, Subpart F, which concerns track inspections and recordkeeping. Accordingly, the plant railroad may adopt whichever track inspection and recordkeeping procedures it finds appropriate to help maintain the condition of the track over which the general system railroad operates. Similarly, the provisions of Part 213, Subpart A, would apply only to the extent they relate to the condition of the track and the railroad’s associated rights and obligations.

2. Assuming track inside an industrial plant facility over which a general system railroad operates must comply with 49 C.F.R. Part 213, must it be inspected by someone qualified under 49 C.F.R. § 213.7? Who is responsible for ensuring the track meets the requirements of Part 213 and must they be qualified under Part 213?

No. As stated in the answer to Question 1, 49 C.F.R. Part 213 requires that the plant railroad only maintain the condition of the track over which the general system railroad operates to the minimum standards listed in Part 213. The plant railroad is not required to inspect such track using someone qualified under 49 C.F.R. § 213.7. The plant railroad may therefore adopt whichever track inspection and recordkeeping procedures it finds appropriate to help maintain the condition of the track over which the general system railroad operates.

3. Assuming track inside an industrial plant facility over which a general system railroad operates must comply with 49 C.F.R. Part 213, must the plant track owner comply with 49 C.F.R. § 213.7(b)? Must the person conducting track inspections be qualified under Part 213? If required to be qualified, who is responsible for qualifying them? If track inspections are required, do records of those inspections need to be maintained, and if so, by whom and at what location?

No. See answers to Questions 1 and 2.

4. Assuming track inside an industrial plant facility over which a general system railroad operates must comply with 49 C.F.R. Part 213, must the plant track owner comply with 49 C.F.R. § 213.7(a)?

No. See answers to Questions 1 and 2.

5. Assuming track inside an industrial plant facility over which a general system railroad operates must comply with 49 C.F.R. Part 213, is it permissible for an industrial plant to place its track in Excepted Track status, per 49 C.F.R. § 213.4?

Yes. A plant railroad can designate a segment of track as excepted track so long as it complies with requirements of § 213.4.

6. If it is permissible for an industrial plant to place its track in Excepted Track status, must the track meet all the requirements listed in 49 C.F.R. § 213.4?

Yes. See answer to Question 5.

If you have any further questions relating to this issue, please contact Aaron Moore of my staff at (202) 493-7009.

Sincerely,

A handwritten signature in black ink, appearing to read 'John T. Seguin', with a stylized flourish at the end.

John T. Seguin  
Assistant Chief Counsel  
for Safety