



# Memorandum

U.S. Department  
of Transportation

Federal Railroad  
Administration

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**Subject:** General Technical Bulletin No. G-13-01  
FAQ Guidelines for Office of Railroad Safety inspectors using railroad and nonrailroad monitoring devices (scanners/two-way radios) in connection with official duties

**From:** *Bonnie Murphy*  
Bonnie J. Murphy, Deputy Associate Administrator for Safety Compliance and Program Implementation

**To:** All Federal Railroad Administration Field Employees, Participating State Employees, and Staff Directors

The purpose of this technical bulletin is to provide the Federal Railroad Administration (FRA) Office of Railroad Safety personnel with guidance in the application of Section 306 of the Rail Safety Improvement Act of 2008 (Public Law No. 110-432), and as amended by 49 U.S.C § 20107. It is also intended to augment a previous enforcement bulletin dated September 9, 2011, by Thomas J. Herrmann, Assistant Chief Counsel for Safety.

This statutory provision permits FRA inspectors to intercept railroad radio communications (that are broadcast over a railroad carrier's radio frequency when primarily used for communications in connection with railroad operations) with or without the permission of the senders or receivers of the communications. However, the intercepted communication itself may not be referenced in an inspection report or a violation report, as is further discussed below and in the enforcement bulletin. In order to take enforcement action based on the contents of an overheard radio communication, inspectors must follow existing FRA procedures (by either listening to the communication in the knowing presence of an authorized user, or having received permission to listen from an authorized user at a location away from the sender or receiver, such that the act of listening to the communication is not an "interception" made under the authority of this statutory provision).

The following Frequently Asked Questions were developed to further assist you in the application of the Section 306:

- 1Q. Can an inspector use a nonrailroad radio to monitor railroad operations?
  - 1A. Yes, but only for the purpose of furthering FRA's overall safety mission of railroad accident and incident prevention and investigation. Inspectors are prohibited from using a nonrailroad radio to record any compliance or noncompliance with Federal regulations on an inspection report or violation report.

- 2Q. Why should an inspector monitor intercepted communications on a nonrailroad radio if the information cannot be used in a violation report?
- 2A. Evidence other than the intercepted conversation itself, uncovered as a result of listening in on the railroad communication, may be used to support a violation report. For example, if an FRA inspector monitors a conversation about improper placement of a hazardous materials tank car in a train, the FRA inspector may be able to position him or herself in a location to physically observe the improper placement. In this example, the inspector would cite personal observation of the violation, and not make any reference to the intercepted conversation in the inspection or violation report.
- 3Q. Are there any circumstances when an inspector can disclose or use intercepted communications from a nonrailroad radio in connection with official FRA business?
- 3A. Yes, but be aware these circumstances are very narrow and are limited to the purpose of accident/incident prevention or investigation. Inspectors are reminded to seek counsel from regional management when in doubt.
- 4Q. Are there any other legal considerations an inspector should be aware of when disclosing or using intercepted communications information from a nonrailroad radio?
- 4A. Yes, disclosure of irrelevant information from any source (e.g., a railroad radio, nonrailroad radio, scanner, or even during discussions) is prohibited. For example, gossip or an embarrassing personal fact about another person obtained through any sources, including intercepted communications, is not permitted and may be in violation of Federal or State law. As with any situation, an inspector must be able to articulate the justification behind the disclosure as it relates to FRA's safety mission.
- 5Q. Can an inspector generate an FRA Form 6180.96 inspection report regarding any information or communication intercepted by nonrailroad radio scanner?
- 5A. No. Intercepted communications cannot be used as evidence on an inspection report unless authorized by regional management.
- 6Q. Can an inspector use a railroad radio (e.g. unattended locomotive radio) to monitor compliance with Title 49 Code of Federal Regulations Part 220?
- 6A. Yes, but if the monitoring does not take place in the knowing presence of an authorized user (e.g., a member of the train crew) or without the inspector having received permission to monitor the communications from an authorized user at a point away from the sender or receiver (e.g., yardmaster or member of the train crew), then the railroad communications overheard while monitoring the radio are considered to be "intercepted" communications, and those communications may not be referenced in an inspection or violation report, or be used to generate such reports. However, if the inspector does monitor the radio in the knowing presence of an authorized user or with the permission of an authorized user to monitor communications at a point away from the sender or receiver, the inspector must provide either the identification of the railroad employee (name and title), who was present, or the railroad employee (name and title), who acknowledged the inspector's intent to monitor the radio, and may reference the radio communications in an inspection or violation report.

- 7Q. If an inspector intercepts a clear Federal violation while monitoring radio communications on a nonrailroad radio, can he or she request a tape recording (pulling the tapes), of said communications if available, then use the tape recordings as evidence of the violation?
- 7A. Yes, but inspectors are reminded to exercise discretion under these circumstances. In addition, inspectors are encouraged to consult with regional management and fully articulate the purpose of the request before initiating any action with the railroad.
- 8Q. Can an inspector record and play the intercepted communications from a nonrailroad radio and use it as evidence to prove noncompliance to a railroad officer, or use the recording in a violation report?
- 8A. No, recorded evidence obtained in this manner may not be used in an inspection report or violation report.
- 9Q. Can an inspector perform other tasks while monitoring communications on a nonrailroad radio (e.g., driving, walking in a railroad yard, observing Roadway Worker Protection procedures, or Form B procedures)?
- 9A. Yes, provided the monitoring does not distract the inspector from his or her personal safety.
- 10Q. Can an inspector monitor communications on a nonrailroad radio while riding in a controlling locomotive cab or hi-rail vehicle?
- 10A. No, the nonrailroad radio could cause a distraction to the locomotive engineer or hi-rail vehicle driver.
- 11Q. If an inspector observes an unsafe condition and has a nonrailroad radio, or has access to a railroad radio that can transmit, can he or she use either device to notify the railroad of the unsafe condition?
- 11A. No, Section 306 does not authorize two-way communication by Office of Railroad Safety employees.
- 12Q. Can an inspector discuss their use of a nonrailroad radio with railroad employees, specifically railroad managers?
- 12A. Yes, FRA inspectors may discuss their ability to monitor railroad operations from a nonrailroad radio. However, inspectors should never discuss or disclose findings associated with this activity.