

BMWED SUMMARY OF REGULATORY JURISDICTION
between the
FEDERAL RAILROAD ADMINISTRATION (FRA)
and the
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)
(December 2016)

The Occupational Safety and Health Act of 1970 established OSHA and granted the agency broad statutory authority to regulate the health and safety of employees in a variety of workplace throughout the United States. OSHA's regulations are found in Title 29 (Labor) of the Code of Federal Regulations (examples: 29 CFR Part 1910 [General Industry], 29 CFR Part 1926 [Construction]).

The Federal Railroad Safety Act of 1970 (the "Safety Act") granted rulemaking authority to the Secretary of Transportation over all areas of railroad safety. This authority, and the authority to levy fines for violating rail safety laws, was subsequently delegated to the Administrator of FRA. Title 49 (Transportation) of the Code of Federal Regulations (49 CFR) is where all FRA regulations are found.

Pursuant to its statutory authority, FRA promulgates and enforces regulations governing railroad safety such as railroad track, signal systems, railroad communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, etc. These are areas considered *intrinsic to railroad operations*, i.e., conditions that generally could not or do not occur in a typical industrial workplace setting outside of the railroad work environment. FRA has also exercised its authority to regulate certain (limited) areas of railroad workplace safety (examples: Roadway Worker Protection, Blue Flag, Bridge Worker Safety).

To summarize the jurisdiction between OSHA and FRA, generally speaking, OSHA's

standards apply according to their terms until another federal agency, such as the Federal Railroad Administration, exercises its authority to prescribe or enforce standards or regulations affecting the working condition. Where FRA has not issued written and enforceable standards or otherwise exercised its authority over a particular safety or health condition occurring within the railroad work environment, the OSHA standard addressing that particular safety or health condition will, *in most cases*, be applicable and enforceable by OSHA on railroad property (with the exception of hazards deemed “*intrinsic to railroad operations*”). Thus, safety and health conditions occurring within the railroad work environment will almost always (with some exceptions) be governed by *either* FRA or OSHA, depending upon which agency has exercised authority to regulate such condition(s). In no case, however, will both FRA and OSHA retain authority over the same identical health or safety condition.

Some Examples on FRA vs. OSHA Jurisdiction:

Welding – FRA regulations (Track Safety Standards, 49 CFR Part 213) govern the specifications for welding a frog, i.e., the depth and width of the flangeway, shape and contour of the point of frog, tread wear, guard face gage/guard check gage, and the maximum authorized speed of trains traveling over the frog based upon its condition. However, FRA does not have standards for the safety and health protection of the welder. As such, the OSHA safety standards related to welding and grinding equipment, as well as eye protection (welding shield), gloves, respiratory protection, hearing protection, fire prevention, etc. apply to track welders.

Hazard Communication: FRA regulations do not address hazard communication with regard

to chemical use or the availability of Material Safety Data Sheets (MSDS). Therefore, the OSHA standard for Hazard Communication (29 CFR 1910.1200) applies to the communication of chemical hazards and the availability of MSDS in the railroad workplace.

Job Safety Briefing: FRA regulations require roadway workers to participate in an On-Track Safety Briefing under the Roadway Worker Protection Standard (49 CFR, Part 214(c)).

However, FRA regulations do not specifically address Job Safety Briefings and Hazard Assessment. Therefore, the job safety briefing requirements of OSHA 1910.132 or 1910.269 generally apply in the railroad workplace.

Respiratory Protection: FRA does not have regulations governing the use, selection, and fit testing of respirators. Therefore, the OSHA Respiratory Protection Standard (29 CFR) 1910.134 apply to the use, selection and fit testing of respirators used in the railroad workplace (outside of locomotives and rolling stock, which are environments deemed “*intrinsic to railroad operations*”).

These are just a few examples of the “shared” jurisdictional authority between FRA and OSHA. There are hundreds of other examples where OSHA standards may apply; however, each specific situation must be viewed on an individual basis to determine coverage.

BMWED members with specific questions regarding regulatory jurisdiction may contact the BMWED Department of safety at Ricki@bmwe.org or Mgekas@bmwe.org.