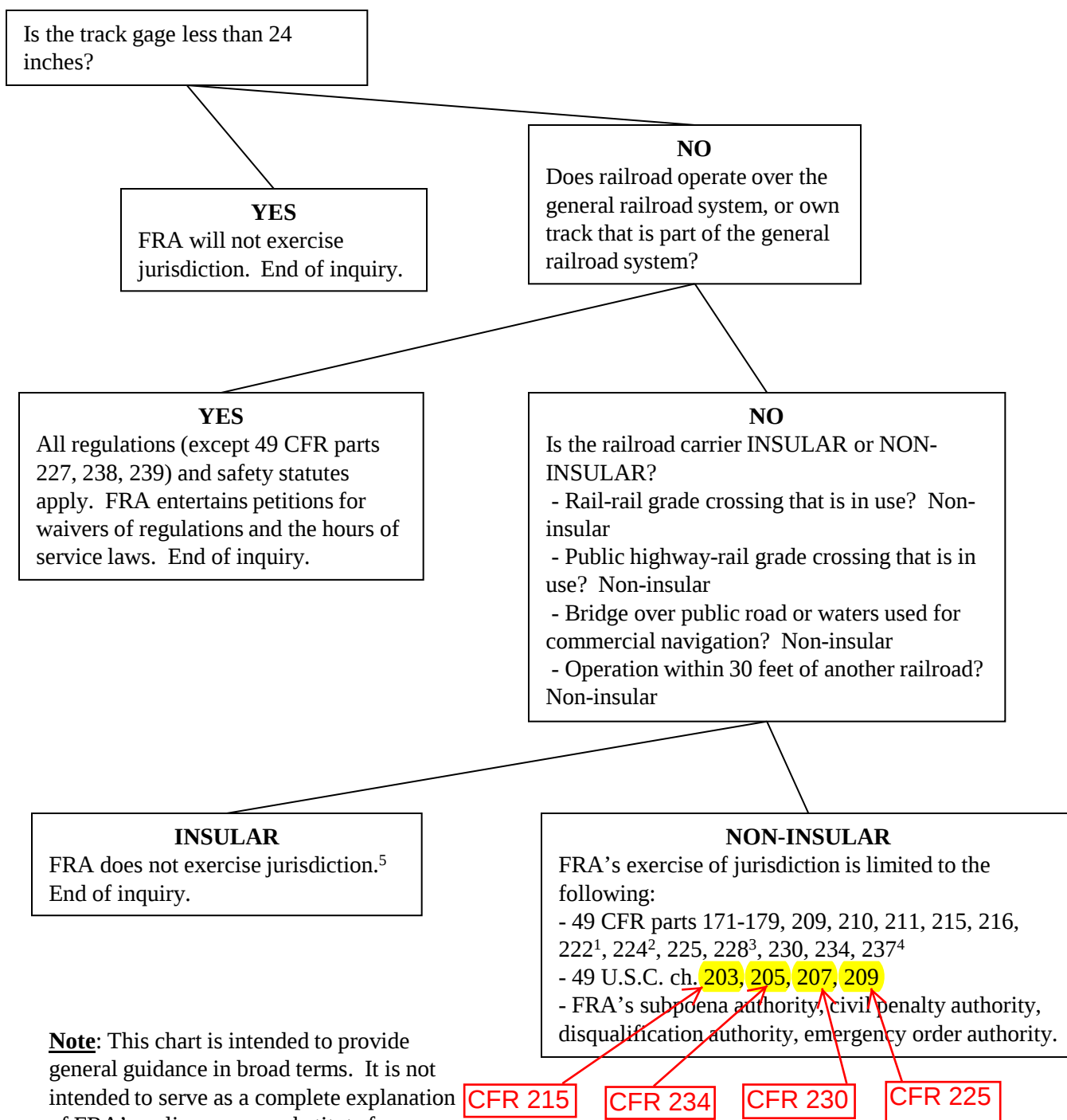


Tourist Railroads

FRA's Exercise-of-Jurisdiction

Decision Tree



¹ Part 222 (train horn) does not apply to passenger railroads that operate entirely off the general system and at speeds of 15 miles per hour or less over public highway-rail grade crossings.

² Part 224 (reflectorization) only applies to those railroad freight cars and locomotives that cross a public or private highway-rail grade crossing, are used for revenue or work train service, and are not being used exclusively in passenger service.

³ Part 228, Subparts B & F, apply to train employees of both insular and non-insular tourist railroads. Hours of service restrictions on duty hours (49 U.S.C. ch. 211) apply to dispatcher and signal employees of tourist railroads.

⁴ Part 237 (bridge safety standards) applies to both insular and non-insular tourist railroads. See 75 Fed. Reg. 41282, 41284 & 41288 (July 15, 2010).

⁵ See above references to Parts 228 and 237 for nuances relating to insularity.

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The Federal Railroad Administration's (FRA) Safety Jurisdiction over Tourist Railroads

The authority of FRA, as a delegate of the Secretary of Transportation, to regulate railroads arises from title 49 of the United States Code, section 20103, which gives the agency plenary authority over “every area of railroad safety.” 49 U.S.C. § 20103; 49 C.F.R. § 1.49. The term “railroad” is defined by the Act as “any form of nonhighway ground transportation that runs on rails or electromagnetic guideways” 49 U.S.C. § 20102(2)(A). The definition excludes only rapid transit systems that operate in urban areas and are not connected to the general railroad system of transportation (general system). 49 U.S.C. § 20102(2)(B). The term “general railroad system of transportation” is defined at Appendix A to 49 C.F.R. Part 209 as: “the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.” Portions of the network that lack a physical connection may still be part of the general system by virtue of the nature of the operations that occur. See id. The term “railroad carrier” is defined by the statute as “a person providing railroad transportation.” 49 U.S.C. § 20102(3).

For resource and policy reasons, FRA does not extend the reach of most of its regulations as far as the statute permits. See Appendix A to 49 C.F.R. Part 209. In an effort to clarify the proper extent of the exercise of FRA’s jurisdiction over tourist railroads, we have recently settled on several principles that we will use as our current guidelines.

We will exercise jurisdiction over all tourist operations, whether or not they operate over the general system, except those that (1) operate over track that is less than 24 inches in gage and/or (2) are insular.¹ Operations on track that is less than 24 inches in gage have never been considered railroads under the Federal railroad safety laws and are generally considered miniature or imitation railroads.

We will consider a tourist operation insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public, except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

- A public highway-rail grade crossing that is in use;
- A rail-rail grade crossing that is in use;
- A bridge over a public road or waters used for commercial navigation; or

¹ Note that 49 C.F.R. Part 228, Subparts B and F (passenger hours of service), and 49 C.F.R. Part 237 (bridge safety standards), apply to both insular and non-insular tourist railroads.

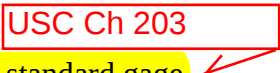
- A common corridor with a railroad, i.e., its operations are within 30 feet of those of another railroad.

The mere fact that a tourist operation is not connected to the general system will not make it insular under the above criteria. While these criteria will tend to sort out the insular theme parks and museums, there will still be a need to do a case-by-case analysis in some close situations.

How the Federal Railroad Safety Laws and Regulations Apply to Tourist Railroads

Tourist railroads are not required to comply with 49 C.F.R. Part 227 (occupational noise exposure), Part 238 (passenger equipment safety) or Part 239 (passenger train emergency preparedness). Tourist railroads that operate on the general system must comply with all statutes and all other regulations and orders unless and until any appropriate waiver has been applied for and granted. Of course, FRA generally lacks the authority to waive statutory requirements.

Some tourist railroads are neither insular nor part of the general system (i.e., stand-alone lines with no freight traffic). For these railroads, only the following regulations and statutory provisions apply:

- The requirements of the safety appliance laws and a provision of the locomotive inspection law found at 49 U.S.C. §§ 20102, 20301, 20302, 20502-20505, 20902, 21302, and 21304 (formerly 45 U.S.C. §§ 2, 4, 9, 11, and 22); and the requirements of the signal inspection law found at 49 U.S.C. §§ 20102, 20502-20505, 20902, 21302, and 21304 (formerly 49 App. U.S.C. § 26);
- Hazardous materials regulations of the Pipeline and Hazardous Materials Safety Administration (49 C.F.R. Parts 171-179);
- FRA's procedural regulations at 49 C.F.R. Parts 209, 211, and 216;
- Noise emission regulations (49 C.F.R. Part 210): but note that the regulations do not apply to steam locomotives;
- Freight car safety standards (49 C.F.R. Part 215) applicable only to standard gage lines; 
- Use of locomotive horns at highway-rail grade crossings (49 C.F.R. Part 222): but does not apply to passenger railroads that operate entirely off of the general system and at speeds of 15 miles per hour or less over public highway-rail grade crossings;
- Reflectorization of rail freight rolling stock (49 C.F.R. Part 224): but only to those railroad freight cars and locomotives that cross a public or private highway-rail grade crossing, are used for revenue or work train service, and are not being used exclusively in passenger service;

- Accident/incident reporting regulations (49 C.F.R. Part 225); 
- Passenger hours of service regulations (49 C.F.R. Part 228)²; 
- Steam locomotive inspection regulations (49 C.F.R. Part 230); 
- Grade crossing signal system safety regulations (49 C.F.R. Part 234);
- Bridge safety standards (49 C.F.R. Part 237)³; and
- All general power and enforcement provisions of the rail safety statutes (e.g., subpoena authority, civil penalty authority, disqualification authority, and emergency order authority).⁴

Thus, there are many FRA regulations that do not presently apply to tourist railroads that do not operate over the general system. However, FRA's emergency order authority permits it to address a true safety emergency arising from conditions (e.g., the proper functioning of air brakes) covered by those regulations or any other regulations (e.g., the track safety standards) that do not apply outside of the general system. Consequently, even tourist railroads that operate off of the general system should understand that FRA has jurisdiction to inspect their operations and to take emergency action if those operations pose an imminent hazard of death or injury.

² 49 C.F.R. Part 228, Subparts B & F, apply to train employees on tourist railroads. See 76 Fed. Reg. 50360, 50361, 50380, 50382 & 50383 (Aug. 12, 2011). Statutory hours of service restrictions on duty hours (49 U.S.C. ch. 211) apply to dispatchers and signal employees.

³ See 75 Fed. Reg. 41282, 41284 & 41288 (July 15, 2010) (stating that the bridge safety standards apply to both insular and non-insular tourist railroads).

⁴ The user fee regulations, formerly at 49 C.F.R. Part 245, have been removed from the Code of Federal Regulations and are not in effect because the Secretary's authority to collect user fees expired at the end of fiscal year 1995. See 74 Fed. Reg. 25176 (May 27, 2009).

Chapter 211: Hours of Service

§ 21101	Definitions
§ 21102	Nonapplication, exemption, and alternate hours of service regime
§ 21103	Limitations on duty hours of train employees
§ 21104	Limitations on duty hours of signal employees
§ 21105	Limitations on duty hours of dispatching service employees
§ 21106	Limitations on employee sleeping quarters
§ 21107	Maximum duty hours and subjects of collective bargaining
§ 21108	Pilot projects
§ 21109	Regulatory authority

21101

§ 21101. Definitions

In this chapter—

- (1) “designated terminal” means the home or away-from-home terminal for the assignment of a particular crew.
- (2) “dispatching service employee” means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.
- (3) “employee” means a dispatching service employee, a signal employee, or a train employee.
- (4) “signal employee” means an individual who is engaged in installing, repairing, or maintaining signal systems.
- (5) “train employee” means an individual engaged in or connected with the movement of a train, including a hostler.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 888.)

21102

§ 21102. Nonapplication, exemption, and alternate hours of service regime

- (a) GENERAL.—This chapter does not apply to a situation involving any of the following:
 - (1) a casualty.
 - (2) an unavoidable accident.
 - (3) an act of God.
 - (4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.
- (b) EXEMPTION.—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on

deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

(c) APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES.—

(1) When providing commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of railroad carriers, including public authorities operating passenger service, shall be solely governed by old section 21103 until the earlier of —

(A) the effective date of regulations prescribed by the Secretary under section 21109(b) of this chapter; or

(B) the date that is 3 years following the date of enactment of the Rail Safety Improvement Act of 2008.

(2) After the date on which old section 21103 ceases to apply, pursuant to paragraph (1), to the limitations on duty hours for train employees of railroad carriers with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of such railroad carriers shall be governed by new section 21103, except as provided in paragraph (3).

(3) After the effective date of the regulations prescribed by the Secretary under section 21109(b) of this title, such carriers shall —

(A) comply with the limitations on duty hours for train employees with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation as prescribed by such regulations; and

(B) be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

(4) In this subsection:

(A) The terms "commuter rail passenger transportation" and "intercity rail passenger transportation" have the meaning given those terms in section 24102 of this title.

(B)(1)

(C) The term "new section 21103" means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

(D) The term "old section 21103" means section 21103 of this chapter as it was in effect on the day before the enactment of that Act.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 888.)

21103

§ 21103. Limitations on duty hours of train employees

(a) IN GENERAL.—Except as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to—

(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours—

- (A) on duty;
- (B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or
- (C) in any other mandatory service for the carrier;
- (2) remain or go on duty for a period in excess of 12 consecutive hours;
- (3) remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours; or
- (4) remain or go on duty after that employee has initiated an on-duty period each day for—
 - (A) 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier except that—
 - (i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and
 - (ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier; or
 - (B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier, if—
 - (i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective bargaining agreements entered into during such period expressly provide for such a schedule;
 - (ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or
 - (iii) such a schedule is provided for by a pilot program under section 21108 of this chapter related to employees' work and rest cycles.

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

- (1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.
- (2) Time the employee is engaged in or connected with the movement of a train is time on duty.
- (3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.
- (4) Time spent in deadhead transportation to a duty assignment is time on duty, but time

spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) LIMBO TIME LIMITATION AND ADDITIONAL REST REQUIREMENT.—

(1) A railroad carrier may not require or allow an employee—

(A) to exceed a total of 40 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release, following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period from the date of enactment of the Rail Safety Improvement Act of 2008 to one year after such date of enactment; and

(B) to exceed a total of 30 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release, following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period beginning one year after the date of enactment of the Rail Safety Improvement Act of 2008 except that the Secretary may further limit the monthly limitation pursuant to regulations prescribed under section 21109.

(2) The limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by—

(A) a casualty;

(B) an accident;

(C) an act of God;

(D) a derailment;

(E) a major equipment failure that prevents the train from advancing; or

(F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(3) Each railroad carrier shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation or in deadhead transportation from a duty

assignment to the place of final release in excess of the requirements of paragraph (1).

(4) If—

(A) the time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time on duty, plus

(B) the time on duty,

exceeds 12 consecutive hours the railroad carrier and its officers and agents shall provide the employee with additional time off duty equal to the number of hours by which such sum exceeds 12 hours.

(d) EMERGENCIES.— A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

(e) COMMUNICATION DURING TIME OFF DUTY.— During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 888.)

21104

§ 21104. Limitations on duty hours of signal employees

(a) IN GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty —

(1) for a period in excess of 12 consecutive hours; or

(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.

(b) DETERMINING TIME ON DUTY.— In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.— A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service. A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.

(d) COMMUNICATING DURING TIME OFF DUTY.— During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.

(e) EXCLUSIVITY.— The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 889.)

21105

§ 21105. Limitations on duty hours of dispatching service employees

(a) Application.— This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) General.— Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which

only one shift is employed.

(c) Determining Time on Duty.— Under subsection (b) of this section, time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) Emergencies.— When an emergency exists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 890.)

21106

§ 21106. Limitations on employee sleeping quarters

(a) IN GENERAL.—A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

(b) CAMP CARS.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with subsection (a).

(c) REGULATIONS.—Not later than April 1, 2010, the Secretary of Transportation, in coordination with the Secretary of Labor, shall prescribe regulations to implement subsection (a)(1) to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that uses camp cars, which shall require that all camp cars comply with those regulations by December 31, 2010. In prescribing the regulations, the Secretary shall assess the action taken by any railroad carrier to fully retrofit or replace its camp cars pursuant to this section.

(d) COMPLIANCE AND ENFORCEMENT.—The Secretary shall determine whether a railroad carrier has fully retrofitted or replaced a camp car pursuant to subsection (b) and shall prohibit the use of any non-compliant camp car. The Secretary may assess civil penalties pursuant to chapter 213 for violations of this section.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 891.)

21107

§ 21107. Maximum duty hours and subjects of collective bargaining

The number of hours established by this chapter that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad

carrier and its employees.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 891.)

21108

§ 21108. Pilot projects

(a) IN GENERAL.—As of the date of enactment of the Rail Safety Improvement Act of 2008, a railroad carrier or railroad carriers and all nonprofit employee labor organizations representing any class or craft of directly affected covered service employees of the railroad carrier or railroad carriers, may jointly petition the Secretary of Transportation for approval of—

(1) a waiver of compliance with this chapter as in effect on the date of enactment of the Rail Safety Improvement Act of 2008; or

(2) a waiver of compliance with this chapter as it will be effective 9 months after the enactment of the Rail Safety Improvement Act of 2008,

to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of this chapter, including requirements concerning maximum on-duty and minimum off-duty periods.

(b) GRANTING OF WAIVERS.—The Secretary may, after notice and opportunity for comment, approve such waivers described in subsection (a) for a period not to exceed two years, if the Secretary determines that such a waiver of compliance is in the public interest and is consistent with railroad safety.

(c) EXTENSIONS.—Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the Federal Register.

(d) REPORT.—The Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, no later than December 31, 2012, or, if no projects are completed prior to December 31, 2012, no later than 6 months after the completion of a pilot project, a report that—

(1) explains and analyzes the effectiveness of any pilot project established pursuant to a waiver granted under subsection (a);

(2) describes the status of all other waivers granted under subsection (a) and their related pilot projects, if any; and

(3) recommends any appropriate legislative changes to this chapter.

(e) DEFINITION.—For purposes of this section, the term ‘directly affected covered service employees’ means covered service employees to whose hours of service the terms of the waiver petitioned for specifically apply.

(Added Pub. L. 103–440, title II, § 203(a), Nov. 2, 1994, 108 Stat. 4619.)

21109

§ 21109. Regulatory authority

(a) IN GENERAL.—In order to improve safety and reduce employee fatigue, the Secretary may prescribe regulations—

(1) to reduce the maximum hours an employee may be required or allowed to go or remain

on duty to a level less than the level established under this chapter;

(2) to increase the minimum hours an employee may be required or allowed to rest to a level greater than the level established under this chapter;

(3) to limit or eliminate the amount of time an employee spends waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is considered neither on duty nor off duty under this chapter;

(4) for signal employees—

(A) to limit or eliminate the amount of time that is considered to be neither on duty nor off duty under this chapter that an employee spends returning from an outlying worksite after scheduled duty hours or returning from a trouble call to the employee's headquarters or directly to the employee's residence; and

(B) to increase the amount of time that constitutes a release period, that does not break the continuity of service and is considered time off duty; and

(5) to require other changes to railroad operating and scheduling practices, including unscheduled duty calls, that could affect employee fatigue and railroad safety.

(b) **REGULATIONS GOVERNING THE HOURS OF SERVICE OF TRAIN EMPLOYEES OF COMMUTER AND INTERCITY PASSENGER RAILROAD CARRIERS.**—Within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall prescribe regulations and issue orders to establish hours of service requirements for train employees engaged in commuter rail passenger transportation and intercity rail passenger transportation (as defined in section 24102 of this title) that may differ from the requirements of this chapter. Such regulations and orders may address railroad operating and scheduling practices, including unscheduled duty calls, communications during time off duty, and time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

(c) **CONSIDERATIONS.**—In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, a railroad's use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad's required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

(d) **TIME LIMITS.**—

(1) If the Secretary determines that regulations are necessary under subsection (a), the Secretary shall first request that the Railroad Safety Advisory Committee develop proposed regulations and, if the Committee accepts the task, provide the Committee with a reasonable time period in which to complete the task.

(2) If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task. If the Committee does not reach consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months.

(3) If the Secretary does not request that the Railroad Safety Advisory Committee accept

the task of developing regulations under subsection (b), the Secretary shall prescribe regulations within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008.

(e) PILOT PROJECTS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:

(A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

(B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

(2) WAIVER.—The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.

(f) DUTY CALL DEFINED.—In this section the term "duty call" means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.

Endnotes

1 (Popup - Popup)

Editor's Note: There is no 21102(c)(4)(B). See Public Law 110-432, Section 108(d)(1)(B).

§ 20102. Definitions

In this part—

(1) ‘Class I railroad’, ‘Class II railroad’, and ‘Class III railroad’ mean railroad carriers that have annual carrier operating revenues that meet the threshold amount for Class I carriers, Class II carriers, and Class III carriers, respectively, as determined by the Surface Transportation Board under section 1201.1-1 of title 49, Code of Federal Regulations.’; and

(2) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(3) ‘railroad carrier’ means a person providing railroad transportation, except that, upon petition by a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated rail system, the Secretary may by order treat the group of railroad carriers as a single railroad carrier for purposes of one or more provisions of part A, subtitle V of this title and implementing regulations and order, subject to any appropriate conditions that the Secretary may impose.

(4) ‘safety-related railroad employee’ means—

(A) a railroad employee who is subject to chapter 211;

(B) another operating railroad employee who is not subject to chapter 211;

(C) an employee who maintains the right of way of a railroad;

(D) an employee of a railroad carrier who is a hazmat employee as defined in section 5102(3) of this title;

(E) an employee who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; and

(F) any other employee of a railroad carrier who directly affects railroad safety, as determined by the Secretary.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 863.)

§ 20301. Definition and nonapplication

(a) DEFINITION.—In this chapter, “vehicle” means a car, locomotive, tender, or similar vehicle.

(b) NONAPPLICATION.—This chapter does not apply to the following:

(1) a train of 4-wheel coal cars.

(2) a train of 8-wheel standard logging cars if the height of each car from the top of the rail to the center of the coupling is not more than 25 inches.

(3) a locomotive used in hauling a train referred to in clause (2) of this subsection when the locomotive and cars of the train are used only to transport logs.

(4) a car, locomotive, or train used on a street railway.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 881; Pub. L. 104–287, § 5(52), Oct. 11, 1996, 110 Stat. 3393.)

20302

§ 20302. General requirements

(a) **GENERAL.**—Except as provided in subsection (c) of this section and section 20303 of this title, a railroad carrier may use or allow to be used on any of its railroad lines—

(1) a vehicle only if it is equipped with—

(A) couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles;

(B) secure sill steps and efficient hand brakes; and

(C) secure ladders and running boards when required by the Secretary of Transportation, and, if ladders are required, secure handholds or grab irons on its roof at the top of each ladder;

(2) except as otherwise ordered by the Secretary, a vehicle only if it is equipped with secure grab irons or handholds on its ends and sides for greater security to individuals in coupling and uncoupling vehicles;

(3) a vehicle only if it complies with the standard height of drawbars required by regulations prescribed by the Secretary;

(4) a locomotive only if it is equipped with a power-driving wheel brake and appliances for operating the train-brake system; and

(5) a train only if—

(A) enough of the vehicles in the train are equipped with power or train brakes so that the engineer on the locomotive hauling the train can control the train's speed without the necessity of brake operators using the common hand brakes for that purpose; and

(B) at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train.

(b) **REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.**—A railroad carrier complying with subsection (a)(5)(A) of this section may refuse to receive from a railroad line of a connecting railroad carrier or a shipper a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier.

(c) **COMBINED VEHICLES LOADING AND HAULING LONG COMMODITIES.**—Notwithstanding subsection (a)(1)(B) of this section, when vehicles are combined to load and haul long commodities, only one of the vehicles must have hand brakes during the loading and hauling.

(d) **AUTHORITY TO CHANGE REQUIREMENTS.**—The Secretary may—

(1) change the number, dimensions, locations, and manner of application prescribed by the

Secretary for safety appliances required by subsection (a)(1)(B) and (C) and (2) of this section only for good cause and after providing an opportunity for a full hearing;

(2) amend regulations for installing, inspecting, maintaining, and repairing power and train brakes only for the purpose of achieving safety; and

(3) increase, after an opportunity for a full hearing, the minimum percentage of vehicles in a train that are required by subsection (a)(5)(B) of this section to be equipped and used with power or train brakes.

(e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying out subsection (d)(2) and (3) of this section, the Secretary may use the services of the Association of American Railroads.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 881.)

20502

§ 20502. Requirements for installation and use

(a) INSTALLATION.—

(1) When the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install, on any part of its railroad line, a signal system that complies with requirements of the Secretary. The order must allow the carrier a reasonable time to complete the installation. A carrier may discontinue or materially alter a signal system required under this paragraph only with the approval of the Secretary.

(2) A railroad carrier ordered under paragraph (1) of this subsection to install a signal system on one part of its railroad line may not be held negligent for not installing the system on any part of its line that was not included in the order. If an accident or incident occurs on a part of the line on which the signal system was not required to be installed and was not installed, the use of the system on another part of the line may not be considered in a civil action brought because of the accident or incident.

(b) USE.—A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating appurtenances—

(1) may be operated safely without unnecessary risk of personal injury; and

(2) has been inspected and can meet any test prescribed under this chapter.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 883.)

20503

§ 20503. Amending regulations and changing requirements

The Secretary of Transportation may amend a regulation or change a requirement applicable to a railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter—

(1) when the carrier files with the Secretary a request for the amendment or change and the Secretary approves the request; or

(2) on the Secretary's own initiative for good cause shown.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 884.)

§ 20504. Inspection, testing, and investigation

(a) SYSTEMS IN USE.—

- (1) inspect and test a signal system used by a railroad carrier; and
 - (A) inspect and test a signal system used by a railroad carrier; and
 - (B) decide whether the system is in safe operating condition.
- (2) In carrying out this subsection, the Secretary may employ only an individual who—
 - (A) has no interest in a patented article required to be used on or with a signal system; and
 - (B) has no financial interest in a railroad carrier or in a concern dealing in railroad supplies.

(b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Secretary may investigate, test, and report on the use of and need for a signal system, without cost to the United States Government, when the system is submitted in completed shape for investigation and testing.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 884.)

§ 20505. Reports of malfunctions and accidents

In the way and to the extent required by the Secretary of Transportation, a railroad carrier shall report to the Secretary a failure of a signal system to function as intended. If the failure results in an accident or incident causing injury to an individual or property that is required to be reported under regulations prescribed by the Secretary, the carrier owning or maintaining the signal system shall report to the Secretary immediately in writing the fact of the accident or incident.

§ 20902. Investigations

(a) GENERAL AUTHORITY.—The Secretary of Transportation, or an impartial investigator authorized by the Secretary, may investigate—

- (1) an accident or incident resulting in serious injury to an individual or to railroad property, occurring on the railroad line of a railroad carrier; and
- (2) an accident or incident reported under section 20505 of this title.

(b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the Secretary or authorized investigator may subpoena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony. If the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation. The railroad carrier on whose railroad line the accident or incident occurred shall provide reasonable facilities to the Secretary for the investigation.

(c) REPORTS.—When in the public interest, the Secretary shall make a report of the investigation, stating the cause of the accident or incident and making recommendations the

Secretary considers appropriate. The Secretary shall publish the report in a way the Secretary considers appropriate.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 887.)

21302

§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—

(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least \$500 but not more than \$25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) **CIVIL ACTIONS TO COLLECT.**—The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 892.)

21304

§ 21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 893.)