

§241.7

49 CFR Ch. II (10–1–07 Edition)

that occurs on trackage in the United States by a dispatcher located outside of the United States.

Fringe border dispatching means the act of extraterritorial dispatching a railroad operation that occurs on trackage in the United States immediately adjacent to the border between the United States and Canada or the border between the United States and Mexico by a dispatcher who is a railroad employee located in Canada or Mexico.

FRA means the Federal Railroad Administration, United States Department of Transportation.

Movement of a train means the movement of one or more locomotives coupled with or without cars, requiring an air brake test in accordance with part 232 or part 238 of this chapter, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

Occupancy of a track by a roadway worker or stationary on-track equipment or both refers to the physical presence of a roadway worker or stationary on-track equipment, or both, on a track for the purpose of making an inspection, repair, or another activity not associated with the movement of a train or other on-track equipment.

Person means an entity of a type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and an employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any person providing such transportation, including—

(1) 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

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad contractor means a contractor to a railroad or a subcontractor to a contractor to a railroad.

Railroad operation means the movement of a train or other on-track equipment (other than on-track equipment used in a switching operation or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up a train), or the activity that is the subject of an authority issued to a roadway worker for working limits.

Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.

State means a State of the United States of America or the District of Columbia.

United States means all of the States.

Working limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through “exclusive track occupancy,” “inaccessible track,” “foul time,” or “train coordination” as defined in part 214 of this chapter.

§241.7 Waivers.

(a) *General.* (1) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. Except as provided in paragraph (b) of this section, the filing of such a petition does not affect that person’s responsibility

for compliance with that requirement while the petition is being considered.

(2) (i) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(ii) Petitions seeking approval to conduct fringe border operations shall also comply with the requirements of paragraph (c) of this section.

(iii) Petitioners not filing under paragraph (c) of this section should review the guidelines at 66 FR 63942 (Dec. 11, 2001), and frame their petitions to address the safety and security concerns articulated in the preamble, or contact the Office of the Chief Counsel, RCC-12, FRA, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590, for a copy of the guidelines.

(3) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions that the Administrator deems necessary.

(b) *Special dispensation for existing extraterritorial dispatching.* (1) A railroad that files a waiver request seeking to continue extraterritorial dispatch of an operation that it has dispatched from Canada or Mexico pursuant to regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that operation until the railroad's waiver request is acted upon by FRA if the petition is filed no later than April 11, 2003.

(2) If the waiver request is for an operation not listed in appendix A to this part, the waiver request must describe when the extraterritorial dispatching of the operation commenced and how the dispatching was authorized by regulations contained in 49 CFR part 241, revised as of October 1, 2002. FRA will notify the railroad if FRA determines that the operation was not permitted by the terms of those regulations.

(c) *Fringe border dispatching.* (1) A waiver request to have a railroad employee located in Canada or in Mexico dispatch a railroad operation in the United States immediately adjacent to the border of the country in which the dispatcher conducts the dispatching will generally be approved by FRA,

subject to any conditions imposed by FRA, if the waiver request meets all of the terms of paragraphs (c)(2) and (3) of this section. A proponent of a waiver request may seek relief from the terms of paragraphs (c)(2) and (3) of this section.

(2) The railroad proposing to conduct the fringe border dispatching shall supply the following documents as part of the waiver request:

(i) A description, by railroad division, applicable subdivision(s), and mileposts, of the line proposed to be dispatched;

(ii) A copy of the operating rules of the railroad that would apply to the proposed fringe border dispatching, including hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions;

(iii) A copy of the railroad's drug and alcohol abuse prevention program that applies to the fringe border dispatchers. The program shall, to the extent permitted by the laws of the country where the dispatching occurs, contain the following:

(A) Preemployment drug testing;

(B) A general prohibition on possession and use of alcohol and drugs while on duty;

(C) Reasonable cause alcohol and drug testing;

(D) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(E) Post-accident testing; and

(F) Random drug testing;

(iv) The steps the railroad has taken to ensure the security of the dispatch center where the fringe border dispatching will take place;

(v) The railroad's plans for complying with the requirements of paragraph (c)(3) of this section; and

(vi) A verification from a government agency in the country where the dispatching will occur that the agency has safety jurisdiction over the railroad and the proposed dispatching, and that the railroad's safety programs referenced in paragraphs (c)(2)(ii) and (iii) of this section meet the safety requirements established by the agency or, in

§ 241.9

the absence of established safety requirements, that the programs are satisfactory to the agency.

(3) Except as otherwise approved by FRA, fringe border dispatching must comply with the following requirements:

(i) The trackage in the United States being extraterritorially dispatched shall not exceed the following route miles, measured from the point that the trackage crosses the United States border:

(A) For operations conducted pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, the route miles shall be the miles normally operated by the railroad in conducting the operation; and

(B) For all other operations, the route miles shall not exceed five miles.

(ii) Except for unforeseen circumstances such as equipment failure, accident, casualty, or incapacitation of a crew member, each extraterritorially dispatched train shall be under the control of the same assigned crew for the entire trip over the extraterritorially dispatched trackage.

(iii) The fringe border dispatcher shall communicate instructions to the train crew and maintenance of way employees working on the line in the English language and, when referencing units of measurement, shall use English units of measurement.

(iv) The rail line shall be under the exclusive control of a single dispatching district or desk; and

(v) The dispatching of the train shall be transferred from the fringe border dispatcher to a dispatcher located in the United States at one of the following locations within the mileage limits mandated in paragraph (c)(3)(i) of this section:

(A) Interchange point;

(B) Signal control point;

(C) Junction of two rail lines;

(D) Established crew change point;

(E) Yard or yard limits location;

(F) Inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or

(G) Location where there is a change in the method of train operations.

49 CFR Ch. II (10–1–07 Edition)

§ 241.9 Prohibition against extraterritorial dispatching; exceptions.

(a) *General.* Except as provided in § 241.7(d) and paragraphs (b) and (c) of this section, a railroad subject to this part shall not require or permit a dispatcher located outside the United States to dispatch a railroad operation that occurs in the United States if the dispatcher is employed by the railroad or by a contractor to the railroad.

(b) *Transitional period to continue existing extraterritorial dispatching.* A railroad that has normally extraterritorially dispatched railroad track in the United States from Canada or Mexico pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that railroad track until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) *Emergencies.* (1) In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency; and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(3) A list of the States that make up the FRA regions and the street and e-mail addresses and fax numbers of the FRA Regional Administrators appears in appendix C to this part.

(d) *Liability.* The Administrator may hold either the railroad that employs the dispatcher or the railroad contractor that employs the dispatcher, or both, responsible for compliance with this section and subject to civil penalties under § 241.15.