

§ 232.7

49 CFR Ch. II (10–1–08 Edition)

(1) Commuter or 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. The term “railroad” is also intended to mean a person that provides transportation by railroad, whether directly or by contracting out operation of the railroad to another person. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Rebuilt equipment means equipment that has undergone overhaul identified by the railroad as a capital expense under the Surface Transportation Board’s accounting standards.

Refresher training means periodic retraining required for employees or contractors to remain qualified to perform specific equipment troubleshooting, inspection, testing, maintenance, or repair functions.

Respond as intended means to produce the result that a device or system is designed to produce.

“Roll-by” inspection means an inspection performed while equipment is moving.

Service application means a brake application that results from one or more service reductions or the equivalent.

Service reduction means a decrease in brake pipe pressure, usually from 5 to 25 psi at a rate sufficiently rapid to move the operating valve to service position, but at a rate not rapid enough to move the operating valve to emergency position.

Solid block of cars means two or more freight cars coupled together and added to or removed from a train as a single unit.

State inspector means an inspector of a participating State rail safety program under part 212 of this chapter.

Switching service means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading,

unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

Tourist, scenic, historic, or excursion operations are railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.

Train means one or more locomotives coupled with one or more freight cars, except during switching service.

Train line means the brake pipe or any non-pneumatic system used to transmit the signal that controls the locomotive and freight car brakes.

Train, unit or train, cycle means a train that, except for the changing of locomotive power and the removal or replacement of defective equipment, remains coupled as a consist and continuously operates from location A to location B and back to location A.

Transfer train means a train that travels between a point of origin and a point of final destination not exceeding 20 miles. Such trains may pick up or deliver freight equipment while en route to destination.

Yard air means a source of compressed air other than from a locomotive.

[66 FR 4193, Jan. 17, 2001, as amended at 67 FR 17580, Apr. 10, 2002]

§ 232.7 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person’s responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) 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 the Administrator deems necessary. If a waiver is granted, the Administrator

publishes a notice in the FEDERAL REGISTER containing the reasons for granting the waiver.

§ 232.9 Responsibility for compliance.

(a) A railroad subject to this part shall not use, haul, permit to be used or hauled on its line, offer in interchange, or accept in interchange any train, railroad car, or locomotive with one or more conditions not in compliance with this part; however, a railroad shall not be liable for a civil penalty for such action if such action is in accordance with § 232.15. For purposes of this part, a train, railroad car, or locomotive will be considered in use prior to departure but after it has received, or should have received, the inspection required for movement and is deemed ready for service.

(b) Although many of the requirements of this part are stated in terms of the duties of a railroad, when any person performs any function required by this part, that person (whether or not a railroad) is required to perform that function in accordance with this part.

(c) Any person performing any function or task required by this part shall be deemed to have consented to FRA inspection of the person's operation to the extent necessary to determine whether the function or task is being performed in accordance with the requirements of this part.

§ 232.11 Penalties.

(a) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550, but not more than \$16,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not

to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule.

(b) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

[66 FR 4193, Jan. 17, 2001, as amended at 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007]

§ 232.13 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision necessary to eliminate or reduce a local safety hazard if that provision is not incompatible with this part and does not impose an undue burden on interstate commerce.

(b) Preemption should also be considered pursuant to the Locomotive Boiler Inspection Act (now codified at 49 U.S.C. 20701–20703), the Safety Appliance Acts (now codified at 49 U.S.C. 20301–20304), and the Commerce Clause based on the relevant case law pertaining to preemption under those provisions.

(c) FRA does not intend by issuance of the regulations in this part to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§ 232.15 Movement of defective equipment.

(a) *General provision.* Except as provided in paragraph (c) of this section, a railroad car or locomotive with one or more conditions not in compliance with this part may be used or hauled without civil penalty liability under this part only if *all* of the following conditions are met:

(1) The defective car or locomotive is properly equipped in accordance with the applicable provisions of 49 U.S.C. chapter 203 and the requirements of this part.