

## § 241.5

## 49 CFR Ch. II (10–1–14 Edition)

of a duty of a railroad, each person, including a contractor for a railroad, who performs a function covered by this part, shall perform that function in accordance with this part.

### § 241.5 Definitions.

As used in this part:

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

*Dispatch* means—

(1) To perform a function that would be classified as a duty of a “dispatching service employee,” as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. For example, to *dispatch* means, by the use of an electrical or mechanical device—

(i) To control the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation, or by establishing a route through the use of a railroad signal or train control system but not merely by aligning or realigning a switch; or

(ii) To control the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) To issue an authority for working limits to a roadway worker.

(2) The term *dispatch* does not include the action of personnel in the field—

(i) Effecting implementation of a written or verbal authority or permission affecting a railroad operation or an authority or permission affecting a railroad operation or an authority for working limits to a roadway worker (e.g., initiating an interlocking timing device, authorizing a train to enter working limits); or

(ii) Operating a function of a signal system designed for use by those personnel.

*Dispatcher* means any individual who dispatches.

*Emergency* means an unexpected and unforeseeable event or situation that affects a railroad's ability to use a dispatcher in the United States to dispatch a railroad operation in the United States and that, absent the rail-

road's use of an extraterritorial dispatcher to dispatch the railroad operation, would either materially disrupt rail service or pose a substantial safety hazard.

*Employee* means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

*Extraterritorial dispatcher* means a dispatcher who, while located outside of the United States, dispatches a railroad operation that occurs in the United States.

*Extraterritorial dispatching* means the act of dispatching a railroad operation 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 en-

gines 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, 1200 New Jersey Avenue, SE., 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