

**§ 220.7**

(3) An individual subject to any Federal Railroad Administration regulations prescribed pursuant to 49 U.S.C. 21109 governing the hours of service of train employees.

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*Railroad-supplied electronic device* means an electronic device provided to a railroad operating employee by the employing railroad for an authorized business purpose. A railroad-supplied device will be considered a personal electronic device when it is being used by the employee for a purpose other than an authorized business purpose.

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*Switching operation* means the classification of rail 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.

\* \* \* \* \*

*Train*, for purposes of subparts A and B of this part, means one or more locomotives coupled with or without cars, requiring an air brake test in accordance with 49 CFR part 232 or part 238, 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. The term, for purposes of subpart C of this part, means—

- (1) A single locomotive,
- (2) Multiple locomotives coupled together,
- or
- (3) One or more locomotives coupled with one or more cars.

\* \* \* \* \*

**§ 220.7 Penalty.**

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 independent contractor providing goods or services to a railroad; and 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 \$650 and not more than \$25,000 per violation, except

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that: Penalties may be assessed against individuals only for willful violations; where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. Each day a violation continues shall constitute a separate offense. (See appendix C to this part for a statement of agency civil penalty policy.)

[63 FR 47195, Sept. 4, 1998, as amended at 69 FR 30593, May 28, 2004; 72 FR 51196, Sept. 6, 2007; 73 FR 79702, Dec. 30, 2008]

**§ 220.8 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.

**§ 220.9 Requirements for trains.**

(a) Except as provided for in paragraphs (b)(1) through (4) of this section, on and after July 1, 1999, each occupied controlling locomotive in a train shall have a working radio, and each train shall also have communications redundancy. For purposes of this section, "communications redundancy" means a working radio on another locomotive in the consist or other means of working wireless communications.

(b) On and after July 1, 2000, the following requirements apply to a railroad that has fewer than 400,000 annual employee work hours:

- (1) Any train that transports passengers shall be equipped with a working radio in the occupied controlling