

§ 228.21

49 CFR Ch. II (10–1–10 Edition)

employees must be reported to FRA as required by this section:

(1) A signal employee is on duty for more than 12 consecutive hours.

(2) A signal employee continues on duty without at least 10 consecutive hours off duty during the preceding 24 hours.

(3) A signal employee returns to duty without at least 10 consecutive hours off duty during the preceding 24 hours.

(f) Except as provided in paragraph (h) of this section, reports required by paragraphs (b) through (e) of this section shall be filed in writing on FRA Form F-6180-3³ with the Office of Railroad Safety, Federal Railroad Administration, Washington, DC 20590. A separate form shall be used for each instance reported.

(g) *Use of electronic signature.* For the purpose of complying with paragraph (f) of this section, the signature required on Form FRA F-6180-3 may be provided to FRA by means of an electronic signature provided that:

(1) The record contains the printed name of the signer and the date and actual time that the signature was executed, and the meaning (such as authorship, review, or approval), associated with the signature;

(2) Each electronic signature shall be unique to one individual and shall not be used by, or assigned to, anyone else;

(3) Before a railroad, or a contractor or subcontractor to a railroad, establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual;

(4) Persons using electronic signatures shall, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after the effective date of this regulation, are the legally binding equivalent of traditional handwritten signatures;

(5) The certification shall be submitted, in paper form and signed with a traditional handwritten signature, to the Associate Administrator for Railroad Safety/Chief Safety Officer; and

³Form may be obtained from the Office of Railroad Safety, Federal Railroad Administration, Washington, DC 20590. Reproduction is authorized.

(6) Persons using electronic signatures shall, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

(h) *Exception.* A railroad, or a contractor or subcontractor to a railroad, is excused from the requirements of paragraphs (a) and (f) of this section as to any employees for which—

(1) The railroad, or a contractor or subcontractor to a railroad, maintains hours of service records using an electronic recordkeeping system that complies with the requirements of subpart D of this part; and

(2) The electronic recordkeeping system referred to in paragraph (h)(1) of this section requires—

(i) The employee to enter an explanation for any excess service certified by the employee; and

(ii) The railroad, or a contractor or subcontractor of a railroad, to analyze each instance of excess service certified by one of its employees, make a determination as to whether each instance of excess service would be reportable under the provisions of paragraphs (b) through (e) of this section, and allows the railroad, or a contractor or subcontractor to a railroad, to append its analysis to its employee's electronic record; and

(iii) Allows FRA inspectors and State inspectors participating under 49 CFR part 212 access to employee reports of excess service and any explanations provided.

[74 FR 25349, May 27, 2009]

§ 228.21 Civil penalty.

Any person (an entity of any 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; 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 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 \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (e.g., requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

[53 FR 52931, Dec. 29, 1988, as amended at 63 FR 11622, Mar. 10, 1998; 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007; 73 FR 79703, Dec. 30, 2008]

§ 228.23 Criminal penalty.

Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

[74 FR 25350, May 27, 2009]

Subpart C—Construction of Employee Sleeping Quarters

SOURCE: 43 FR 31012, July 19, 1978, unless otherwise noted.

§ 228.101 Distance requirement; definitions.

(a) The Hours of Service Act, as amended (45 U.S.C. 61–64b), makes it unlawful for any common carrier engaged in interstate or foreign commerce by railroad to begin, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for employees who perform duties covered by the act “within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary

of Transportation) of any area where railroad switching or humping operations are performed.” 45 U.S.C. 62(a)(4). This subpart sets forth (1) a general definition of “immediate vicinity” (§ 228.101(b)), (2) procedures under which a carrier may request a determination by the Federal Railroad Administration that a particular proposed site is not within the “immediate vicinity” of railroad switching or humping operations (§§ 228.103 and 228.105), and (3) the basic criteria utilized in evaluating proposed sites (§ 228.107).

(b) Except as determined in accordance with the provisions of this subpart. “The immediate vicinity” shall mean the area within one-half mile (2,640 feet) (804 meters) of switching or humping operations as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.

(c) As used in this subpart—

(1) *Construction* shall refer to the—

- (i) Creation of a new facility;
- (ii) Expansion of an existing facility;
- (iii) Placement of a mobile or modular facility; or
- (iv) Acquisition and use of an existing building.

(2) *Reconstruction* shall refer to the—

- (i) Replacement of an existing facility with a new facility on the same site; or

- (ii) Rehabilitation or improvement of an existing facility (normal periodic maintenance excepted) involving the expenditure of an amount representing more than 50 percent of the cost of replacing such facility on the same site at the time the work of rehabilitation or improvement began, the replacement cost to be estimated on the basis of contemporary construction methods and materials.

(3) *Switching or humping operations* includes the classification of placarded railroad cars according to commodity or destination, assembling of placarded cars for train movements, changing the position of placarded cars for purposes of loading, unloading, or weighing, and the placing of placarded cars for repair. However, the term does not include the