§ 228.409 Consultation.

(1) Each railroad subject to this subpart shall consult with, employ good faith, and use its best efforts to reach agreement with, all of its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad, on the following subjects:

(i) The railroad’s review of work schedules found to be at risk for a level of fatigue at which safety may be compromised (as described by paragraph (a) of this section);
(ii) The railroad’s selection of appropriate fatigue mitigation tools; and
(iii) All submissions by the railroad to the Associate Administrator for approval that are required by this section.

(2) For purposes of this section, the term “directly affected employee” means an employee to whom one of the work schedules applies or would apply if approved.

(3) If the railroad and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad, cannot reach consensus on any area described in paragraph (f)(1) of this section, then directly affected employees and any such organization may file a statement with the Associate Administrator explaining their views on any issue on which consensus was not reached. The Associate Administrator shall consider such views during review and approval of items required by this section.

(g) Schedules not requiring analysis. The types of schedules described in paragraphs (1) and (2) of this section do not require the analysis described in paragraphs (a) or (d) of this section.

(1) Schedules consisting solely of Type 1 assignments do not have to be analyzed.

(2) Schedules containing Type 2 assignments do not have to be analyzed if—

(i) The Type 2 assignment is no longer in duration than, and fully contained within, the schedule of another Type 2 assignment that has already been determined to present an acceptable level of risk for fatigue that does not violate the fatigue threshold; and

(ii) If the longer Type 2 schedule within which another Type 2 schedule is contained requires mitigations to be applied in order to achieve an acceptable level of risk for fatigue that does not violate the fatigue threshold, the same or more effective mitigations must be applied to the shorter Type 2 schedule that is fully contained within the already acceptable Type 2 schedule.

§ 228.409 Requirements for railroad-provided employee sleeping quarters during interim releases and other periods available for rest within a duty tour.

(a) If a railroad subject to this subpart provides sleeping quarters for the use of a train employee subject to this subpart during interim periods of release as a method of mitigating fatigue identified by the analysis of work schedules required by §228.407(a) and (d), such sleeping quarters must be “clean, safe, and sanitary,” and give the employee “an opportunity for rest free from the interruptions caused by noise under the control of the” railroad within the meaning of section 21106(a)(1) of title 49 of the United States Code.

(b) Any sleeping quarters provided by a railroad that are proposed as a fatigue mitigation tool pursuant to §228.407(b)(1)(i), are subject to the requirements of §228.407(f). Consultation.

§ 228.411 Training.

(a) Individuals to be trained. Except as provided by paragraph (f) of this section, each railroad subject to this subpart shall provide training for its employees subject to this subpart, and the immediate supervisors of its employees subject to this subpart.

(b) Subjects to be covered. The training shall provide, at a minimum, information on the following subjects that is based on the most current available scientific and medical research literature:

(1) Physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue;
(2) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(3) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(4) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad; and

(5) The effects of abrupt changes in rest cycles for employees.

(c) Timing of initial training. Initial training shall be provided to affected current employees not later than December 31, 2012, and to new employees subject to this subpart before the employee first works a schedule subject to analysis under this subpart, or not later than December 31, 2012, whichever occurs later.

(d) Timing of refresher training. (1) At a minimum, refresher training shall be provided every three calendar years.

(2) Additional refresher training shall also be provided when significant changes are made to the railroad’s fatigue mitigation plan or to the available fatigue mitigation tools applied to an employee’s assignment or assignments at the location where he or she works.

(e) Records of training. A railroad shall maintain a record of each employee provided training in compliance with this section and shall retain these records for three years.

(f) Conditional exclusion. A railroad engaged in tourist, scenic, historic, or excursion rail passenger transportation, subject to this subpart, may be excluded from the requirements of this section, if its train employees subject to this rule are assigned to work only schedules wholly within the hours of 4 a.m. and 8 p.m. on the same calendar day that comply with the provisions of §228.405, upon that railroad’s submission to the Associate Administrator of a written declaration, signed by an officer of the railroad, indicating that the railroad meets the limitations established in this paragraph.

§228.413 Compliance date for regulations; exemption from compliance with statute.

(a) General. Except as provided by paragraph (d) of this section or as provided in §228.411, on and after April 12, 2012, railroads subject to this subpart shall comply with this subpart and §§228.11(c)(1)–(2) and 228.19(c)(5)–(c)(8) with respect to their train employees who are engaged in commuter or intercity rail passenger transportation.

(b) Exemption from compliance with statute. On and after October 15, 2011, railroads subject to this subpart or any provision of this subpart shall be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

(c) Definitions. In this section—


(2) The term “old section 21103” means section 21103 of title 49, United States Code, as it was in effect on the day before the enactment of the RSIA.

(d) Exceptions. (1) On and after October 15, 2011, railroads subject to this subpart shall comply with §§228.401, 228.403, 228.405(a)(1), (a)(2), (b), and (c), and 228.409(a).

(2) Railroads engaged in tourist, scenic, historic, or excursion rail passenger transportation, subject to this subpart, must comply with the sections listed in paragraph (d)(1) of this section on and after October 15, 2011, but are not required to comply with the other provisions of this subpart and §§228.11(c)(1)–(2) and 228.19(c)(5)–(c)(8) until April 12, 2013.

APPENDIX A TO PART 228—REQUIREMENTS OF THE HOURS OF SERVICE ACT: STATEMENT OF AGENCY POLICY AND INTERPRETATION

First enacted in 1907, the Hours of Service Act was substantially revised in 1969 by Public Law 91–169. Further amendments were enacted as part of the Federal Railroad Safety Authorization Act of 1976, Public Law 94–348 and by the Rail Safety Improvement Act of 1998, Public Law 105–342. The purpose of the law is “to promote the safety of employees and travelers upon railroads by limiting the