

“(B) to authorize electronic record keeping, and reporting of excess service, consistent with appropriate considerations for user interface; and

“(C) to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

“(2) PROCEDURE.—In lieu of issuing a notice of proposed rulemaking as contemplated by section 553 of title 5, United States Code, the Secretary may utilize the Railroad Safety Advisory Committee to assist in development of the regulation. The Secretary may propose and adopt amendments to the revised regulations thereafter as may be necessary in light of experience under the revised requirements.”

#### § 21102. Nonapplication, exemption, and alternate hours of service regime

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

- (1) a casualty.
- (2) an unavoidable accident.
- (3) an act of God.
- (4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(b) EXEMPTION.—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

(c) APPLICATION OF HOURS OF SERVICE REGIME TO COMMUTER AND INTERCITY PASSENGER RAILROAD TRAIN EMPLOYEES.—

(1) When providing commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of railroad carriers, including public authorities operating passenger service, shall be solely governed by old section 21103 until the earlier of—

(A) the effective date of regulations prescribed by the Secretary under section 21109(b) of this chapter; or

(B) the date that is 3 years following the date of enactment of the Rail Safety Improvement Act of 2008.

(2) After the date on which old section 21103 ceases to apply, pursuant to paragraph (1), to the limitations on duty hours for train employees of railroad carriers with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of such railroad carriers shall be governed by new section 21103, except as provided in paragraph (3).

(3) After the effective date of the regulations prescribed by the Secretary under section 21109(b) of this title, such carriers shall—

(A) comply with the limitations on duty hours for train employees with respect to the provision of commuter rail passenger

transportation or intercity rail passenger transportation as prescribed by such regulations; and

(B) be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

(4) In this subsection:

(A) The terms “commuter rail passenger transportation” and “intercity rail passenger transportation” have the meaning given those terms in section 24102 of this title.

(C)<sup>1</sup> The term “new section 21103” means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

(D) The term “old section 21103” means section 21103 of this chapter as it was in effect on the day before the enactment of that Act.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 888; Pub. L. 110–432, div. A, title I, §108(d)(1), Oct. 16, 2008, 122 Stat. 4863.)

#### HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code)             | Source (Statutes at Large)   |
|-----------------|--------------------------------|--|
| 21102(a) .....  | 45:63a(d) (related to 45:64a). | Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(d) (related to §5); added July 8, 1976, Pub. L. 94–348, §4(d), 90 Stat. 819; June 22, 1968, Pub. L. 100–342, §16(4), 102 Stat. 635. |
|                 | 45:64a(d).                     | Mar. 4, 1907, ch. 2939, §5(d), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91–169, §1, 83 Stat. 464; June 22, 1968, Pub. L. 100–342, §16(6)(D), 102 Stat. 635.              |
| 21102(b) .....  | 45:63a(d) (related to 45:64a). | Mar. 4, 1907, ch. 2939, §5(e), 34 Stat. 1417; restated Dec. 26, 1969, Pub. L. 91–169, §1, 83 Stat. 464.  |
|                 | 45:64a(e).                     |  |

In subsection (b), the words “with respect to one or more of its employees” are omitted as surplus because the authority to exempt a railroad carrier includes the authority to exempt only some of the employees of the carrier. The words “carrier to require or allow its employees to be on duty” are substituted for “any railroad described in this section to work its employees” for clarity and consistency in this chapter.

#### Editorial Notes

##### REFERENCES IN TEXT

The Rail Safety Improvement Act of 2008, referred to in subsec. (c)(1)(B), (4)(C), (D), is div. A of Pub. L. 110–432, Oct. 16, 2008, 122 Stat. 4848. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 20101 of this title and Tables.

##### AMENDMENTS

2008—Pub. L. 110–432, §108(d)(1)(A), substituted “Non-application, exemption, and alternate hours of service regime” for “Nonapplication and exemption” in section catchline.

Subsec. (c). Pub. L. 110–432, §108(d)(1)(B), added subsec. (c).

#### § 21103. Limitations on duty hours of train employees

(a) IN GENERAL.—Except as provided in subsection (d) of this section, a railroad carrier and

<sup>1</sup> So in original. No subpar. (B) has been enacted.

its officers and agents may not require or allow a train employee to—

(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours—

(A) on duty;

(B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or

(C) in any other mandatory service for the carrier;

(2) remain or go on duty for a period in excess of 12 consecutive hours;

(3) remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours; or

(4) remain or go on duty after that employee has initiated an on-duty period each day for—

(A) 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier except that—

(i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and

(ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier; or

(B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee's home terminal during which time the employee is unavailable for any service for any railroad carrier, if—

(i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective bargaining agreements entered into during such period expressly provide for such a schedule;

(ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or

(iii) such a schedule is provided for by a pilot program under section 21108 of this chapter related to employees' work and rest cycles.

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time the employee is engaged in or connected with the movement of a train is time on duty.

(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) LIMBO TIME LIMITATION AND ADDITIONAL REST REQUIREMENT.—

(1) A railroad carrier may not require or allow an employee—

(A) to exceed a total of 40 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period from the date of enactment of the Rail Safety Improvement Act of 2008 to one year after such date of enactment; and

(B) to exceed a total of 30 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period beginning one year after

the date of enactment of the Rail Safety Improvement Act of 2008 except that the Secretary may further limit the monthly limitation pursuant to regulations prescribed under section 21109.

(2) The limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by—

- (A) a casualty;
- (B) an accident;
- (C) an act of God;
- (D) a derailment;
- (E) a major equipment failure that prevents the train from advancing; or
- (F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(3) Each railroad carrier shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release in excess of the requirements of paragraph (1).

(4) If—

- (A) the time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time on duty, plus
- (B) the time on duty,

exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the employee with additional time off duty equal to the number of hours by which such sum exceeds 12 hours.

(d) EMERGENCIES.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

(e) COMMUNICATION DURING TIME OFF DUTY.—During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 888; Pub. L. 110-432, div. A, title I, §108(b), Oct. 16, 2008, 122 Stat. 4860.)

## HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code)           | Source (Statutes at Large)  |
|-----------------|------------------------------|---|
| 21103(a) .....  | 45:62(a)(1), (2).            | Mar. 4, 1907, ch. 2939, §2(a)(1), (2), 34 Stat. 1416; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 463; July 8, 1976, Pub. L. 94-348, §4(a)(1), (2), 90 Stat. 818; June 22, 1988, Pub. L. 100-342, §16(2), 102 Stat. 634. |
| 21103(b) .....  | 45:61(b)(3).                 | Mar. 4, 1907, ch. 2939, §§1(b)(3), 2(b), 34 Stat. 1415, 1416; restated Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 463.   |
|                 | 45:61(b)(4) (last sentence). | Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §1(b)(4) (last sentence); added Nov. 2, 1978, Pub. L. 95-574, §6, 92 Stat. 2461; June 22, 1988, Pub. L. 100-342, §16(1)(C), 102 Stat. 634.   |
| 21103(c) .....  | 45:62(b).<br>45:62(c).       | Mar. 4, 1907, ch. 2939, §2(c), 34 Stat. 1416; Dec. 26, 1969, Pub. L. 91-169, §1, 83 Stat. 464; restated July 8, 1976, Pub. L. 94-348, §4(b), 90 Stat. 818.  |

In subsection (a), before clause (1), the words "Except as provided in subsection (c) of this section" are added to alert the reader to the exception restated in subsection (c). The words "train employee" are substituted for "employee" because of the definition of "train employee" in section 21101 of the revised title. In clause (2), the words "12 consecutive hours" are substituted for "continuously . . . fourteen hours" and "except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour duty period shall be reduced to twelve hours" because the 2-year period has ended.

In subsection (b), the words before paragraph (1) are added as related to 45:61(b)(3) and (4) (last sentence) and substituted for "In determining, for the purposes of subsection (a), the number of hours an employee is on duty" in 45:62(b) for clarity. In paragraphs (2) and (3), the word "actually" is omitted as surplus. In paragraph (4), the words "neither time on duty nor time off duty" are substituted for "time off duty" for clarity and consistency with the source provisions restated in 21104(b)(3) and (4) of the revised title. In paragraph (7), before clause (A), the words "between designated terminals" are omitted as surplus. The text of 45:61(b)(3)(E) is omitted as surplus because of the restatement.

In subsection (c), the words "A train employee on" are added for consistency in this section. The word "actual" is omitted as surplus.

## Editorial Notes

## REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subssecs. (a)(4)(B)(i) and (c)(1), is the date of enactment of div. A of Pub. L. 110-432, which was approved Oct. 16, 2008.

## AMENDMENTS

2008—Subsec. (a). Pub. L. 110-432, §108(b)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

- "(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or
- "(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty."

Subsecs. (c), (d). Pub. L. 110-432, §108(b)(2), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 110-432, §108(b)(3), added subsec. (e).

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-432 effective 9 months after Oct. 16, 2008, see section 108(g) of Pub. L. 110-432, set out as a note under section 21101 of this title.

**§ 21104. Limitations on duty hours of signal employees**

(a) IN GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty—

(1) for a period in excess of 12 consecutive hours; or

(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service. A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.

(d) COMMUNICATION DURING TIME OFF DUTY.—During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.

(e) EXCLUSIVITY.—The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 889; Pub. L. 110-432, div. A, title I, §108(c), Oct. 16, 2008, 122 Stat. 4862.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code)             | Source (Statutes at Large)   |
|-----------------|--------------------------------|--|
| 21104(a) .....  | 45:63a(a) (1st sentence).      | Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(a) (1st sentence), (b); added July 8, 1976, Pub. L. 94-348, §4(d), 90 Stat. 819; June 22, 1988, Pub. L. 100-342, §16(4), 102 Stat. 635. |
|                 | 45:63a(a) (2d-last sentences). | Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(a) (2d-last sentences); added Nov. 2, 1978, Pub. L. 95-574, §4(a), 92 Stat. 2459.   |
| 21104(b) .....  | 45:63a(b).<br>45:63a(c).       | Mar. 4, 1907, ch. 2939, 34 Stat. 1415; §3A(c); added July 8, 1976, Pub. L. 94-348, §4(d), 90 Stat. 819; restated Nov. 2, 1978, Pub. L. 95-574, §4(b), 92 Stat. 2460.               |
| 21104(c) .....  | 45:63a(f).                     | Mar. 4, 1907, ch. 2939, 34 Stat. 1415, §3A(f); added July 8, 1976, Pub. L. 94-348, §4(d), 90 Stat. 819.  |

In this section, the words "signal employee" are substituted for "an individual employed by the railroad who is engaged in installing, repairing or maintaining signal systems" and "an individual described in paragraph (1)" in 45:63a(a), "individual" in 45:63a(b) and (c), and "individual engaged in installing, repairing, or maintaining signal systems" in 45:63a(f) because of the definition of "signal employee" in section 21101 of the revised title.

Subsection (a)(1) is substituted for 45:63a(a) (last sentence) for clarity and because of the restatement.

In subsection (a)(2), before clause (A), the words "Except as provided in subsection (c) of this section" are added to alert the reader to the exception restated in subsection (c). The text of 45:63a(a) (2d sentence) is omitted as surplus.

In subsection (b), the words before paragraph (1) are added as related to 45:63a(c) and substituted for "In determining for the purposes of subsection (a) of this section"