



U.S. Department  
of Transportation  
Federal Railroad  
Administration

# Memorandum

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IMPORTANT  
INTERPRETATIONS

Date:

DEC 2 1992

Reply to Attn. of.

OP 92-05

Subject:

Hypothetical Examples for the "On-Duty Time" decision of the United States Court of Appeals for the Ninth Circuit

From:

*Edward R. English*  
Edward R. English  
Director, Office of Safety Enforcement

To:

Regional Directors

Reference OP Bulletin 92-04 relative to the recent decision of the United States Court of Appeals for the Ninth Circuit in United Transportation Union v. Skinner (No 90-16741) and Brotherhood of Locomotive Engineers v. Skinner (Nos 91-35911, 91-36061) concerning time spent waiting for deadhead transportation to the point of final release after the expiration of the mandatory limits imposed by the Hours of Service Act (Act). In its decision, the court held that all time waiting for transportation was covered service. The attached examples are provided as guidance in determining "on-duty time" as a result of train and engine crews waiting for transportation to their point of final release.

## GENERAL STATEMENT

### COVERED TIME: WAITING FOR TRANSPORTATION

Crew member(s) reach their statutory limits (expire) under the Act at an outlying point and remain on or near the train until transportation arrives to carry them to their point of final release. **ONLY** the waiting time is covered service. Waiting time ends when the expired crew ceases to be **THE CREW OF THE TRAIN**, which occurs when the transportation that will carry them back to their point of final release arrives.

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**HYPOTHETICAL EXAMPLES OF "ON-DUTY" TIME COVERED BY THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DECISION**

The following are examples of time that will be counted as covered service when the decision is applied in your region of the United States.

**Example A:** Brazos and Santo Southern (BSS) Train XYZ is called for 2:30 a.m. at Fort Worth for a run to Ranger. The crew expires under the Hours of Service Law at Santo at 2:30 p.m. and remains on the train. Transportation (either contract van, taxi or company auto) arrives at Santo at 3:55 p.m. The crew is transported to Ranger where they arrive at 5:05 p.m. and tie-up at 5:15 p.m.

Violation: 2:30 p.m. to 3:55 p.m. (actual waiting time)

Limbo Time: 3:55 p.m. to 5:15 p.m. (travel and tie-up)

**Example B:** Same scenario as Example A except at 2:25 p.m. the BSS Dispatcher instructs the crew to relieve themselves prior to the expiration of their hours of service (2:30 p.m.), vacate the train, walk up town to Miss Maude's Cafe where transportation will pick them up for their deadhead to Ranger. Transportation arrives at 3:55 p.m. The crew is transported to Ranger where they arrive at 5:05 p.m. and tie-up at 5:15 p.m.

Violation: 2:30 p.m. to 3:55 p.m. The fact that the crew is not physically present on the train is not the determining factor. Waiting time is the determinate. The crew had to wait until 3:55 p.m. to be picked up by their transportation.

Limbo Time: 3:55 p.m. to 5:15 p.m. (travel and tie-up)

**Example C:** Same scenario as Example A except a relief crew is deadheaded on following train DEF. Train DEF arrives at Santo at 3:50 p.m. with the relief crew. The relief crew assumed operation of Train XYZ at 3:55 p.m. Train DEF departs Santo at 4:00 p.m. with the expired crew and arrives Ranger at 5:05 p.m. Expired crew ties-up at 5:15 p.m.

Violation: 2:30 p.m. to 3:55 p.m. The expired crew remained "the crew of the train" until they were relieved by the deadhead relief crew.

Limbo Time: 3:55 p.m. to 5:15 p.m. (travel and tie-up)

Example D: Same scenario as Example C except the expired crew remained on Train XYZ for their deadhead trip to Ranger. Train XYZ departed Santo at 4:30 p.m. behind Train DEF. Train XYZ arrived at Ranger at 5:45 p.m. Expired crew ties-up at 5:55 p.m.

Violation: 2:30 p.m. to 3:55 p.m. Expired crew was relieved at 3:55 p.m. They are no longer "the crew of the train." They are considered as being in their mode of transportation at that time, provided they are deadheading on Train XYZ.

Limbo Time: 3:55 p.m. to 5:55 p.m. (travel and tie-up)

Example E: Same scenario as Example A except a lite engine consist (or Train DEF) arrives at Santo at 3:50 p.m. Lite engine consist (or Train DEF) couples into (or picks-up) Train XYZ at 3:55 p.m. for the purpose of towing Train XYZ to Ranger. Combined Train departs Santo at 4:30 p.m. and arrives Ranger at 5:45 p.m. Expired crew ties-up at 5:55 p.m.

Violation: 2:30 p.m. to 3:55 p.m. The expired crew is relieved at 3:55 p.m. when they no longer are "the crew of the train."

Limbo Time: 3:55 p.m. to 5:55 p.m. (travel and tie-up)

Example F: Same scenario as Example A except the BSS Dispatcher has decided to tie-up the crew at Santo. The BSS Dispatcher has called a local Santo taxi to meet the train. The crew is off Train XYZ and into the taxi at 2:30 p.m. The taxi arrives at Santo Sleepy Motel at 2:45 p.m. The crew makes a brief mark-off call to the BSS Crew Dispatcher at 2:55 p.m. and ties-up for ten (10) hours rest. The crew is called on their rest for a return deadhead to Fort Worth at 12:55 a.m.

Violation: Predicated on whether or not Santo is a "designated terminal." The crew ceased to be the crew of the train when they were removed for purposes of tying up for rest. If Santo is not a "designated terminal", the crew would be on continuous duty until they arrived back at Fort Worth. If Santo is a "designated terminal", a violation would not have occurred since the crew ceased to be "the crew of the train" at 2:30 p.m.

Limbo Time: 2:30 p.m. to 2:55 p.m. (travel and tie-up)

Example G: BSS Train XYZ arrives at the entry switch to the east end of Ranger Yard at 2:30 p.m. The Ranger Yardmaster instructs the crew to leave the train and wait on an adjacent service road for transportation (contract van, taxi, or company auto). A waiting yard job couples into Train XYZ, yards the train and takes XYZ's units to the locomotive facility. Crew transportation is delayed. It arrives at the east end of Ranger Yard at 3:05 p.m. The crew arrives at the tie-up point at 3:35 and ties-up at 3:40 p.m.

Violation: 2:30 p.m. to 3:05 p.m. (actual waiting time)

Limbo Time: 3:05 p.m. to 3:40 p.m. (travel and tie-up)

Example H: Same scenario as Example G except the Ranger Yardmaster instructs the crew to remain on the train for transportation because other sources of transportation are not available. The yard job couples into Train XYZ at 2:35 p.m. The train is "yarded" at 3:00 p.m. The yard crew removes Train XYZ's locomotive power and delivers it to the locomotive facility at 3:15 p.m. The tie-up point for the crew of Train XYZ is near the locomotive facility. The crew walks to the tie up point and ties up at 3:30 p.m.

Violation: None. The tow-in of Train XYZ became the crews transportation to their point of final release. In addition, when Train XYZ came under tow, the expired crew was no longer the crew of the train. While this event may be construed as a 5 minute violation (2:30 to 2:35 p.m.), the transportation for the crew (yard job) was present at 2:30 p.m. The de minimis nature of the event should also be considered in this example.

Limbo Time: 2:30 p.m. to 3:30 p.m. (travel and tie-up)

Example I: BSS Yard Job OHME-2 is assigned to work 3:30 p.m. to 11:30 p.m. primarily to make interchange to foreign lines in the Ranger area. OHME-2 departs Ranger Yard at 10:00 p.m. with daily interchange for the Denton, Abilene and Northern (DAN). Due to congestion OHME-2 is still in the DAN Yard at 3:30 a.m. A taxi carrying the relief crew arrives at 4:15 a.m. The expired crew departs the DAN Yard in the taxi at 4:20 a.m., arrives Ranger Yard crew room at 5:10 a.m., and ties-up at 5:15 a.m.

Violation: 3:30 a.m. to 4:15 a.m. (actual waiting time)

Limbo Time: 4:15 a.m. to 5:15 a.m. (travel and tie-up)

**NOTE:** If the OHME-2 crew is scheduled to work the next afternoon and circumstances caused the tie-up time to be 5:31 a.m. or later, the start time of the next afternoon would have to be set back to obey the requirement that the crew have ten consecutive hours off duty.

While these examples do not cover all possible hypothetical situations, two events should be considered in determining the existence of a violation relative to the Ninth Circuit's decision.

1. The time transportation arrived.
2. The time the expired crew ceased to be the crew of the train.

Federal requirement	FR reference	FR promulgation date
Mining Waste Exclusion II .....	55 FR 2322	1/23/90
Modification of F019 Listing .....	55 FR 5340	2/14/90
Testing and Monitoring Activities; Technical Corrections .....	55 FR 8948	3/9/90
Criteria for Listing Toxic Wastes; Technical Amendment .....	55 FR 18726	5/4/90
Land Disposal Restrictions for Third Third Scheduled Wastes .....	55 FR 22520	6/1/90
Toxicity Characteristic; Hydrocarbon Recovery Operations .....	55 FR 40834	10/5/90
	56 FR 3978	2/1/91
	56 FR 13406	4/2/91
Petroleum Refinery Primary and Secondary Oil/Water Solids Separation Sludge Listings (F037 & F038) .....	55 FR 46354	11/2/90
	55 FR 51707	12/17/90
Land Disposal Restrictions for Third Wastes; Technical Amendments .....	56 FR 3864	1/31/91
Toxicity Characteristic; Chlorofluorocarbon Refrigerants .....	56 FR 5910	2/13/91
Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment .....	56 FR 7567	2/25/91
Organic Air Emission Standards for Process Vents and Equipment Leaks .....	56 FR 19290	4/26/91
Mining Waste Exclusion III .....	56 FR 27300	6/13/91

Mississippi's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Mississippi is granted final authorization to operate its hazardous waste program as revised.

Mississippi now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities.

Mississippi also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

#### Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Mississippi's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities.

This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials

transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93-8275 Filed 4-7-93; 8:45 am]

BILLING CODE 6560-50-P

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

##### 43 CFR Public Land Order 6962

[OR-943-4210-06; GP3-055; OR-48056 (WASH)]

Public Land Order No. 6952, Correction; Withdrawal of National Forest System Lands for the Peony, Pole Pick, and Frank Burge Seed Orchards; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct an error in the land description in Public Land Order No. 6952.

EFFECTIVE DATE: April 8, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

The land description in Public Land Order No. 6952, 57 FR 53587-53588, November 12, 1992, is hereby corrected as follows:

On page 53587, column 3, paragraph 1, prior to line 9 which reads "Frank Burge Seed Orchard" insert the lines "Willamette Meridian" and "Okanogan National Forest".

Dated: March 29, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93-8242 Filed 4-7-93; 8:45 am]

BILLING CODE 4310-33-M

#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

##### 49 CFR Part 228, Appendix A

Nationwide Applicability of a Decision of the United States Court of Appeals for the Ninth Circuit Concerning an Agency Interpretation of the Hours of Service Act; Miscellaneous Hours of Service Act Issues

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Statement of agency policy and interpretation.

SUMMARY: Notice is hereby given that, in acquiescence to the decision of the United States Court of Appeals for the Ninth Circuit in *United Transportation Union v. Skinner*, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release shall be treated by FRA as time on duty for purposes of the Hours of Service Act ("Act"), throughout the entire nation, and such time should be recorded as such and reports of excess service filed, as necessary, under the hours of service record keeping regulations. FRA is amending its current interpretive statement to reflect this policy change. In addition, FRA is amending the interpretive statement to reflect that the Rail Safety Enforcement

and Review Act of 1992 has expanded the applicability of the Act and increased the maximum penalty for violations of the Act.

**EFFECTIVE DATE:** The agency interpretation contained in this document has previously taken effect, as explained below.

**FOR FURTHER INFORMATION CONTACT:** Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-9252); or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-0635).

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation**

In this notice FRA states that it has acquiesced in a decision of the United States Court of Appeals for the Ninth Circuit concerning the treatment of time spent awaiting the arrival of deadhead transportation to the point of final release for purposes of the Act (45 U.S.C. 61-64b). Notice and comment procedures are unnecessary with regard to the general statement of policy and interpretation issued by this notice because such a statement is excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Statements of policy are also an exception to the general requirement of publication at least 30 days prior to the effective date. See 5 U.S.C. 553(d)(2).

##### **Effect of This Notice**

On September 22, 1992, the United States Court of Appeals for the Ninth Circuit issued its decision in the related cases of *United Transportation Union v. Skinner* (No. 90-16741) ("UTU") and *Brotherhood of Locomotive Engineers v. Skinner* (Nos. 91-35911, 91-36061) ("BLE"). *United Transportation Union v. Skinner*, 975 F.2d 1421 (9th Cir. 1992). Those cases concern FRA's interpretation of the Act as it pertains to the status of train crew members waiting for deadhead transportation to their point of final release.

The Court of Appeals upheld the decision of the district court in Portland in BLE, which found that all time spent waiting for transportation is to be considered on-duty time. In the UTU case, which was an appeal from the district court in San Francisco, the Court of Appeals affirmed the district court's order of dismissal as to the claims for injunctive relief and mandamus, but reversed the district court's dismissal of the entire case and remanded the case to that court for further proceedings consistent with the

appellate court's opinion on the interpretive issue.

FRA has traditionally considered an employee on duty during the time spent awaiting arrival of the deadhead vehicle only if the employee actually has duties to perform. If the railroad had relieved the employee of all responsibility, we had considered the time spent merely waiting for the deadhead vehicle to arrive as "limbo time" (i.e., neither on nor off duty) for hours of service purposes.

Although we do not agree with the court's legal rationale, we have decided to accept its decision and treat it as binding. Given the ambiguity of the Act's pertinent provisions, the issue has always been a close one. While we do not agree that the conclusion reached by the court is compelled by previous case law, we believe the court's reading of the statute, like the interpretation FRA has held until now, to be reasonable.

Our traditional interpretation was based on the assumption that some railroads might choose to continue crews in train operation if having the crews tie up the train and await deadhead transportation would itself constitute a violation. We did not wish to encourage the less safe alternative of having the crews continue train operation after expiration of their legally permissible hours. However, we had not seen evidence of such behavior in Oregon, where the interpretation of the district court had been in effect for more than a year. With increased penalties and individual liability now available for violations of the Act, we are more convinced that railroads will work to avoid violations and, if faced with an inevitable violation, choose the safer alternative.

Although awaiting deadhead transportation will now constitute time on duty and FRA will enforce the Act accordingly, FRA will, of course, continue to exercise its prosecutorial discretion, as it does in all areas, in deciding which cases warrant civil penalties or other enforcement action. Moreover, where civil penalties are assessed, FRA will treat more harshly the violations that are more likely to have a serious impact on safety, i.e., those violations involving actual train operation after the period permitted by the Act. In addition to the legal incentives to encourage compliance, it appears that railroads have an economic incentive to minimize time spent awaiting deadhead transportation, which is wholly unproductive time.

As our original interpretation made clear, we have long been concerned about the instances in which employees are held on trains for several hours

awaiting deadhead transportation even in the absence of any valid emergency that might explain such an occurrence. To the extent the waiting periods are extremely lengthy, there is a chance that they could contribute to the cumulative exhaustion of the employee, despite the fact that the legally required rest period is provided upon arrival at the point of final release. In some cases, the railroads have "relieved" employees on the expiration of 11 hours and 59 minutes, which has meant that the employee was guaranteed as little as 8 hours off after having been involved in many hours of service for the carrier (e.g., almost 12 hours "on duty," several hours spent waiting, and potentially several hours in deadhead transportation to the point of "final release"). Thus, to the extent that application of the Ninth Circuit's decision reduces the frequency of such instances, it should contribute to safety.

It is not unreasonable to posit that the Congress considered the proportionality of work and rest periods, in addition to their absolute duration, when fashioning the Act. Application of the Act in the manner required by the Ninth Circuit is also generally consistent with contemporary learning with respect to maintaining the alertness of shift workers.

Accordingly, in the interest of uniform application of the Act and to promote the safety of railroad operations, we are treating the Ninth Circuit's opinion as binding in the entire nation. We have done so in two stages. We considered the court's reading of the Act binding within the Ninth Circuit beginning at 12:01 a.m. on November 1, 1992. The Ninth Circuit includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. We chose November 1 because that date was likely to precede or be very close to the issuance of the mandate by the Court of Appeals and railroads within that circuit have had every reason to expect that its mandate would be honored.

This meant that, starting on November 1, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release, if it occurred within the territory of the Ninth Circuit, was to be treated as time on duty, and such time was to be recorded as such and reports of excess service filed, as necessary, under 49 CFR part 228, subpart B.

For the remainder of the nation, we believed that a period of adjustment was necessary in order to permit railroads to train their employees who will be responsible for implementation of the decision. Railroads with operations



outside the Ninth Circuit have not had reason, until very recently, to believe those operations would be affected by the court's decision. We believed a period of 60 days would permit the necessary training to occur. Accordingly, we began to apply the Ninth Circuit's decision to operations outside that circuit at 12:01 a.m. on January 1, 1993.

In November 1992, FRA mailed copies of a letter to affected railroads that operate within the Ninth Circuit providing actual notice of the court's decision. At the same time, we wrote to the Association of American Railroads asking its cooperation in making known to its member railroads our intention to enforce the court's decision nationwide beginning January 1, 1993. This published notice is intended to further ensure that all concerned parties are in fact informed of our new policy.

On March 2, 1993, pursuant to 28 U.S.C. 2342(7), FRA was served with a Petition for Review of Agency Action filed in the United States Court of Appeals for the Seventh Circuit by The Atchison, Topeka, and Santa Fe Railway Company; the Burlington Northern Railroad Company; the Consolidated Rail Corporation; CSX Transportation, Inc.; the Illinois Central Railroad Company; the Norfolk Southern Railway Company; the Norfolk and Western Railway Company; the Southern Pacific Transportation Company; and the Union Pacific Railroad Company (Railroads). *Atchison, Topeka, and Santa Fe Railway Co. v. Peña* (No. 93-1505). The Railroads request that the court order FRA to rescind nationwide application of its new interpretation of the Act, provide notice to the public of its new interpretation, and provide interested parties with an opportunity to comment. In the alternative, the Railroads ask the court to interpret the Act as providing that time spent waiting by a train crew which has been relieved from further operating duties is not on-duty time for purposes of the Act.

FRA is amending its current interpretive statement in appendix A to 49 CFR part 228 to reflect the fact that although time spent in deadhead transportation from the final duty assignment of the work tour to the point of final release is not computed as either time on duty or time off duty, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release shall be treated by FRA as time on duty for purposes of the Act.

#### Miscellaneous Issues

FRA is also amending its current interpretive statement in appendix A to 49 CFR part 228 to reflect the fact that

section 5(a)(1) of the Act was amended by section 4 of the Rail Safety Enforcement and Review Act of 1992, Public Law 102-365, by striking "penalty of up to \$1,000 per violation, as the Secretary of Transportation deems reasonable," and inserting in lieu thereof "civil penalty, as the Secretary of Transportation deems reasonable, in an amount not less than \$500 nor more than \$10,000, except that 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 of not to exceed \$20,000 may be assessed," and by adding at the end the following sentence: "In compromising a civil penalty assessed under this section, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

In addition, section 5(a)(1) of the Act was amended by section 9 of the Rail Safety Enforcement and Review Act of 1992, Public Law 102-365, by striking the parenthetical clause and inserting, in lieu thereof, the following: "(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)."

#### List of Subjects in 49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 228 is amended as follows:

#### PART 228—[AMENDED]

1. The authority citation for 49 CFR part 228 is revised to read as follows:

Authority: 45 U.S.C. 61-64b, as amended; 45 U.S.C. 437 and 438, as amended; Public Law 102-365; 49 App. U.S.C. 655(e), as amended; 49 CFR 1.49(d) and (m).

2. Appendix A to part 228 is amended:

- (a) By adding a new paragraph after the first paragraph of *Deadheading*, under the undesignated centerheading "Train and Engine Service," and
- (b) By revising the paragraphs for *Penalty* under the undesignated center

heading "General Provisions" to read as follows:

#### Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

\* \* \* \* \*

Train and Engine Service

\* \* \* \* \*

*Deadheading.* \* \* \* \* \*

All time spent awaiting the arrival of a deadhead vehicle for transportation from the final duty assignment of the work tour to the point of final release is considered on-duty time, regardless of whether the employee is given specific responsibilities to perform during this time. Although awaiting deadhead transportation constitutes time on duty and FRA enforces the Act accordingly, FRA treats more harshly violations that are more likely to have a serious impact on safety, i.e., these violations involving actual train operation after the period permitted by the Act.

\* \* \* \* \*

#### General Provisions

(Applicable to all Covered Service)

\* \* \* \* \*

*Penalty.* As amended by the Rail Safety Improvement Act of 1988 and the Rail Safety Enforcement and Review Act of 1992, the penalty provisions of the law apply to 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), except that a penalty may be assessed against an individual only for a willful violation. See appendix A to 49 CFR part 209. For violations that occurred on or after September 3, 1992, a person who violates the Act is liable for a civil penalty, as the Secretary of Transportation deems reasonable, in an amount not less than \$500 nor more than \$10,000, except that 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 \$20,000 may be assessed.

Each employee who is required or permitted to be on duty for a longer period than prescribed by law or who does not receive a required period of rest represents a separate and distinct violation and subjects the railroad to a separate civil penalty. In the case of a violation of section 2 (a)(3) or (a)(4) of the Act, each day a facility is in noncompliance constitutes a separate offense and subjects the railroad to a separate civil penalty.

In compromising a civil penalty assessed under the Act, FRA takes into account the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior or subsequent offenses,



ability to pay, effect on ability to continue to  
do business, and such other matters as justice  
may require.

Issued in Washington, DC, on April 2,  
1993.

S. Mark Lindsey,

*Acting Federal Railroad Administrator.*

[FR Doc. 93-8145 Filed 4-7-93; 8:45 am]

BILLING CODE 4910-08-M

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