

49 CFR Part 241

United States Locational Requirement for Dispatching of United States Rail Operations

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Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

Source: Interim Rule 66 FR 63942, December 11, 2001; Final Rule 67 FR 75938, December 10, 2002

241.1

Purpose and scope.

(a) The purpose of this part is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by individuals located outside of the United States.

(b) This part prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part. [67 FR 75938, December 10, 2002]

241.3

Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to -

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) Although the duties imposed by this part are generally stated in terms of a duty of a railroad, each person, including a contractor for a railroad, who performs a function covered by this part, shall perform that function in accordance with this part.

[67 FR 75938, December 10, 2002]

241.5

Definitions.

As used in this part: Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate. Dispatch means -

(1) To perform a function that would be classified as a duty of a "dispatching service employee," as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. For example, to dispatch means, by the use of an electrical or mechanical device -

(i) To control the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation, or by establishing a route through the use of a railroad signal or train control system but not merely by aligning or realigning a switch; or

(ii) To control the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or

(iii) To issue an authority for working limits to a roadway worker.

(2) The term dispatch does not include the action of personnel in the field -

(i) Effecting implementation of a written or verbal authority or permission affecting a railroad operation or an authority or permission affecting a railroad operation or an authority for working limits to a roadway worker (e.g., initiating an interlocking timing device, authorizing a train to enter working limits); or

(ii) Operating a function of a signal system designed for use by those personnel. Dispatcher

means any individual who dispatches. Emergency means an unexpected and unforeseeable event or situation that affects a railroad's ability to use a dispatcher in the United States to dispatch a railroad operation in the United States and that, absent the railroad's use of an extraterritorial dispatcher to dispatch the railroad operation, would either materially disrupt rail service or pose a substantial safety hazard. Employee means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part. Extraterritorial dispatcher means a dispatcher who, while located outside of the United States, dispatches a railroad operation that occurs in the United States. Extraterritorial dispatching means the act of dispatching a railroad operation that occurs on trackage in the United States by a dispatcher located outside of the United States. Fringe border dispatching means the act of extraterritorial dispatching a railroad operation that occurs on trackage in the United States immediately adjacent to the border between the United States and Canada or the border between the United States and Mexico by a dispatcher who is a railroad employee located in Canada or Mexico. FRA means the Federal Railroad Administration, United States Department of Transportation. Movement of a train means the movement of one or more locomotives coupled with or without cars, requiring an air brake test in accordance with part 232 or part 238 of this chapter, 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. Occupancy of a track by a roadway worker or stationary on-track equipment or both refers to the physical presence of a roadway worker or stationary on-track equipment, or both, on a track for the purpose of making an inspection, repair, or another activity not associated with the movement of a train or other on-track equipment. Person means an entity of a 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; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and an employee of such owner, manufacturer, lessor, lessee, or independent contractor. Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any person providing such transportation, including -

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Railroad contractor means a contractor to a railroad or a subcontractor to a contractor to a railroad. Railroad operation means the movement of a train or other on-track equipment (other than on-track equipment used in a switching operation or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up a train), or the activity that is the subject of an authority issued to a roadway worker for working limits. Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities, or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts. State means a State of the United States of America

or the District of Columbia. United States means all of the States. Working limits means a segment of track with definite boundaries established in accordance with part 214 of this chapter upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time," or "train coordination" as defined in part 214 of this chapter.

[67 FR 75938, December 10, 2002]

241.7

Waivers.

(a) General.

(1) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. Except as provided in paragraph (b) of this section, the filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(2) --

(i) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(ii) Petitions seeking approval to conduct fringe border operations shall also comply with the requirements of paragraph (c) of this section.

(iii) Petitioners not filing under paragraph (c) of this section should review the guidelines at 66 FR 63942 (Dec. 11, 2001), and frame their petitions to address the safety and security concerns articulated in the preamble, or contact the Office of the Chief Counsel, RCC-12, FRA, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590, for a copy of the guidelines.

(3) 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 that the Administrator deems necessary.

(b) Special dispensation for existing extraterritorial dispatching.

(1) A railroad that files a waiver request seeking to continue extraterritorial dispatch of an operation that it has dispatched from Canada or Mexico pursuant to regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that operation until the railroad's waiver request is acted upon by FRA if the petition is filed no later than April 11, 2003.

(2) If the waiver request is for an operation not listed in appendix A to this part, the waiver request must describe when the extraterritorial dispatching of the operation commenced and how the dispatching was authorized by regulations contained in 49 CFR part 241, revised as of October 1, 2002. FRA will notify the railroad if FRA determines that the operation was not permitted by the terms of those regulations.

(c) Fringe border dispatching.

(1) A waiver request to have a railroad employee located in Canada or in Mexico dispatch a railroad operation in the United States immediately adjacent to the border of the country in which the dispatcher conducts the dispatching will generally be approved by FRA, subject to any conditions imposed by FRA, if the waiver request meets all of the terms of paragraphs (c)(2) and (3) of this section. A proponent of a waiver request may seek relief from the terms of paragraphs (c)(2) and (3) of this section.

(2) The railroad proposing to conduct the fringe border dispatching shall supply the following documents as part of the waiver request:

(i) A description, by railroad division, applicable subdivision(s), and mileposts, of the line proposed to be dispatched;

(ii) A copy of the operating rules of the railroad that would apply to the proposed fringe border dispatching, including hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions;

(iii) A copy of the railroad's drug and alcohol abuse prevention program that applies to the fringe border dispatchers. The program shall, to the extent permitted by the laws of the country where the dispatching occurs, contain the following:

(A) Preemployment drug testing;

(B) A general prohibition on possession and use of alcohol and drugs while on duty;

(C) Reasonable cause alcohol and drug testing;

(D) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(E) Post-accident testing; and

(F) Random drug testing;

(iv) The steps the railroad has taken to ensure the security of the dispatch center where the fringe border dispatching will take place;

(v) The railroad's plans for complying with the requirements of paragraph (c)(3) of this section; and

(vi) A verification from a government agency in the country where the dispatching will occur that the agency has safety jurisdiction over the railroad and the proposed dispatching, and that the railroad's safety programs referenced in paragraphs (c)(2)(ii) and (iii) of this section meet the safety requirements established by the agency or, in the absence of established safety requirements, that the programs are satisfactory to the agency.

(3) Except as otherwise approved by FRA, fringe border dispatching must comply with the following requirements:

(i) The trackage in the United States being extraterritorially dispatched shall not exceed the following route miles, measured from the point that the trackage crosses the United States border:

(A) For operations conducted pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, the route miles shall be the miles normally operated by the railroad in conducting the operation; and

(B) For all other operations, the route miles shall not exceed five miles.

(ii) Except for unforeseen circumstances such as equipment failure, accident, casualty, or incapacitation of a crew member, each extraterritorially dispatched train shall be under the control of the same assigned crew for the entire trip over the extraterritorially dispatched trackage.

(iii) The fringe border dispatcher shall communicate instructions to the train crew and maintenance of way employees working on the line in the English language and, when referencing units of measurement, shall use English units of measurement.

(iv) The rail line shall be under the exclusive control of a single dispatching district or desk; and

(v) The dispatching of the train shall be transferred from the fringe border dispatcher to a dispatcher located in the United States at one of the following locations within the mileage limits mandated in paragraph (c)(3)(i) of this section:

(A) Interchange point;

(B) Signal control point;

(C) Junction of two rail lines;

(D) Established crew change point;

(E) Yard or yard limits location;

(F) Inspection point for U.S. Customs, Immigration and Naturalization Service, Department of Agriculture, or other governmental inspection; or

(G) Location where there is a change in the method of train operations.

[67 FR 75938, December 10, 2002]

241.9

Prohibition against extraterritorial dispatching; exceptions.

(a) General. Except as provided in § 241.7(d) and paragraphs (b) and (c) of this section, a railroad subject to this part shall not require or permit a dispatcher located outside the United States to dispatch a railroad operation that occurs in the United States if the dispatcher is employed by the railroad or by a contractor to the railroad.

(b) Transitional period to continue existing extraterritorial dispatching. A railroad that has normally extraterritorially dispatched railroad track in the United States from Canada or Mexico pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that railroad track until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) Emergencies.

(1) In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency; and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(3) A list of the States that make up the FRA regions and the street and e-mail addresses and fax numbers of the FRA Regional Administrators appears in appendix C to this part.

(d) Liability. The Administrator may hold either the railroad that employs the dispatcher or the railroad contractor that employs the dispatcher, or both, responsible for compliance with this section and subject to civil penalties under § 241.15.

[67 FR 75938, December 10, 2002]

241.11

Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) General. Except as provided in § 241.5(d) or paragraphs (b) and (c) of this section, a railroad subject to this part shall not conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside of the United States.

(b) Transitional period to continue existing extraterritorial dispatching. A railroad that has normally conducted, or contracted for the conduct of, a railroad operation in the United States that is extraterritorially dispatched pursuant to the regulations contained in 49 CFR part 241, revised as of October 1, 2002, may continue to conduct or contract for the conduct of the operation until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) Emergencies.

(1) In an emergency situation, a railroad may conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside the United States, provided that:

(i) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the railroad operation was conducted, in writing as soon as practicable, of the emergency; and

(ii) The extraterritorial dispatching is limited to the duration of the emergency.

(2) Written notification may be made either on paper or by electronic mail.

(3) A list of the States that make up the FRA regions and the street and e-mail addresses and fax numbers of the FRA Regional Administrators appears in appendix C to this part.

(d) Liability. The Administrator may hold either the railroad that conducts the railroad operation or the railroad contractor that conducts the operation, or both, responsible for compliance with this section and subject to civil penalties under § 241.15.

[67 FR 75938, December 10, 2002]

241.13

Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.

(a) General. Except as provided in paragraphs (b) and (c) of this section, an owner of railroad

track located in the United States shall not require or permit the track to be used for a railroad operation that is dispatched from outside the United States.

(b) Transitional period to continue existing extraterritorial dispatching. An owner of a track segment located in the United States that is extraterritorially dispatched pursuant to the regulations contained in 49 CFR 241, revised as of October 1, 2002, may require or permit the track segment to be continued to be used for a railroad operation that is extraterritorially dispatched until April 10, 2003, to permit the railroad an opportunity to file a waiver request pursuant to § 241.7.

(c) Emergencies. In an emergency situation, an owner of railroad track located in the United States may require or permit the track to be used for a railroad operation that is dispatched from outside the United States, provided that:

(1) The dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency and

(2) The extraterritorial dispatching is limited to the duration of the emergency. Written notification may be made either on paper or by electronic mail.

(d) Liability. The Administrator may hold either the track owner or the assignee under § 213.5(c) of this chapter (if any), or both, responsible for compliance with this section and subject to civil penalties under § 241.15. A common carrier by railroad that is directed by the Surface Transportation Board to provide service over the track in the United States of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this section during the period that the directed service order remains in effect.
[67 FR 75938, December 10, 2002]

241.15

Penalties and other consequences for noncompliance.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550 and not more than \$11,000 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 \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

(b) An individual who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may

be subject to criminal penalties under 49 U.S.C. 21311.

[67 FR 75938, December 10, 2002; 69 FR 30591, May 28, 2004]

241.17

Preemptive effect.

Under 49 U.S.C. 20106, the regulations in this part preempt any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

[67 FR 75938, December 10, 2002]

241.19

Information collection.

(a) The information collection requirements of this part are being reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements are found in the following sections: § 241.7(a),(b), (c); 241.9(c); 241.11(c); 241.13(c); and 214.15. When an effective date for these sections is established, FRA will publish notice of that date in the Federal Register.

[67 FR 75938, December 10, 2002]

241 App A

Appendix A to Part 241 - List of Lines Being Extraterritorially Dispatched in Accordance With the Regulations Contained in 49 CFR Part 241, Revised as of October 1, 2002

Description of United States track segment being extraterritorially dispatched	Length of United States' track segment	Railroad conducting the dispatching
Maine: Between Vanceboro, Maine and Brownville Junction, Maine	99 miles	Eastern Maine Ry. Co.
Michigan: U.S. trackage between Windsor, Ontario, and Detroit, Michigan	1.8 miles	Canadian Pacific Railway

Company.

U.S. trackage between Sarnia, Ontario, and Port Huron, Michigan 3.1 miles Canadian National Railway Company (CN).

Minnesota: Sprague Subdivision, between Baudette, Minnesota, and International Boundary, Minnesota 43.8 miles CN.

[67 FR 75938, December 10, 2002; 69 FR 30591, May 28, 2004]

241 App B

Appendix B to Part 241 - Schedule of Civil Penalties 1

Section 2	Violation	Willful violation		
241.9(a)	Requiring or permitting extraterritorial dispatching of a railroad operation		\$7,500	\$11,000
(b)	Failing to notify FRA about extraterritorial dispatching of a railroad operation in an emergency situation		5,000	7,500
241.11	Conducting a railroad operation that is extraterritorially dispatched:			
(a)(1)	Generally		7,500	11,000
(a)(2)	In an emergency situation-where dispatching railroad fails to notify FRA of the extraterritorial dispatching		2,500	5,000
241.13	Requiring or permitting track to be used for the conduct of a railroad operation that is extraterritorially dispatched:			
(a)(1)	Generally		7,500	11,000
(a)(2)	In an emergency situation-where dispatching railroad fails to notify FRA of the extraterritorial dispatching		2,500	5,000

1 A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 U.S.C. 21301, 21304 and 49 CFR part 209, appendix A.

[67 FR 75938, December 10, 2002]

241 App C

Appendix C to Part 241 - Geographical Boundaries of FRA's Regions and Addresses of FRA's Regional Headquarters

The geographical boundaries of FRA's eight regions and the addresses for the regional headquarters of those regions are as follows:

(1) Region 1 consists of Maine, Vermont, New Hampshire, New York, Massachusetts, Rhode Island, Connecticut, and New Jersey. The mailing address of the Regional Headquarters is: 55 Broadway, Room 1077, Cambridge, Massachusetts 02142. The fax number is 617-494-2967. The electronic mail (E-mail) address of the Regional Administrator for Region 1 is: Mark.McKeon@fra.dot.gov.

(2) Region 2 consists of Pennsylvania, Delaware, Maryland, Ohio, West Virginia, Virginia, and Washington, DC. The mailing address of the Regional Headquarters is: Two International Plaza, Suite 550, Philadelphia, Pennsylvania 19113. The fax number is 610-521-8225. The E-mail address of the Regional Administrator for Region 2 is: David.Myers@fra.dot.gov.

(3) Region 3 consists of Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Florida. The mailing address of the Regional Headquarters is: Atlanta Federal Center, 61 Forsythe Street, SW., Suite 16T20, Atlanta, Georgia 30303. The fax number is 404-562-3830. The E-mail address of the Regional Administrator for Region 3 is: Fred.Dennin@fra.dot.gov.

(4) Region 4 consists of Minnesota, Wisconsin, Michigan, Illinois, and Indiana. The mailing address of the Regional Headquarters is: 300 West Adams Street, Rm 310, Chicago, Illinois 60606. The fax number is 312-886-9634. The E-mail address of the Regional Administrator for Region 4 is: Laurence.Hasvold@fra.dot.gov.

(5) Region 5 consists of New Mexico, Oklahoma, Arkansas, Louisiana and Texas. The mailing address of the Regional Headquarters is: 4100 International Plaza, Suite 450, Fort Worth, Texas, 76109-4820. The fax number is 817-284-3804. The E-mail address of the Regional Administrator for Region 5 is: John.Megary@fra.dot.gov.

(6) Region 6 consists of Nebraska, Iowa, Colorado, Kansas, and Missouri. The mailing address of the Regional Headquarters is: 911 Locust Street, Suite 464, Kansas City, Missouri 64106. The fax number is 816-329-3867. The E-mail address of the Regional Administrator for Region 6 is: Darrell.Tisor@fra.dot.gov.

(7) Region 7 consists of California, Nevada, Utah, Arizona, and Hawaii. The mailing address of the Regional Headquarters is: 801 I Street, Suite 466, Sacramento, California 95814. The fax number is 916-498-6546. The E-mail address of the Regional Administrator for Region 7 is: Alvin.Settje@fra.dot.gov.

(8) Region 8 consists of Washington, Idaho, Montana, North Dakota, Oregon, Wyoming, South Dakota, and Alaska. The mailing address of the Regional Headquarters is: Murdock Executive Plaza, 703 Broadway, Suite 650, Vancouver, Washington 98660. The fax number is 360-696-7548. The E-mail address of the Regional Administrator for Region 8 is: Dick.Clairmont@fra.dot.gov.

Source: 67 FR 75938, December 10, 2002