

# Hours of Service Rulemaking and Waivers



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# Waivers - Statutory Authority



- The Rail Safety Improvement Act of 2008 granted FRA the authority to waive one of the new hours of service requirements, at 49 USC 21103(a)(4). That paragraph requires that employees receive 48 hours off duty at the home terminal after initiating an on-duty period on 6 consecutive days, or 72 hours off duty at the home terminal after initiating an on-duty period on 7 consecutive days.
- However:
  - The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103 (FRA's general waiver authority), if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

# Pilot Projects – Statutory Authority



- 49 USC 21108 allows railroads to seek a waiver for the purpose of conducting a pilot project.
- The Secretary may, after notice and opportunity for comment, approve such waivers for a period not to exceed two years, if the Secretary determines that such a waiver of compliance is in the public interest and is consistent with railroad safety.
- This was not added by the RSIA of 2008, but the new provisions have somewhat increased interest in pilot projects.

# Exemption – Statutory Authority



- 49 USC 21102(b) provides that the Secretary may exempt a railroad having not more than 15 employees covered by the hours of service law 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.

# Petitions



- FRA's Railroad Safety Board has received 13 petitions to date.
- 3 have been or will be dismissed for lack of jurisdiction and/or lack of a jointly filed petition.
- Substantial effort has gone into working with non-unionized railroads on how to demonstrate having sought the input of affected employees.
- Several small, non-unionized railroads that filed petitions have since aligned their interests with the petition of the ASLRRA, in which they were also included.

# Process for Evaluation of Petitions



- Threshold step is determining the petition is jointly filed, or establishing that a non-unionized railroad has consulted affected employees.
- FRA analyzes submitted schedules for which a waiver is sought, using the FAST model, to determine the fatigue implications of the requested schedule, and based on this analysis, a recommendation is made to the Railroad Safety Board as to whether the requested waiver is in the public interest and consistent with railroad safety.

# Petitions Granted



- 4 petitions have been granted or partially granted.
  - To allow 6 days on & 1 day off for BLE-T employees working certain BNSF yard assignments which initially go on duty on either the 1st or 2nd shift.
  - To allow CN to split the workforce for calculation of the 276 hour monthly cap, with half starting on the first of the month & half starting on the 15th.
  - PARTIAL - To allow 6 days on & 1 day off for CN employees working regularly scheduled assignments that do not extend into the early morning hours (between midnight and 6 AM).
  - PARTIAL - To allow 6 days on & 1 day off for employees of railroads subject to ASLRRA petition, who are represented by BLE-T or USW, working regularly scheduled assignments that do not extend into the early morning hours (between midnight and 6 AM).

# Status of Current Work



- Continued analysis of additional schedule information to be provided by CN, to determine if further relief may be granted.
- Continued analysis of additional schedule information to determine if relief may be granted for other schedules related to ASLRRA petition.
- Analysis of ASLRRA request to waive 276-hour limitation for management employees spending less than 25% of their time in covered service.
- Analysis of ASLRRA request for pilot project to develop fatigue management plans.



# Still to be Addressed



- ASLRRA petition for exemption on behalf of its members having not more than 15 employees covered by the HSL. These entities are also included in the ASLRRA waiver request, and would be included in the pilot project.



# Questions?