

HERITAGERAIL ALLIANCE SUMMARY
APPLICABILITY OF FRA STATUTES AND RULES
TO
TOURIST / HISTORIC / MUSEUM / SCENIC /EXCURSION PASSENGER RAIL OPERATIONS ("TOURIST OPERATIONS")

REVISED: JULY 31, 2017

(See last page for explanation of abbreviations and terminology)

| STATUTE / RULE | GENERAL SYSTEM TOURIST OPERATIONS | NON-GENERAL SYSTEM TOURIST OPERATIONS ¹ | SOURCES / COMMENTS |
|--|--------------------------------------|--|--|
| STATUTES (USC) | | | |
| SAFETY APPLIANCE ACT (Statutory standards only, including statutory power brake requirements), 49 USC Chapter 203 | Yes | Yes | FRA 1994 "Tourist RR" Memo & Decision Tree; 49 CFR Part 209, App A |
| SIGNAL INSPECTION ACT (Statutory standards only), 49 USC Chapter 205 | Yes | Yes | FRA 1994 "Tourist RR" Memo & Decision Tree; 49 CFR Part 209, App A |
| LOCOMOTIVE INSPECTION ACT, (Statutory standards only) 49 USC Chapter 207 | Yes | Yes | FRA 1994 "Tourist RR" Memo & Decision Tree; 49 CFR Part 209, App A |
| HOURS OF SERVICE ACT, 49 USC Chapter 211 | Yes | Yes | Signal & dispatching workers subject only to statutory duty time / rest requirements (2008 RSIA and new FRA Part 228 rules did not change applicability to signal & dispatching employees). See 49 CFR Part 228 below for rules applicable to train service workers |

¹ Applies to "non-insular" tourist roads only, except as noted in comments.

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| RULES (CFR) | | | |
| 49 CFR Parts 209, 211 and 216, FRA Enforcement and Procedures | Yes | Yes | FRA 1994 "Tourist RR" Memo & Decision tree: Part 209 App A (containing detailed explanation of FRA tourist RR policy under heading "The Extent And Exercise of FRA's Safety Jurisdiction") |
| 49 CFR Part 210, RR Noise Emissions | Yes | Yes | 49 CFR 210.3 (note steam loco exclusion); FRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR Part 214, RR Workplace Safety | Yes | No | 49 CFR 214.3 (general system operations only) |
| 49 CFR Part 215, RR Freight Car Safety Standards | Yes (freight cars only) | Yes (freight cars only) | FRA 1994 "Tourist RR" Memo & Decision tree. Includes "Restricted Equipment" provisions (restrictions on use of 50 year old freight cars, or cars with certain restricted components). NOTE: in December, 2014, FRA's "Rail Safety Advisory Committee (RSAC) recommended changes to the "restricted equipment requirements" used on tourist roads which would significantly reduce the burden of these requirements. FRA is expected to begin a rulemaking proceeding in early 2018 to adopt these recommendations. |
| 49 CFR Part 217, RR Operating Rules | Yes | No | 49 CFR 217.3(a) & (b)(1); FRA 1994 "Tourist RR" Memo & Decision Tree. Note: FRA 2008 "Railroad Operating Rules" rulemaking, 73 Fed Reg 8442 (2-13-2008) did not change applicability as to tourist roads. |
| 49 CFR Part 218, RR Operating Practices (includes "blue signal" rules) | Yes | No | 49 CFR 218.3(a) & (b)(1); FRA 1994 "Tourist RR" Memo & Decision Tree. Note: FRA 2008 "Railroad Operating Rules" rulemaking, 73 Fed Reg 8442 (2-13-2008) did not change applicability as to tourist roads. |
| 49 CFR Part 219, Alcohol & Drug Use | Yes | No | 49 CFR 219.3(a) & (b)(1) exclude non-general system roads. 49 CFR 219(b)(2) makes most testing (except post-accident) inapplicable to small general system roads (see criteria in rule). See also FRA 1994 "Tourist RR" Memo & Decision Tree. Note: New requirements for testing of maintenance of way employees (including volunteers) became effective June 12, 2017. |

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| 49 CFR Part 220, Railroad Communications | Yes | No | 49 CFR 220.3 (rule applies only to railroads that operate on standard gage track which is part of the general railroad system) |
| 49 CFR Part 221, Rear End Markers | Yes | No | 49 CFR 221.2(a) & (b)(1)-(2); FRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR Part 222, Train Horn Rule | Yes | Limited | 49 CFR 222.5. Note the 15 mph exception in 222.5(b) applicable to non general system passenger roads. Note also that horn design and volume requirements are in Part 229, which is inapplicable to non-general system railroads. |
| 49 CFR Part 223, Safety Glazing | Limited | No | 49 CFR 223.3. Note general exclusion for "historic" equipment. Non-general system excluded per 223.3(a) & (b)(1); FRA 1994 "Tourist RR" Memo & Decision Tree. Note: FRA adopted an amendment effective April 2016 which significantly limits the impact of this rule on "historic" equipment used on general system tourist roads. |
| 49 CFR Part 224, Freight Car Reflectorization | Yes (freight cars & locos only) | No (see comment) | 49 CFR 224.3 excludes freight equipment which operates only on track inside an installation which is not part of the general railroad system of transportation. At its December, 2014 meeting FRA's RSAC recommended further changes in this rule which would limit its applicability to non-interchange freight equipment on both general system and non- general system tourist roads. FRA is expected to begin a rulemaking proceeding in early 2018 to adopt this recommendation. |
| 49 CFR Part 225, Accident Reporting | Yes | Yes | 49 CFR 225.1. Note special provisions applicable to "small" general system roads and non-general system tourist roads, 225.3(c) & (d), exempting them from certain "general system" requirements. |
| 49 CFR Part 227, Occupational Noise Exposure | No | No | 49 CFR 227.3(b)(4) (rule not applicable to general system or non-general system tourist roads). |
| 49 CFR Part 228 Hours of Service (Passenger) | Yes | Yes | 49 CFR 228.401. FRA staff advises that the passenger rule applies to both "non-insular" and "insular" tourist roads (including amusement park railroads). See "Hours of Service Compliance" section of HRA "Regulation" website for compliance materials (including forms) for this rule |

| STATUTE / RULE | GENERAL SYSTEM TOURIST OPERATIONS | NON-GENERAL SYSTEM TOURIST OPERATIONS ¹ | SOURCES / COMMENTS |
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| 49 CFR Part 229, Locomotive Inspection (not steam) | Yes | No | 49 CFR 229.3(b), 58 Fed Reg 36609 at 36610 (1993), FRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR Part 230, Steam Locomotive Inspection & Maintenance | Yes | Yes | 49 CFR 230.2 |
| 49 CFR Part 231, Safety Appliance Standards (FRA regulatory standards). | Yes | No | 49 CFR 231.0(b)(1) ("installation" exception); IFRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR Part 232, Brake System Safety Standards | See comments | No | <p>Applicability of Part 232 to general system tourist railroads is as follows:</p> <p>(i) Except for Subpart E (End of Train Devices), the current version of Part 232 is not applicable to general system tourist railroads (but see 'ii' and 'iii' below).</p> <p>(ii) (Subpart E- "End of Train Devices" is applicable to all trains operated on general system unless excluded in that Subpart. However, Subpart E has exclusions for specific passenger operations which should cover many tourist road general system passenger train operations, 49 CFR 232.407(e)).</p> <p>(iii) Passenger equipment not subject to Part 238 (see Part 238 description below) must comply with the Part 232 that existed May 31, 2001 (included as Appendix B to current Part 232)</p> |
| 49 CFR Part 233, Signal System Reporting Requirements | Yes | No | 49 CFR 233.3(a); FRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR Part 234, Grade Crossing Signal System Safety | Yes | Yes | 49 CFR 234.3(a); FRA Decision Tree. This rule includes "emergency notification system" (ENS) requirements which FRA adopted on 6-12-2012. Note exceptions in new 234.303(b)2 and 234.305(h)(2), which should exclude most tourist railroads (on or off general system) from the rule's ENS "live coverage" requirements |

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| 49 CFR Part 235, Signal System Applications | Yes | No | 49 CFR 235.3(a); FRA 1994 "Tourist RR" Memo & Decision Tree |
| 49 CFR Part 236, Signal System Rules | Yes | No | 49 CFR 236.0(a) & (b)(1); FRA 1994 "Tourist RR" Memo & Decision Tree |
| 49 CFR Part 237, Bridge Safety Standards | Yes | Yes | 49 CFR 237.1, 75 Fed. Reg., at 41284, 7-15-2010. This rule expressly applies to all non-general system tourist roads (both non-insular and insular). |
| 49 CFR Part 238, Passenger Equipment Safety Standards | No | No | 49 CFR 238.(c)(3) (rule inapplicable to "tourist, scenic, historic or excursion operations, whether on or off the general railroad system of transportation.") |
| 49 CFR Part 239, Passenger Train Emergency Preparedness | No | No | 49 CFR 239.3(b)(3)) (rule inapplicable to "tourist, scenic, historic or excursion operations, whether on or off the general railroad system of transportation.") |
| 49 CFR Part 240, Engineer Qualification & Certification Rule | Yes | No | 49 CFR 240.3(a) & (b); FRA 1994 "Tourist RR" Memo & Decision Tree. |
| 49 CFR 241 , U.S. Locational requirement for dispatching of U.S. railroads | Yes (see comments) | No ("installation" exclusion) | 49 CFR 241.3. Rule generally requires U.S. railroads to be dispatched in the U.S. Technically applicable to general system tourist roads, but probably no such roads actually affected by requirements. |
| 49 CFR Part 242, Conductor Qualification and Certification | Yes | No | 49 CFR 242.3(a) |
| 49 CFR Part 243. Training, Qualification & Oversight for Safety Related RR Employees (new 11/7/2014) | Yes | No | 49 CFR 243.3. On May 3, 2017, FRA extended all compliance deadlines for one year. The new compliance deadline for most (probably all) tourist roads subject to rule is now May 1, 2020. |
| 49 CFR Part 244 – Safety Integration Plans | No (see comments) | No (see comments) | 49 CFR 244.1(a) (rule only applies to Class I RR proposals to merge with, consolidate with or acquire control of another Class I or Class II railroad - transactions unlikely to involve tourist RRs) |

Abbreviations and Terminology:

USC - United States Code (statutes passed by Congress). The citation "49 USC Chapter 205" means Title 49 of the US Code, Chapter 205. The entire US Code is available on the US Government Printing Office (GPO) Website at:

<http://www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE>

CFR - Code of Federal Regulations (rules enacted by regulatory agencies such as FRA). Shorthand citations such as "Part 240" refer to the numbered "Parts" of Title 49 of the Code of Federal Regulations. The entire CFR is available on the GPO website at:

<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>

Fed Reg - Federal Register. This is a daily publication of agency rules and other agency and executive documents. New FRA rules are typically published in Federal Register at least 30 days before they become effective, and are usually accompanied by a regulatory "preamble", which is FRA's authoritative explanation of the rule and the policy decisions reflected in the rule. The citation "58 Fed Reg 36609 (1993)" means volume 58 of Federal Register (all of 1993 is in Volume 58), page 36609. Federal Registers since 1994 are available on the GPO website at:

<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>

General system tourist railroad - A tourist, scenic, historic or excursion passenger operation which runs on tracks used for commercial freight service, or intercity or commuter passenger service. Typically, a "general system" tourist railroad has this status because it is also a short line freight railroad, or operates over trackage used by a short line freight railroad.

Non-general system / non-insular tourist railroad - A tourist, scenic, historic or excursion passenger rail operation which:

1. Does NOT operate on general railroad system trackage AND
2. Has ONE OR MORE of the following characteristics:
 - > An active public highway-rail crossing,
 - > An active grade crossing with another railroad,
 - > A bridge over a public road or waters used for commercial navigation, or
 - > A common corridor with another railroad (i.e. its operation are within 30 feet of those of any railroad)

Most non-general system tourist railroads are "non-insular" (typically because of one or more public grade crossings)

Non-general system / insular tourist railroad – A tourist, scenic, historic or excursion passenger rail operation (like an amusement park railroad) which:

1. Does NOT operate on general railroad system trackage, AND
2. Does NOT have ANY of the characteristics of a "non-insular" operation described in '2' above.

Bob Opal
Revised 7-31-2017