

§ 228.1

APPENDIX C TO PART 228—GUIDELINES FOR CLEAN, SAFE, AND SANITARY RAILROAD PROVIDED CAMP CARS
APPENDIX D TO PART 228—GUIDANCE ON FATIGUE MANAGEMENT PLANS

AUTHORITY: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49; and 49 U.S.C. 103.

EFFECTIVE DATE NOTE: At 76 FR 50396, Aug. 12, 2011, the authority citation to part 228 was revised, effective October 15, 2011. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Pub. L. 110–432, 122 Stat. 4860–4866; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 U.S.C. 103; and 49 CFR 1.49.

SOURCE: 37 FR 12234, June 21, 1972, unless otherwise noted.

Subpart A—General

§ 228.1 Scope.

This part—

(a) Prescribes reporting and record-keeping requirements with respect to the hours of service of certain railroad employees and certain employees of railroad contractors and subcontractors; and

(b) Establishes standards and procedures concerning the construction or reconstruction of employee sleeping quarters.

[43 FR 31012, July 19, 1978, as amended at 74 FR 25345, May 27, 2009]

EFFECTIVE DATE NOTE: At 76 FR 50396, Aug. 12, 2011, § 228.1 was amended by removing the word “and” at the end of paragraph (a), removing the period and adding a semicolon in its place at the end of paragraph (b), adding and reserving paragraph (c), and adding paragraph (d) effective October 15, 2011 For the convenience of the user, the added text is set forth as follows:

§ 228.1 Scope.

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(d) Prescribes substantive hours of service requirements for train employees engaged in commuter or intercity rail passenger transportation.

§ 228.3 Application.

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

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all railroads and contractors and subcontractors of railroads.

(b) This part does not apply to:

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

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

[74 FR 25345, May 27, 2009]

EFFECTIVE DATE NOTE: At 76 FR 50396, Aug. 12, 2011, § 228.3 was amended by revising paragraph (b) introductory text, effective October 15, 2011 For the convenience of the user, the revised text is set forth as follows:

§ 228.3 Application.

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(b) Except as provided in § 228.401 of this part, this part does not apply to:

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§ 228.5 Definitions.

As used in this part—

Actual time means either the specific time of day, to the hour and minute, or the precise amount of time spent in an activity, in hours and minutes, that must be included in the hours of duty record, including, where appropriate, reference to the applicable time zone and either standard time or daylight savings time.

Administrator means the Administrator of the Federal Railroad Administration or any person to whom the Administrator has delegated authority in the matter concerned.

Administrative duties means any activities required by the railroad as a condition of employment, related to reporting, recording, or providing an oral or written statement related to a current, previous, or future duty tour. Such activities are considered service for the railroad, and time spent in these activities must be included in the *total time on duty* for any *duty tour* with which it may commingle.

At the behest of the employee refers to time spent by an employee in a railroad-related activity that is not required by the railroad as a condition of

employment, in which the employee voluntarily participates.

At the behest of the railroad refers to time spent by an employee in a railroad-required activity that compels an employee to perform service for the railroad as a condition of employment.

Broken (aggregate) service means one or more periods of time on duty within a single *duty tour* separated by one or more qualifying interim releases.

Call and release occurs when an employing railroad issues an employee a *report-for-duty time*, and then releases the employee from the requirement to report prior to the *report-for-duty time*.

Carrier, common carrier, and common carrier engaged in interstate or foreign commerce by railroad mean railroad.

Commingled service means—

(1) For a train employee or a signal employee, any non-covered service at the behest of the railroad and performed for the railroad that is not separated from *covered service* by a qualifying statutory off-duty period of 8 or 10 hours or more. Such commingled service is counted as time on duty pursuant to 49 U.S.C. 21103(b)(3) (for train employees) or 49 U.S.C. 21104(b)(2) (for signal employees).

(2) For a dispatching service employee, any non-covered service mandated by the railroad and performed for the railroad within any 24-hour period containing *covered service*. Such commingled service is counted as time on duty pursuant to 49 U.S.C. 21105(c).

Commuting means—

(1) For a train employee, the time spent in travel—

(i) Between the employee's residence and the employee's *regular reporting point*, and

(ii) In railroad-provided or authorized transportation to and from the lodging facility at the away-from-home terminal (excluding travel for purposes of an interim release), where such time (including travel delays and room availability) does not exceed 30 minutes.

(2) For a signal employee, the time spent in travel between the employee's residence and the employee's *head-quarters*.

(3) For a dispatching service employee, the time spent in travel be-

tween the employee's residence and any reporting point.

Consecutive service is a period of unbroken *total time on duty* during a *duty tour*.

Covered service means—

(1) For a train employee, the portion of the employee's time on duty during which the employee is engaged in, or connected with, the movement of a train.

(2) For a dispatching service employee, the portion of the employee's time on duty during which the employee, by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers an order related to or affecting the movement of a train.

(3) For a signal employee, the portion of the employee's time on duty during which the employee is engaged in installing, repairing, or maintaining a signal system.

Covered service assignment means—

(1) For a train employee, each unique assignment of the employee during a period of *covered service* that is associated with either a specific train or a specific yard job.

(2) For a signal employee, the assigned duty hours of the employee, including overtime, or unique trouble call assignments occurring outside the employee's assigned duty hours.

(3) For a dispatching service employee, each unique assignment for the employee that occurs within any 24-hour period in which the employee, by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

Deadheading means the physical relocation of a train employee from one point to another as a result of a railroad-issued verbal or written directive.

Designated terminal means the home or away-from-home terminal for the assignment of a particular train crew.

Dispatching service employee means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

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Duty location for a signal employee is the employee's *headquarters* or the precise location where the employee is expected to begin performing service for the railroad as defined in 49 U.S.C. 21104(b)(1) and (2).

Duty tour means—

(1) The total of all periods of *covered service* and *commingled service* for a train employee or a signal employee occurring between two *statutory off-duty periods* (i.e., off-duty periods of a minimum of 8 or 10 hours); or

(2) The total of all periods of *covered service* and *commingled service* for a dispatching service employee occurring in any 24-hour period.

Employee means an individual employed by a railroad or a contractor or subcontractor to a railroad who—

(1) Is actually engaged in or connected with the movement of any train, including a person who performs the duties of a hostler;

(2) Dispatches, reports, transmits, receives, or delivers an order pertaining to a train movement by the use of telegraph, telephone, radio, or any other electrical or mechanical device; or

(3) Is engaged in installing, repairing, or maintaining a signal system.

Final release is the time that a train employee or a signal employee is released from all activities at the behest of the railroad and begins his or her *statutory off-duty period*.

Headquarters means the regular assigned on-duty location for signal employees, or the lodging facility or crew quarters where traveling signal gangs reside when working at various system locations.

Interim release means an off-duty period applied to train employees only, of at least 4 hours but less than the required *statutory off-duty period* at a *designated terminal*, which off-duty period temporarily suspends the accumulation of time on duty, but does not start a new *duty tour*.

Limbo time means a period of time treated as neither time on duty nor time off duty in 49 U.S.C. 21103 and 21104, and any other period of service for the railroad that does not qualify as either covered service or commingled service.

On-duty time means the actual time that an employee reports for duty to begin a *covered service assignment*.

Other-than-regular reporting point means any location where a train employee reports to begin or restart a *duty tour*, that is not the employee's *regular reporting point*.

Prior time off means the *amount of time* that an employee has been off duty between identifiable periods of service *at the behest of the railroad*.

Program edits are filters contained in the logic of an hours of service record-keeping program that detect identifiable reporting errors made by a reporting employee at the time of data entry, and prevent the employee from submitting a record without first correcting or explaining any identified errors or anomalies.

Quick tie-up is a data entry process used only when an employee is within 3 minutes of, or is beyond, his or her statutory maximum on-duty period, which process allows an employee to enter only the basic information necessary for the railroad to identify the beginning of an employee's *statutory off-duty period*, to avoid the excess service that would otherwise be incurred in completing the full record for the *duty tour*. The information permitted in a quick tie-up process is limited to, at a maximum:

(1) Board placement time;

(2) Relieved location, date, and time;

(3) Final release location, date, and time;

(4) Contact information for the employee during the statutory off-duty period;

(5) Request for rest in addition to the statutory minimum, if provided by collective bargaining agreement or local practice;

(6) The employee may be provided an option to enter basic payroll information, related only to the duty tour being tied up; and

(7) Employee certification of the tie-up information provided.

Railroad means a person providing *railroad transportation*.

Railroad transportation means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul rail passenger service in a metropolitan or suburban area, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Regular reporting point means the permanent on-duty location of a train employee's regular assignment that is established through a job bulletin assignment (either a job award or a forced assignment) or through an employee's exercise of seniority to be placed in an assignment. The assigned regular reporting point is a single fixed location identified by the railroad, even for extra board and pool crew employees.

Release means—

- (1) For a train employee,
 - (i) The time within the *duty tour* that the employee begins an *interim release*;
 - (ii) The time that an employee completes a *covered service assignment* and begins another *covered service assignment* on a different train or job, or
 - (iii) The time that an employee completes a *covered service assignment* to begin another activity that counts as time on duty (including waiting for deadhead transportation to another duty location at which the employee will perform *covered service*, deadheading to duty, or any other *commingled service*).
- (2) For a signal employee, the time within a *duty tour* that the employee—
 - (i) Completes his or her regular assigned hours and begins an off-duty period of at least one hour but less than a *statutory off-duty period*; or
 - (ii) Completes his or her return travel from a trouble call or other unscheduled duty and begins an off-duty period of at least one hour, but less than a *statutory off-duty period*.
- (3) For a dispatching service employee, when he or she stops performing *covered service* and *commingled service* within any 24-hour period and

begins an *off-duty period* of at least one hour.

Relieved time means—

- (1) The actual time that a train employee stops performing a *covered service assignment* or *commingled service*.
- (2) The actual time that a signal employee:
 - (i) Completes his or her assigned duty hours, or stops performing *covered service* or *commingled service*, whichever is later; or
 - (ii) Stops performing *covered service* associated with a trouble call or other unscheduled duty outside of normally assigned duty hours.

Reports for duty means that an employee—

- (i) Presents himself or herself at the location established by the railroad at the time the railroad established for the employee to be present; and
- (ii) Is ready to perform *covered service*.

Report-for-duty time means—

- (1) For a train employee, the actual time that the employee is required to be present at a *reporting point* and prepared to start a *covered service assignment*.
- (2) For a signal employee, the assigned starting time of an employee's scheduled shift, or the time that he or she receives a trouble call or a call for any other unscheduled duty during an off-duty period.
- (3) For a dispatching service employee, when the employee begins the turn-over process at or before the beginning of his or her assigned shift, or begins any other activity at the behest of the railroad during any 24-hour period in which covered service is performed.

Reporting point means any location where an employee is required to begin or restart a duty tour.

Seniority move means a repositioning at the behest of the employee, usually a repositioning from a regular assignment or extra board to a different regularly assigned position or extra board, as the result of the employee's selection of a bulletin assignment or the employee's exercise of seniority over a junior employee.

Signal employee means an individual who is engaged in installing, repairing, or maintaining signal systems.

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Station, office or tower means the precise location where a dispatching service employee is expected to perform service for the railroad as defined in 49 U.S.C. 21105(b) and (c).

Statutory off-duty period means the period of 8 or 10 consecutive hours or more time, that is the minimum off-duty period required under the hours of service laws for a train employee or a signal employee to begin a new 24-hour period for the purposes of calculating his or her *total time on duty*.

Total off-duty period means the actual amount of time that a train employee or a signal employee is off duty between duty tours after the previous final release and before the beginning of the next duty tour. This time may differ from the expected prior time off that will be generated by the record-keeping system, if the employee performed service at the behest of the railroad between the duty tours.

Total time on duty (TTOD) means the total accumulation of time spent in periods of *covered service* and *commingled service* between qualifying *statutory off-duty periods* of 8 or 10 hours or more. Mandatory activities that do not constitute *covered service*, such as rules classes, when they may not attach to *covered service*, are counted as *limbo time*, rather than *commingled service*, which *limbo time* is not counted toward the calculation of *total time on duty*.

Train employee means an individual engaged in or connected with the movement of a train, including a hostler.

Travel time means—

(1) For a signal employee, the time spent in transportation between the employee's *headquarters* and an outlying duty point or between the employee's residence and an outlying duty point, or, between duty locations, including both on-track and on-highway vehicular travel.

(2) For a dispatching service employee, the time spent in travel between *stations, offices, or towers* during the employee's time on duty.

[74 FR 25346, May 27, 2009]

EFFECTIVE DATE NOTE: At 76 FR 50396, Aug. 12, 2011, §228.3 was amended by adding definitions of *Associate Administrator*, *FRA*, *Type 1 assignment*, and *Type 2 assignment*, effective

October 15, 2011 For the convenience of the user, the revised text is set forth as follows:

§ 228.5 Definitions.

* * * * *

Associate Administrator means the Associate Administrator for Railroad Safety/Chief Safety Officer, Office of Railroad Safety, Federal Railroad Administration, or any person to whom he or she has delegated authority in the matter concerned.

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FRA means the Federal Railroad Administration.

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Type 1 assignment means an assignment to be worked by a train employee who is engaged in commuter or intercity rail passenger transportation that requires the employee to report for duty no earlier than 4 a.m. on a calendar day and be released from duty no later than 8 p.m. on the same calendar day, and that complies with the provisions of §228.405. For the purposes of this part, FRA considers a Type 1 assignment to present an acceptable level of risk for fatigue that does not violate the defined fatigue threshold under a scientifically valid, biomathematical model of human performance and fatigue specified by FRA at §228.407(c)(1) or approved by FRA under the procedures at §228.407(c)(2). However, a Type 1 assignment that is delayed such that the schedule actually worked includes any period of time between midnight and 4 a.m. is considered a Type 2 assignment for the purposes of compliance with §228.405.

Type 2 assignment. (1) *Type 2 assignment* means an assignment to be worked by a train employee who is engaged in commuter or intercity rail passenger transportation that requires the employee to be on duty for any period of time between 8:01 p.m. on a calendar day and 3:59 a.m. on the next calendar day, or that otherwise fails to qualify as a Type 1 assignment. A Type 2 assignment is considered a Type 1 assignment if—

(i) It does not violate the defined fatigue threshold under a scientifically valid biomathematical model of human performance and fatigue specified by FRA at 228.407(c)(2) or approved by FRA under the procedures at §228.407(c)(1);

(ii) It complies with the provisions of §228.405; and

(iii) It does not require the employee to be on duty for any period of time between midnight and 4 a.m.

(2) If a Type 2 assignment that would normally qualify to be treated as a Type 1 assignment is delayed so that the schedule actually worked includes any period of time between midnight and 4 a.m., the assignment is considered a Type 2 assignment for the purposes of compliance with § 228.405.

Subpart B—Records and Reporting

§ 228.7 Hours of duty.

(a) For purposes of this part, time on duty of an employee actually engaged in or connected with the movement of any train, including a hostler, begins when he reports for duty and ends when he is finally released from duty, and includes—

(1) Time engaged in or connected with the movement of any train;

(2) Any interim period available for rest at a location that is not a designated terminal;

(3) Any interim period of less than 4 hours available for rest at a designated terminal;

(4) Time spent in deadhead transportation en route to a duty assignment; and

(5) Time engaged in any other service for the carrier.

Time spent in deadhead transportation by an employee returning from duty to his point of final release may not be counted in computing time off duty or time on duty.

(b) For purposes of this part, time on duty of an employee who dispatches, reports, transmits, receives, or delivers orders pertaining to train movements by use of telegraph, telephone, radio, or any other electrical or mechanical device includes all time on duty in other service performed for the common carrier during the 24-hour period involved.

(c) For purposes of this part, time on duty of an employee who is engaged in installing, repairing or maintaining signal systems includes all time on duty in other service performed for a common carrier during the 24-hour period involved.

[37 FR 12234, June 21, 1972, as amended at 43 FR 3124, Jan. 23, 1978]

§ 228.9 Records; general.

(a) Each manual record maintained under this part shall be—

(1) Signed by the employee whose time on duty is being recorded or, in the case of a train and engine crew or a signal employee gang, signed by the ranking crewmember;

(2) Retained for two years at locations identified by the carrier; and

(3) Available upon request at the identified location for inspection and copying by the Administrator during regular business hours.

(b) Each electronic record maintained under this part shall be—

(1) Certified by the employee whose time on duty is being recorded or, in the case of a train and engine crew or a signal employee gang, certified by the reporting employee who is a member of the train crew or signal gang whose time is being recorded;

(2) Electronically stamped with the certifying employee's name and the date and time of certification;

(3) Retained for 2 years in a secured file that prevents alteration after certification;

(4) Accessible by the Administrator through a computer terminal of the railroad, using a railroad-provided identification code and a unique password.

(5) Reproducible using the printing capability at the location where records are accessed.

[74 FR 25348, May 27, 2009]

§ 228.11 Hours of duty records.

(a) *In general.* Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record, either manually or electronically, concerning the hours of duty of each employee. Each contractor or subcontractor of a railroad shall also record the name of the railroad for whom its employee performed covered service during the duty tour covered by the record. Employees who perform covered service assignments in a single duty tour that are subject to the recordkeeping requirements of more than one paragraph of this section, must complete the record applicable to the covered service position for which they were called, and record other covered service as an activity constituting other service at the behest of the railroad.

(b) *For train employees.* Except as provided by paragraph (c) of this section,