

provided to the person to be charged within that two year period. In no event may a suit be brought after expiration of the period specified in 28 U.S.C. 2462.

*Exemptions.* A railroad which employs not more than 15 persons covered by the Hours of Service Act (including signalmen and hostlers) may be exempted from the law's requirements by the FRA after hearing and for good cause shown. The exemption must be supported by a finding that it is in the public interest and will not adversely affect safety. The exemption need not relate to all carrier employees. In no event may any employee of an exempt railroad be required or permitted to work beyond 16 hours continuously or in the aggregate within any 24-hour period. Any exemption is subject to review at least annually.

[42 FR 27596, May 31, 1977, as amended at 43 FR 30804, July 18, 1978; 53 FR 28601, July 28, 1988; 55 FR 30893, July 27, 1990; 58 FR 18165, Apr. 8, 1993; 61 FR 20495, May 7, 1996; 63 FR 11622, Mar. 10, 1998; 69 FR 30594, May 28, 2004; 72 FR 51197, Sept. 6, 2007; 73 FR 79703, Dec. 30, 2008; 76 FR 67092, Oct. 31, 2011; 77 FR 24421, Apr. 24, 2012]

APPENDIX B TO PART 228—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

Section	Violation	Willful violation
Subpart B—Records and Reporting:		
228.9 Railroad records	\$1,000	\$2,000
228.11 Hours of duty records .....	1,000	2,000
228.17 Dispatcher's record .....	1,000	2,000
228.19 Monthly reports of excess service .....	1,000	2,000

<sup>1</sup> 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 \$105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[53 FR 52931, Dec. 29, 1988, as amended at 69 FR 30594, May 28, 2004; 73 FR 79703, Dec. 30, 2008; 77 FR 24421, Apr. 24, 2012]

APPENDIX C TO PART 228 [RESERVED]

APPENDIX D TO PART 228—GUIDANCE ON FATIGUE MANAGEMENT PLANS

(a) Railroads subject to subpart F of this part, Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation, may wish to consider adopting a written fatigue management plan that is designed to reduce the fatigue experienced by their train employees subject to that subpart and to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by the fatigue of these employees. If a railroad is

required to have a fatigue mitigation plan under §228.407 (containing the fatigue mitigation tools that the railroad has determined will mitigate the risk posed by a particular work schedule for a level of fatigue at or above the fatigue threshold), then the railroad's fatigue management plan could include the railroad's written fatigue mitigation plan, designated as such to distinguish it from the part of the plan that is optional, or could be a separate document. As provided in §228.407(a)(2) and (e), compliance with the fatigue mitigation plan itself is mandatory.

(b) A good fatigue management plan contains targeted fatigue countermeasures for the particular railroad. In other words, the plan takes into account varying circumstances of operations by the railroad on different parts of its system, and should prescribe appropriate fatigue countermeasures to address those varying circumstances. In addition, the plan addresses each of the following items, as applicable:

(1) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature;

(2) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders;

(3) Effects on employee fatigue of an employee's short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions;

(4) Scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss;

(5) Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research has shown that increased fatigue disrupts employees' circadian rhythm;

(6) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty;

(7) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad;

(8) The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad or its managers, supervisors, officers, or agents; and

(9) Avoidance of abrupt changes in rest cycles for employees.

(c) Finally, if a railroad chooses to adopt a fatigue management plan, FRA suggests