

§ 228.405

- (1) A casualty;
- (2) An unavoidable accident;
- (3) An act of God; or
- (4) A delay resulting from a cause unknown and unforeseeable to a railroad or its officer or agent in charge of the employee when the employee left a terminal.

(b) *Exemption.* The Administrator may exempt a railroad having not more than a total of 15 train employees, signal employees, and dispatching service employees from the limitations imposed by this subpart on the railroad's train employees who are engaged in commuter or intercity rail passenger transportation. The Administrator may allow the exemption from this subpart after a full hearing, 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 railroad to require or allow its train employees to be on duty more than a total of 16 hours in a 24-hour period.

(c) *Definitions.* In this subpart—

*Commuter or intercity rail passenger transportation* has the meaning assigned by section 24102 of title 49, United States Code, to the terms "commuter rail passenger transportation" or "intercity rail passenger transportation."

*Train employee who is engaged in commuter or intercity rail passenger transportation* includes a train employee who is engaged in commuter or intercity rail passenger transportation regardless of the nature of the entity by whom the employee is employed and any other train employee who is employed by a commuter railroad or an intercity passenger railroad. The term excludes a train employee of another type of railroad who is engaged in work train service even though that work train service might be related to providing commuter or intercity rail passenger transportation, and a train employee of another type of railroad who serves as a pilot on a train operated by a commuter railroad or intercity passenger railroad.

49 CFR Ch. II (10–1–13 Edition)

§ 228.405 **Limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation.**

(a) *General.* Except as provided in paragraph (c) of this section, a railroad and its officers and agents may not require or allow a train employee engaged in commuter or intercity rail passenger transportation to remain or go on duty—

(1) Unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

(2) After that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(3) In a series of at most 14 consecutive calendar days, in excess of the following limitations:

(i) That employee's first series of at most 14 consecutive calendar days begins on the first calendar day that the employee initiates an on-duty period on or after the compliance date for this paragraph (a)(3), as specified in § 228.413. A series of at most 14 consecutive calendar days either ends on the 14th consecutive day or may last for less than 14 days if an employee has accumulated a total of two calendar days on which the employee has not initiated an on-duty period before the beginning of the 14th day of the series. After the employee has accumulated a total of two calendar days on which the employee has not initiated an on-duty period, including at least 24 consecutive hours off duty as required by paragraph (a)(3)(ii) or two consecutive calendar days without initiating an on-duty period as required by paragraph (a)(3)(iii) of this section, during the employee's current series of at most 14 consecutive calendar days, a new series of at most 14 consecutive calendar days begins on the calendar day in which the employee next initiates an on-duty period. Only calendar days after the starting date of a series are counted toward the accumulation of a total of two calendar days on which the employee did not initiate an on-duty period. A calendar day on which an on-duty period was not initiated that occurred prior to the start of the new series, does not count toward refreshing the new series.

(ii) If the employee initiates an on-duty period each day on any six or more consecutive calendar days during the series of at most 14 consecutive calendar days, and at least one of the on-duty periods is defined as a Type 2 assignment, that employee must have at least 24 consecutive hours off duty prior to next initiating an on-duty period, except as provided in paragraph (a)(3)(v) of this section.

(iii) If the employee has initiated an on-duty period each day on 13 or more calendar days in the series of at most 14 consecutive calendar days, that employee must have at least two consecutive calendar days on which the employee does not initiate an on-duty period prior to next initiating an on-duty period, except as provided in paragraph (a)(3)(v) of this section.

(iv) The minimum time off duty required by paragraph (a)(3)(ii) of this section and the at least two consecutive calendar days in which the employee does not initiate an on-duty period required by paragraph (a)(3)(iii) of this section must be at the employee's home terminal, and during such periods, the employee shall be unavailable for any service for any railroad.

(v) Paragraphs (a)(3)(ii)-(iii) of this section notwithstanding, if the employee is not at the employee's home terminal when time off duty is required by paragraph (a)(3)(ii) of this section or calendar days in which the employee does not initiate an on-duty period are required by paragraph (a)(3)(iii) of this section, the employee may either deadhead to the point of final release at the employee's home terminal or initiate an on-duty period in order to return to the employee's home terminal either on the same calendar day or the next consecutive calendar day after the completion of the duty tour triggering the requirements of paragraph (a)(3)(ii) or paragraph (a)(3)(iii) of this section.

(vi) If the employee is required to have at least 24 consecutive hours off duty under paragraph (a)(3)(ii) of this section and not to initiate an on-duty period for at least two consecutive calendar days under paragraph (a)(3)(iii) of this section, both requirements shall be observed. The required periods run

concurrently, to the extent that they overlap.

(b) *Determining time on duty.* In determining under paragraph (a) of this section the time that a train employee subject to this subpart is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty;

(2) Time the employee is engaged in or connected with the movement of a train is time on duty;

(3) Time spent performing any other service for the railroad during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty;

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty;

(5) An interim period available for rest at a place other than a designated terminal is time on duty;

(6) An interim period available for less than four hours rest at a designated terminal is time on duty; and

(7) An interim period available for at least four hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(i) A casualty;

(ii) A track obstruction;

(iii) An act of God; or

(iv) A derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) *Emergencies.* A train employee subject to this subpart who is on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than four additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this paragraph, an emergency ends when the track is cleared and the railroad line is open for traffic.