



**HOURS OF SERVICE ACT
REFERENCE MANUAL
FOR
EMPLOYEES DIRECTLY ENGAGED OR
CONNECTED WITH THE MOVEMENT
OF PASSENGER TRAINS OR ENGINES**

Revised by the System Operating Practices Department

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INTRODUCTION

This booklet has been prepared to explain the provisions of the Hours of Service Act that apply to employees who are directly engaged in the movement of trains or engines. Much of the material in this booklet has been derived from written interpretations issued by the Federal Railroad Administration (FRA).

Employees who have questions on applications of the Hours of Service Act that go beyond the scope of this booklet must contact their immediate supervisor or an Operating Practices Department representative for an explanation.

Use of the male gender throughout this booklet is for convenience and clarity only. All explanations apply equally to male and female personnel.

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DEFINITIONS

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.

Commingled Service: Any service not included in the definition of covered service that is required by the company *and* is not separated from covered service by a statutory off-duty period of 8 or 10 hours.

Covered Employee: A railroad employee who performs any of the types of service covered by the Hours of Service Act. (See section titled "Who the Act Covers".)

Covered Service: Any of the services covered by the Hours of Service Act. (See section titled "Who the Act Covers".)

Designated Terminal: A terminal which has been designated in or under a collective bargaining agreement as a "home" or "away from home" terminal for a particular crew assignment, and which has suitable facilities for food and lodging. The carrier and union representatives may agree to designate additional terminals having such facilities as points of effective release under the Act. The Act requires only that suitable facilities for food and lodging be available; it does not require the company to pay for the accommodations.

Duty Tour:

For a train or signal employee, the total of all periods of covered service and commingled service occurring between two statutory off-duty periods.

For a dispatching service employee, the total of all periods of covered service and commingled service occurring in any 24-hour period.

Interim Release: A break of 4 or more hours at a designated terminal. The time spent on such breaks is considered off-duty time, and may be used to break an employee's on-duty time.

Point of Final Release: The designated terminal where an employee is finally released from duty to receive a statutory off-duty period before the start of a new duty tour.

Statutory Off-Duty Period: An off-duty period of 8 or more consecutive hours, or 10 or more consecutive hours when following an on-duty period of 12 or more consecutive hours.

Time: The time spent by an employee who performs covered service can be grouped into one of three categories: On-Duty Time, Off-Duty Time and Limbo Time.

On-Duty Time: Time during an employee's duty tour that must be counted toward the total hours the employee can work.

Off-Duty Time: Time that may be counted toward an employee's statutory off-duty period.

Limbo Time: Time that may not be considered on-duty time or off-duty time.

Type 1 Assignment: (See "*Limitations on Duty Tours in a Set Period, Assignment Types*".)

Type 2 Assignment: (See "*Limitations on Duty Tours in a Set Period, Assignment Types*".)

PURPOSE OF THE ACT

The purpose of the Hours of Service Act is to promote the safety of railroad employees and travelers by limiting the work hours of employees who perform certain safety sensitive functions.

WHO THE ACT COVERS

The Hours of Service Act covers railroad employees in three categories of service:

1. ***Employees who are actually engaged in or connected with the movement of any train***^{1,2}
This category includes Conductors, Assistant Conductors, Switch Tenders, Engineers, Assistant Engineers, Student Engineers, Class 4 Engineers, Heavy Equipment Operators (HEOs),³ and other employees who move trains or engines, operate switches or provide hand signals for, or otherwise directly assist in the movement of trains or engines. Supervisors are also covered by the Act when they perform the duties of a crew member, such as: operating a train or engine, piloting a train or engine, copying a Form D, Track Warrant, Track Bulletin, or other mandatory written directive for the Engineer or Conductor; or performing the duties of an absent Conductor.
Note: Most railroads require employees and supervisors who are riding on the head end of a train to call signals or restrictions. These actions alone do not subject the employees to the provisions of the Act.
2. ***Employees who dispatch, report, transmit, receive, or deliver train orders by telegraph, telephone, radio, or any other electrical or mechanical device***
3. ***Employees who are engaged in installing, repairing or maintaining signal systems***

THIS BOOKLET FOCUSES ON ONLY THE FIRST OF THESE THREE CATEGORIES OF SERVICE.

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- 1 For the purpose of the Act and this booklet, a "train" is defined as an engine, with or without cars.
 - 2 As discussed in the section titled "Limitations on Duty Tours in a Set Period", refers only to the employees of a *passenger* railroad engaged or connected with the movement of any train. Employees of a *freight* railroad will continue to be governed by the HOS regulations that apply to freight, including when serving as a pilot on a train operated by a passenger railroad.
 - 3 Regarding Mechanical Department employees, the FRA's interpretation of who is covered by the Act is based on the job function performed, not the department or craft of the person.
 - a) The following job functions are covered by this HOS Act:
 - Moving a locomotive under its own power to or from a repair shop *for servicing*: fueling, sanding, etc.
 - Moving a locomotive under its own power to repair or test cab signal or ATC equipment
 - Moving engines or cars to or from a mechanical facility *for servicing* using a trackmobile
 - Employees (helpers) who operate switches for, provide hand signals for, or otherwise directly assist in or control the equipment movements listed above
 - b) The following job functions by themselves would *not* constitute covered service:
 - Duties of machinists, electricians, laborers, and similar occupations not associated with the duties of a hostler
 - Anyone that uncouples/couples equipment within confines of Mechanical facility
 - Moving or repositioning an engine in the course of performing maintenance, repair, or troubleshooting inspections (ex: on a wheel truing machine to inspect or turn the next wheel; so that its mechanical parts can be inspected or repaired; moving any locomotive, including multiple-unit electric cars, in a repair shop by use of a winch or other device other than trackmobile)
 - Employees (helpers) who operate switches for or otherwise assist in the job functions listed above

LIMITATIONS IMPOSED BY THE ACT

The Act places the following limitations on the on-duty time of employees *engaged in or connected with the movement of any train*:

1. They must not be required or permitted to continue on duty for more than 12 **consecutive** hours. After being on duty for 12 **consecutive** hours, they must not be required or permitted to go on duty without at least 10 consecutive hours off duty.
2. They must not be required or permitted to continue on duty or go on duty unless they have had at least 8 consecutive hours off duty during the preceding 24 hours.
3. An employee's on-duty time may be broken by one or more periods of interim release. (See section on "Interim Release".) When an employee's on-duty time has been broken in this manner, the employee must not be required or permitted to accumulate more than 12 hours of on-duty time since the end of the employee's last statutory off-duty period.
4. After completing 12 hours of broken duty, or 24 hours after the end of the employee's last statutory off-duty period, whichever occurs first, the employee may not be required or permitted to continue on duty or go on duty until he has had at least **8** consecutive hours off duty.

Example 1: A fully rested employee reports for duty at 7:00 AM. At 11:00 AM, the employee is given a 7 hour release at a designated terminal. At 6:00 PM, the employee returns to duty and works an additional 5 hours until 11:00 PM, at which time he is given a 6 hour release at a designated terminal. So far the employee has accumulated 9 hours of on-duty time. When he returns to duty at 5:00 AM, he may work only 2 more hours. Even though he has 3 hours left before he reaches the 12 hour limit, he will exceed the 24 hour limit at 7:00 A.M. since it will have been 24 hours since his last statutory off-duty period.

Example 2: A fully rested employee reports for duty at 7:00 AM. At 11:00 AM, the employee is given a 4 hour release at a designated terminal. At 3:00 PM, the employee returns to duty and works an additional 8 hours until 11:00 PM. The employee has reached his 12 hour broken duty limit since he has accumulated 12 hours of on-duty time since the end of his last statutory off duty period. The employee must be released from duty and may not return to duty without at least 8 consecutive hours off-duty. Had the employee been on-duty for 12 **consecutive** hours, a 10 hour off-duty period would have been required.

COMPUTATION OF TOTAL TIME ON DUTY

When computing total time on duty, employees engaged in or connected with the movement of a train must include the following:

1. Time engaged in or connected with the movement of any train.
2. Any period available for rest that does not qualify as an interim release. (See section on "Interim Release".)
3. Time spent deadheading **to** an assignment. (Time spent deadheading **from** an assignment to point of final release is considered **limbo time**.)
4. Time spent waiting for deadhead transportation to **arrive** is considered **limbo time**, as long as employees are relieved from performing any duties while waiting for transportation.
5. Time spent in any company required service that is not separated from covered service by a statutory off-duty period. (See section on "Commingle Service".)

WHEN ON-DUTY TIME BEGINS

The on-duty time for an employee engaged in or connected with the movement of a train begins at the actual time the employee is required to report for duty prepared to begin a covered service assignment at his regular reporting point⁴, regardless of whether the employee will begin work at that location or will deadhead to and begin work at another location.

If an employee reports directly to a point of duty assignment other than his regular reporting point, his on-duty time will begin when he leaves his home. However, if the actual travel time from his home to the point of duty assignment exceeds a reasonable travel time from the regular point to the point of duty assignment, then only the latter period is counted. Actual travel time must be reasonable and must not include diversions for personal reasons.

If an employee is beginning a new duty tour at an away from home terminal, and the travel time from the lodging facility to his regular reporting point exceeds 30 minutes, the on-duty time for the employee begins when he leaves the lodging facility. If such travel time is 30 minutes or less, it is considered personal commuting time and is therefore off-duty time.

Example 1: Facts: An employee arrives at location "A", his regular reporting point, at 7:40 AM and reports for duty at the scheduled reporting (sign-up) time of 8:00 AM. The employee then deadheads by company provided transportation to location "B", where he will begin his work assignment. The employee arrives at location "B" at 9:15 AM. Determination: The employee's on-duty time began at 8:00 AM, when he reported for deadhead at his regular reporting point.

Example 2: Facts: An employee obtains permission from the company to drive directly from his home to work location "B", which is not his regular reporting point. The employee leaves his home at 11:00 AM and arrives at work location "B" at 11:30 AM. Normal travel time from the employee's regular reporting point to work location "B" is one hour. Determination: The employee's on-duty time began when he left his home at 11:00 AM.

4 FRA's position is that employees may have only one regular reporting point at their home terminal or away from home terminal.

Example 3: Facts: An employee obtains permission from the company to drive directly from his home to work location "B", which is not his regular reporting point. The employee leaves his home at 2:00 PM and arrives at work location "B" at the scheduled reporting (sign-up) time of 4:00 PM. Normal travel time from the location "A", the employee's regular reporting point, to work location "B" is one hour. Determination: The employee's on-duty time is considered to have begun at 3:00 PM, since actual travel time from his home to work location "B" (2 hours) exceeded a reasonable travel time from regular reporting point "A" to work location "B" (1 hour). The on-duty time of 3:00 PM is obtained by subtracting the normal travel time from "A" to "B" (1 hour) from 4:00 PM (the time the employee arrived at "B").

Example 4: Facts: An employee is beginning a new duty tour at away from home terminal "C". The employee leaves his lodging facility at 9:00 PM and arrives at away from home terminal "C" at the scheduled reporting (sign-up) time of 9:25 PM. Determination: The employee's on-duty time begins at 9:25 PM, since travel time from the lodging facility to the away from home terminal did not exceed 30 minutes.

Example 5: Facts: An employee is beginning a new duty tour at away from home terminal "D". The employee leaves his lodging facility at 2:30 PM and arrives at away from home terminal "D" at the scheduled reporting (sign-up) time of 3:15 PM. Determination: The employee's on-duty time begins at 2:30 PM, since travel time from the lodging facility to the away from home terminal exceeded 30 minutes.

WHEN ON-DUTY TIME ENDS

An employee's on-duty time ends when he is released from duty to receive his statutory 8 or 10 hour off-duty period.

If an employee is released from duty at a location other than his home terminal or away from home terminal, his on-duty time ends he is relieved from performing any duties. Time spent waiting for deadhead transportation to **arrive** is considered **limbo time**.

Example 1: Facts: A work train crew that reported for duty in New York, NY at 7:00 PM ties the work train up at Trenton, NJ at 6:00 AM. The first Amtrak train that the crew can deadhead on to New York arrives in Trenton at 6:36 AM. Determination: The crew's on-duty time ends at 6:00 AM. As long as they were relieved of all duties, the time waiting for deadhead transportation to arrive is considered limbo time.

WHEN OFF-DUTY TIME BEGINS

If an employee is released from duty at his home terminal, his off-duty time begins immediately upon his release at the home terminal.

If an employee is released from duty at his away from home terminal, his off-duty time shall begin immediately upon his release at the away from home terminal if travel time to the lodging facility is 30 minutes or less.

If travel time from the away from home terminal to the lodging facility exceeds 30 minutes, the employee's off-duty time shall not begin until he arrives at the lodging facility. In such a case, time

spent travelling from the away from home terminal to the lodging facility is considered **limbo time**.

When computing "**travel time**" to the lodging facility, employees must include any time they must wait at the away from home terminal for transportation to arrive to take them to the lodging facility⁵.

Example 1: Facts: A crew's on-duty time ends when they complete their assignment at their away from home terminal at 2:00 PM. The taxi cab that is to take them to their lodging facility arrives at 2:15 PM. When they arrive at the lodging facility at 2:25 PM, their rooms are immediately available. Determination: The crew's off-duty time begins at 2:00 PM, since travel time from the point of final release to the lodging facility did not exceed 30 minutes.

Example 2: Facts: A crew's on-duty time ends when they complete their assignment at their away from home terminal at 2:00 PM. The taxi cab that is to take them to their lodging facility arrives at 2:20 PM. Although they arrive at the lodging facility at 2:30 PM, their rooms are not ready until 2:45 PM. Determination: The crew's off-duty time does not begin until 2:45 PM, since their lodging accommodations were not ready until 2:45 PM. The time between 2:00 PM and 2:45 PM is treated as limbo time.

Example 3: Facts: A crew short on time is relieved en route at 5:00 AM. The crew then deadheads to their away from home terminal, where they arrive at 8:00 AM. The taxi cab that is to take them from their away from home terminal to their lodging facility arrives at 8:20 AM. When the crew arrives at the lodging facility at 8:35 AM, their rooms are immediately available. Determination: The crew's off-duty time begins at 8:35 AM, since travel time from their away from home terminal to the lodging facility exceeded 30 minutes. The time between 8:00 AM and 8:35 AM is treated as limbo time. The time between 5:00 AM and 8:00 AM is also treated as limbo time, since it was used for deadheading to the employee's point of final release - the away from home terminal.

Example 4: Facts: A crew short on time is relieved en route at 5:00 AM. The crew then deadheads to their away from home terminal, where they arrive at 8:00 AM. The taxi cab that is to take them from their away from home terminal to their lodging facility arrives at 8:10 AM. When the crew arrives at the lodging facility at 8:20 AM, their rooms are immediately available. Determination: The crew's off-duty time begins at 8:00 AM, since travel time from their away from home terminal to the lodging facility did not exceed 30 minutes.

INTERIM RELEASE

The Act permits a railroad to break an employee's on-duty time by giving the employee an interim release of 4 or more hours at a designated terminal. The time spent on such interim releases is considered off-duty time. Following an interim release, the employee may return to duty for the balance of their 12 hour duty tour limit or the end of the 24-hour period that began at the conclusion of their last statutory off-duty period, whichever comes first.

It is not required that employees be told in advance that they are being given an interim release.

5 If accommodations are not ready when employees arrive at the lodging facility, time spent waiting for such accommodations must also be considered limbo time.

COMMINGLED SERVICE

Under the "**Commingled Service**" provision of the Hours of Service Act, time spent in any service not otherwise covered by the Act that is required by the railroad must be counted as on-duty time when computing the total time on duty of an employee who has performed covered service during the same duty tour.

This means that time spent in any service that is (1) required by the railroad **and** (2) not separated from covered service by a statutory off-duty period, must be counted as on-duty time when computing the total on-duty time of the duty tour in which the covered service was performed. Any time period between the non-covered service and the covered service must also be counted as on-duty time, unless the period qualifies as an interim release. The issues of payment for services or contract requirements are not recognized or covered by the Act.

The Act does **not** distinguish treatment of situations in which non-covered service follows, rather than precedes covered service. Non-covered service must be counted as on-duty time when it is performed less than 8 hours **before or after** covered service⁶

If commingled service is performed at locations other than the employee's regular reporting point, deadhead time from the employee's regular reporting point must be considered in accordance with the "Deadheading" section of this booklet.

The following are examples of activities which **are** considered commingled service when they **are not separated from covered service by a statutory off-duty period**:

1. **Physical Examinations:** If an employee is required to report for a physical examination as a condition of continued employment, the time spent taking the examination must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period.
2. **Attendance at Required Rules Classes:** Attendance at required rules classes must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period, since attendance at such classes is required by the company and fulfills a condition of employment. This is true even where employees have the option to attend one of several sessions, and it is immaterial that specific scheduling of such service is left, in part, to the employee.
3. **Company Required Completion of Study Guides or Questionnaires:** If an employee is required to complete a study guide or questionnaire as a condition of their employment, the time that spent completing the study guide or questionnaire must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period. If completion of a study guide or questionnaire is strictly voluntary, the time spent completing the study guide or questionnaire is not subject to the commingled service provision.
4. **Company Required Attendance at Railroad Investigation Hearings:** When an employee is required by the railroad to attend a hearing as a principal under charge, or as a witness on behalf of the railroad, time so spent must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period.

6 When an employee has completed a duty tour of 12 or more consecutive hours, no service may be performed by the employee until he has had 10 consecutive hours off-duty.

5. **Company Required Physical Characteristics Qualification Rides:** When an employee is directed by the company to ride trains to qualify on the physical characteristics of specific routes, the time spent performing this service must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period.
6. **Medical Attention for a Personal Injury:** Where a covered employee requires medical attention as a result of an on-duty injury, the time spent receiving such attention must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period. If medical attention results in an employee performing excess service, the occurrence must be reported to FRA on the prescribed form. FRA will consider the circumstances of the incident, including the railroad's diligence, when deciding which cases warrant civil penalties.
7. **Providing Information Concerning Railroad Accidents:** If a train crew is explicitly required by railroad officials to remain on railroad property to provide information regarding an accident, the time spent waiting to give, and giving, such information must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period.
8. **Taking Required Drug and Alcohol Tests:** Time spent by an employee taking required drug and alcohol tests must be counted as on-duty time when it is not separated from covered service by a statutory off-duty period. If excess service occurs as a result of such tests, the railroad must report the excess service to FRA on the prescribed form. FRA will consider the circumstances of the test, including the railroad's diligence, when deciding which cases warrant civil penalties.

The following are examples of activities which **are not** subject to the commingled service provision of the Act:

1. **Voluntary Attendance at Railroad Investigation Hearings:** When an employee and/or union representative **voluntarily** attends a hearing as a witness on behalf of an employee, such service is not required by the railroad, and therefore, **not** considered time on-duty under the commingled service provision.
2. **Voluntary Completion of Study Guides or Questionnaires:** If the completion of a study guide or questionnaire is voluntary, the time spent completing the study guide or questionnaire is not subject to the commingled service provision.
3. **Participation in Railroad Safety Committees:** As long as participation in railroad safety committee activities is a voluntary act by an employee, and not a condition of continued employment, such service is not subject to the commingled service provision.
4. **Incidental Activities Performed Upon Arrival at Point of Final Release:** A brief call to the Crew Dispatcher to inform him of the beginning of the employee's off-duty period is not currently viewed by FRA as commingled service. Any other company required duties performed at the point of final release may be considered commingled service. If, after deadheading and arriving at the point of final release, an employee performs commingled service, he is again on duty. Moreover, since the deadheading time would then have been transportation to a duty assignment, it would also count as on-duty time. To avoid excess service, employees should defer other duties until they have completed their statutory off-duty period.
5. **Receiving an Assignment Call:** When an extra list employee receives a call for an assignment, the call is not considered commingled service nor is it an interruption of off-duty time.

Example 1: Facts: An employee who has worked 9 hours in covered service goes off-duty at his home terminal at 3:00 PM. At 6:00 PM, the employee goes to take his annual physical examination which is required by the company. The physical examination is completed at 7:00 PM. Determination: The employee has been on duty for 13 hours and has therefore exceeded the 12 hour limit. Because the physical examination was required by the company and was not separated from covered service by a statutory off-duty period, the time spent undergoing the examination must be counted as time on-duty. Also, because the physical examination was not separated from the covered service by an interim release, the time that lapsed between the end of the covered service and the physical examination must be counted as on-duty time as well. **Employees must schedule their physical examinations and other company required activities so that the activities do not lead to excess service.**

Example 2: Facts: An employee who has worked 10 hours in covered service goes off-duty at his home terminal at 1:00 AM. At 11:00 AM, the employee decides to complete a work related questionnaire that he was ordered to complete by his supervisor. The employee completes the questionnaire at 12:00 NOON. At 3:00 PM the employee goes on duty to work a 10 hour assignment (3:00 PM to 1:00 AM). Determination: The employee will have 12 hours on-duty time at 11:00 PM, and will thus be unable to complete his assignment. Because completion of the questionnaire was required by the company and was not separated from covered service by a statutory off-duty period, the time spent completing the questionnaire must be counted as time on-duty. Also, because the time spent completing the questionnaire was not separated from covered service by an interim release, the time that lapsed between the completion of the questionnaire and the beginning of covered service must be counted as on-duty time as well. Had the employee completed the questionnaire between 10:00 AM and 11:00 AM, the time between 11:00 AM and 3:00 PM could have been counted as an interim release, which would have enabled the employee to work for 11 more hours before he reached the 12 hour limit. **Employees must schedule company required activities such as questionnaire completion so that the activities do not prevent them from completing their next assignment.**

Example 3: Facts: An employee goes on duty to perform covered service at 7:00 AM. At 6:00 PM, the employee is released at his home terminal and decides to attend a voluntary safety committee meeting that lasts until 8:00 PM. Determination: Since the employee's attendance at the safety meeting was not required by the company, it did not count as commingled service and was therefore part of the employee's off-duty time. Although the Hours of Service Act does not govern the non-company required activities employees engage in during their off-duty time, **employees are reminded that for their own personal safety and the safety of others they should ensure that such activities do not interfere with their ability to obtain adequate rest before their next assignment.**

Example 4: Facts: A Conductor who has worked 9 hours in covered service goes off duty in Philadelphia at 10:00 PM on Monday. At 8:00 AM on Tuesday, the employee attends his annual operating rules class in Philadelphia. The rules class ends at 5:00 PM, and the employee decides to take a head end observation ride (will not be involved in the train's operation) to New York and back to begin learning the physical characteristics of the railroad for a new assignment he has been awarded. The employee arrives back in Philadelphia at 9:00 PM and goes home to rest for a 6:00 AM assignment the next day (Wednesday). Determination: The employee did not have any hours of service on-duty time for Tuesday. Although the rules class and the physical characteristics qualification rides were required by the company, the time spent doing those activities did not count as commingled service because there was a statutory off-duty period between the non-covered activities and the covered service that preceded them, and between the non-covered activities and the covered service that followed them. Remember, **non-covered service becomes commingled service only when it is not separated from covered service by a statutory off-duty period of 8 or 10 hours.**

SET BACKS

An employee's assigned on-duty time (reporting time) may be set back as long as the employee is notified of the set back before he leaves his residence or designated lodging facility. **One** brief call during an employee's statutory off-duty period is not considered service performed or an interruption of off-duty time.

If an employee is notified of a set back after he has left his residence or designated lodging facility, all time from the original sign-up time will be counted as on-duty time.

EXCEPTION: The time between the set back notification and the employee's new reporting time may be considered an interim release if:

1. The set back is 4 hours or more
- AND
2. The employee had completed his statutory off-duty period (8 or 10 hours, as required) when he received the set back call.

Example 1: Facts: An employee who has worked 10 hours goes off-duty at 11:30 PM. At 6:00 AM, the employee is called at home and told that his reporting time, originally scheduled for 8:00 AM, has been set back to 10:00 AM. Determination: The employee may go on duty at 10:00 AM, considered as having been fully rested.

Example 2: Facts: An employee who has worked 10 hours goes off-duty at 11:30 PM. At 7:00 AM, the employee departs his residence and arrives at his reporting point at the required time of 8:00 AM. A Transportation Manager meets the employee when he arrives at the reporting point and informs the employee that his on-duty time has been set back until 10:00 AM. Determination: The employee must be considered on duty, since he was not notified of the set back before he left his residence. The Transportation Manager may either keep the employee on duty, or give the employee an interim release or another statutory off-duty period.

Example 3: Facts: An employee who has worked 10 hours goes off-duty at his away-from-home terminal at 11:30 PM. The employee is scheduled to sign up for duty the next morning at 8:30 AM. At 8:00 AM, the employee departs his lodging facility and arrives at his reporting point at 8:25 AM. A Transportation Manager meets the employee when he arrives at the reporting point and informs the employee that his on-duty time has been set back until 12:30 PM. Determination: The employee must accept the set back, since he had completed his statutory off-duty period before he left his residence and was notified of the set-back before his assigned reporting time. When the employee goes on duty at 12:30 PM, he will be considered as having been fully rested.

WRECK AND RELIEF TRAINS

The crew of a wreck or relief train may be permitted to be on-duty for 4 additional hours in any period of 24 consecutive hours whenever an actual emergency (such as a derailment) exists and work of the crew is related to such emergency. According to this provision of the Act, the emergency ceases to exist when the track is cleared and the line is open for traffic.

Example: Facts: The crew of a wreck train is dispatched to clear the site of a derailment which has just occurred on the main line. The wreck crew rerails or clears the last car and the maintenance of way department releases the track to the transportation department at 14 hours and 30 minutes into the wreck crew's duty tour. Determination: Since the line is not clear until the wreck train itself is out of the way, the crew may operate the wreck train to its terminal, provided this can be accomplished within the total of 16 hours on duty. (49 CFR Part 228, Appendix A)

LIMITATIONS ON DUTY TOURS IN A SET PERIOD

ASSIGNMENT TYPES

The Act has two additional requirements governing the minimum amount of time off duty that an employee *engaged in or connected with the movement of passenger trains*⁷ must have within a prescribed number of calendar days⁸ based on the Type 1 or Type 2 classification of the assignments worked. The Type 1 or Type 2 classification of all assignments will be determined by CMS and indicated on job bulletins and awards. The criteria for these classifications are described below.

Type 1 Assignments:

- Assignments that require an 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
- Assignments that require an employee to be on duty later than 8 p.m. but not past 11:59 p.m. will be classified and advertised as Type 1 after they have been analyzed using an FRA-approved fatigue model and shown not to result in an unsafe level of fatigue⁹.

Type 2 Assignments:

- Assignments that require the employee to be on duty for any period of time between midnight and 3:59 a.m., including Type 1 assignments delayed such that the schedule actually worked includes any period of time between midnight and 4 a.m.
- Assignments that require the employee to be on duty for any period of time between 8:01 p.m. but not past 11:59 p.m. will be considered Type 2 unless analyzed using an FRA-approved fatigue model and shown not to result in an unsafe level of fatigue¹⁰.

Example 1: Facts: An assignment is scheduled to report at 5:30 a.m., with a scheduled release time 12:40 p.m. Determination: Classified as a Type 1 Assignment.

Example 2: Facts: A yard assignment is scheduled to report at 3:10 a.m. with a release time of 8:40 a.m. Determination: Classified as a Type 2 Assignment because the on duty time is prior to 4:00 a.m.

Example 3: Facts: An assignment scheduled to report at 3:00 p.m. with a release time 11:30 p.m. Determination: This would be classified as a Type 2 assignment unless/until validated and approved by the FRA not to result in an unsafe level of fatigue. If it passes this process it will be classified and advertised as a Type 1 Assignment.

Example 4: Facts: An employee working a road assignment classified as Type 1, scheduled to report at 3:00 p.m. with a scheduled release time of 11:30 p.m. is delayed 35 minutes en-route and is not finally released until 12:05 a.m. Determination: Because the time on duty extended beyond midnight, the employee must be considered to have worked a Type 2 assignment.

7 Applies to any employee of a passenger railroad when engaged or connected with the movement of any train. These consecutive day limitations will not apply to employees of a freight railroad when serving as a pilot on a train operated by a passenger railroad.

8 A calendar day within this section means the period from midnight to midnight.

9 "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)"

10 "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)"

AT MOST 14 CONSECUTIVE CALENDAR DAY SERIES
(Type 1 and Type 2 Assignments)

Within a series of at most 14 consecutive calendar days¹¹, the rest requirements are satisfied once an employee accumulates a total of any two *calendar days without initiating an on duty period*¹². The series of at most 14 consecutive days will end on the 14th consecutive day or may last for less than 14 days if the rest requirements are met at any time prior to the 14th day.

If the employee reaches the end of the 14 consecutive day series and has not had two calendar days without initiating an on duty period, before next going on duty the employee must have two consecutive calendar days at the employee's home terminal on which an on-duty period is not initiated and during which time the employee is unavailable for any service for any railroad¹³.

Exception: If the employee is not at the home terminal when this rest requirement is triggered, the employee may deadhead or initiate an additional on duty period to return to the home terminal.

A new series of at most 14 consecutive calendar days begins with the next on duty period initiated. Any calendar days on which an on duty period is not initiated that occur prior to the start of the new series can not be counted toward the rest requirements of the new series.

Example 1:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
4a – 12p Type 1	6a – 5p Type 1	6a – 5p Type 1	(1 st) Doesn't Initiate duty	6a – 5p Type 1	6a – 5p Type 1	8a – 7p Type 1

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 8	Day 9	Day 10	Doesn't Initiate duty,	Day 1	Day 2	Day 3
8a – 7p Type 1	8a – 7p Type 1	(2 nd) Doesn't Initiate duty	Not counted toward rest requirements	6a – 5p Type 1	6a – 5p Type 1	6a – 5p Type 1

Determination: The at most 14 consecutive day series ends once the rest requirements are met (Day 10). A new 14 day series begins when the employee next goes on duty on Thursday of Week 2. Note: Wednesday of Week 2 is not counted toward any rest requirements because it occurs prior to the start of the next 14 day series.

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- 11 An 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 April 12, 2012.
- 12 The phrase "*calendar day without initiating an on duty period*" used throughout this section must be understood literally, as follows:
- Covered service may be performed during that calendar day, provided the on-duty period was *initiated* before midnight, i.e. on the *previous* calendar day.
 - *Non-covered* service (rules class, required physical, etc.) could be *initiated* on that day, provided that it is separated from covered service by statutory off-duty periods, in which case it is not considered time "*on duty*".
- 13 Because of the additional requirement, "*unavailable for any service for any railroad*", any day that includes non-covered service for any railroad may not be counted toward satisfying this rest requirement. *Unavailable for service* does not preclude the employee from being contacted by the railroad.

Example 2:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
6a – 5p Type 1	(1 st) Doesn't Initiate duty					

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
6a – 5p Type 1	(2 nd) Doesn't Initiate duty					

WEEK 3						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
6a – 5p Type 1	(1 st) Doesn't Initiate duty					

Determination: The 14 day rest requirements are met once the employee receives the second day within the 14 day series (Day 14) on which an on duty period is not initiated. Day 1 of the next 14 day series begins with the next on duty period initiated on Sunday of Week 3.

Example 3:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
6a – 5p Type 1	(1 st) Doesn't Initiate duty					

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 8	Day 9	Day 10	Day 11	Day 12	Day 13	Day 14
6a – 5p Type 1						

WEEK 3						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 15	Day 16	Day 1	Day 2	Day 3	Day 4	Day 5
Required at home terminal Doesn't Initiate duty, Unavailable for RR service		6a – 5p Type 1	(1 st) Doesn't Initiate duty			

Determination: Because the employee in this example did not receive two days without initiating an on-duty period before the end of the 14 day series, prior to going on duty again the employee is required to have at least two consecutive calendar days at the home terminal on which an on duty period is not initiated. During these 2 consecutive days the employee is unavailable for any service for any railroad. Day 1 of the next 14 day series begins with the next on duty period initiated and may not be prior to Tuesday of Week 3.

Exception: If Day 14 had ended at the employee's s away from the home terminal, an additional on duty period may be initiated on Day 15 to return to the home terminal in order to receive the required two consecutive rest days on which an on duty period is not initiated and no service is performed for the railroad.

ADDITIONAL REST REQUIREMENTS FOR TYPE 2 ASSIGNMENTS

If the employee initiates an on duty period on any six or more consecutive calendar days during the 14 day series, and at least one of the on-duty periods is considered a Type 2 assignment, that employee must have at least 24 consecutive hours off duty and unavailable for any service for the railroad prior to next initiating an on-duty period.

Exception: If the employee is not at the home terminal when the time off duty is required, the employee may deadhead or initiate an additional on duty period to return to the home terminal.

Example 1:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
<i>Day 1</i>	<i>Day 2</i>	<i>Day 3</i>	<i>Day 4</i>	<i>Day 5</i>	<i>Day 6</i>	<i>Day 7</i>
4a– 12p Type 1	4a– 12p Type 1	4a– 12p Type 1	12p – 9p Type 1	6a – 5p Type 1	6a – 5p Type 1	8a – 7p Type 1

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
<i>Day 8</i>	<i>Day 9</i>	<i>Day 10</i>	<i>Day 11</i>	<i>Day 12</i>	<i>Day 13</i>	<i>Day 1</i>
10p – 2a Type 2 ¹⁴	Required 24hrs at Home Term. Unavailable for RR service (1 st) Doesn't Initiate duty	10p – 2a Type 2	10p – 2a Type 2	10p – 2a Type 2	(2 nd) Doesn't Initiate duty	8a – 7p Type 1

Determination: The employee works a Type 2 assignment on Day 8 after working the 5 prior consecutive days, and is therefore required to have 24 hours off at the home terminal prior to going back on duty. In this case the 24 hour period extends from 2:00 a.m. on Day 9 when the employee is released until 2:00 a.m. on Day 10 when the employee is again available for service. The employee is unavailable for any service for the railroad during this 24 hour period. (Had the employee not initiated duty on any one of the 5 prior consecutive days (days 3 – 7), this rest requirement would not have been triggered.)

Since the employee does not *initiate* an on duty period on Day 9 this day also counts toward the 14 day rest requirements. The at most 14 consecutive day period ends on Day 13 when the employee receives the second day on which an on duty period is not initiated.

Note: Not *any* 24 hours off duty will reset the 6 consecutive calendar day Type 2 series. Although the employee has two 24 hour off duty periods in the schedule that occur prior to Day 9 (between Day 3 and 4, and between Day 7 and 8) they cannot count toward satisfying the Type 2 rest requirement because they occur prior to the requirement being triggered.¹⁵

14 All Type 2 Assignments are shown on the calendars on the day that the on duty period is initiated, which may or may not be the calendar day on which the majority of the on duty period occurs.

15 This interpretation differs from the HOS requirements that applies to freight railroad employees. For the regulations specific to freight the FRA has interpreted that any two on duty periods separated by a qualifying 24 hour off duty period are considered non-consecutive.

Example 2:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
3p - 11p Type 1	3p - 11p Type 1	3p - 12:15a Type 2	3p - 11p Type 1	3p - 11p Type 1	3p - 11p Type 1	Required 24hrs at Home Term. Unavailable for RR service (1 st) Doesn't Initiate duty

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 8	Day 9	Day 10	Day 11	Day 1	Day 2	Day 3
7a - 3p Type 1	7a - 3p Type 1	7a - 3p Type 1 11p - 7a Type 2	(2 nd) Doesn't Initiate duty	7a - 3p Type 1	7a - 3p Type 1	7a - 3p Type 1

Determination: Because an on duty period was initiated on each day consecutively on Days 1 through 6, and Day 3 is a Type 2 assignment, the employee is not permitted to initiate another on duty period until receiving 24 hours off at the home terminal during which time no other service is performed for the railroad. Because the employee did not initiate an on duty period on Day 7 it will also qualify toward the *at most 14 consecutive day* rest requirements.

The 14 day rest requirements are met on Day 11 once the employee receives the second day within the *at most 14 day series* on which an on duty period is not initiated. Day 1 of the next 14 day series begins with the next on duty period initiated.

Example 3:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Day 7
12:30a - 8:30a Type 2	12:30a - 8:30a Type 2 Required 24hrs at Home Term. Unavailable for RR service	8:30a - 4:30p Type 1				

WEEK 2						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Day 8	Day 9	Day 10	Day 11	Day 12	Day 1	Day 2
4a - 8p Type 1	(1 st) Doesn't Initiate duty	4a - 8p Type 1	4a - 8p Type 1	(2 nd) Doesn't Initiate duty	12:30a - 8:30a Type 2	12:30a - 8:30a Type 2

Determination: In this example, the employee is required to have 24 hours off at the home terminal after finishing the Type 2 assignment on Day 6 at 8:30 a.m. Because the employee initiates an on duty period on Day 7 immediately following this 24 hours off, the 24 hour rest does not count toward the 14 day requirements as a *calendar day on which an on duty period is not initiated*. The at most 14 consecutive day rest requirements are not met until Day 12.

Example 4:

WEEK 1						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
<i>Day 1</i>	<i>Day 2</i>	<i>Day 3</i>	8a – 4p Block Training	8a – 4p Block Training	<i>Day 1</i>	<i>Day 2</i>
3:30a – 12:30p Type 2	8a – 4p Block Training	8a – 4p Block Training	Not counted toward rest requirements	Not counted toward rest requirements	3:30a – 12:30p Type 2	3:30a – 12:30p Type 2
	<i>(1st) Doesn't Initiate duty</i>	<i>(2nd) Doesn't Initiate duty</i>				

Determination: In this example, attending Block Training does not qualify as time on duty because it is separated from the covered service by a statutory off duty period. Therefore, Days 2 and 3 are counted as days without initiating an on duty period, and the at most 14 consecutive day series ends on Day 3. A new 14 day series begins with the next on duty period, Friday. Days without initiating an on duty period that occur prior to the beginning of the new 14 day series (Wednesday and Thursday) are not counted toward the rest requirements of the new series.

RECORD KEEPING REQUIREMENTS

Title 49 of the Code of Federal Regulations, Parts 228.9 and 228.11, require records to be maintained on the duty times of employees who perform service covered by the Hours of Service Act.

Hours of Service records must include the following information and may be maintained either manually or electronically by the railroad:

1. Identification of the employee
2. The date on which the series of at most 14 consecutive calendar days began for the duty tour.
3. Any date prior to the duty tour and during the series of at most 14 consecutive calendar days on which the employee did not initiate an on duty period.
4. Number of consecutive hours off duty before beginning a new covered service assignment or resuming a duty tour.
5. Train ID for each covered service position in a duty tour. (Yard Jobs, Utility employees etc. may use unique job or train ID).
6. Location, date, beginning time, and time released/relieved for each assignment in a duty tour.
7. Total time on duty in all occupations.
8. Beginning and ending locations, dates, and times of periods spent in transportation, other than personal commuting to or from a duty assignment, and mode of transportation (train, railroad motor vehicle, personal automobile, etc.).

Where applicable, record must include:

- **Commingled Service:** Identification, beginning and ending location, date, and time of any commingled service
- **If duty tour exceeds 12 consecutive hours:** Reason for any service that exceeds 12 hours total time on duty
- **If the duty tour exceeds 12 hours and includes a qualifying period of interim release:** The location, date, and times released/relieved from the assignment immediately preceding and immediately following the interim release must be included.

Once completed, the records must be signed by the employee whose duty is being recorded or, in the case of T&E employees, by the ranking crew member, then retained by the railroad for 2 years at a location where they may be inspected or copied by FRA during regular business hours.

REPORTING CASES OF EXCESS SERVICE

Title 49 of the Code of Federal Regulations, Parts 228.9 and 228.11, require railroads to report **ALL** cases of excess service to the FRA not less than 30 days following the end of the month in which the excess service occurred, even when such excess service was justified.

Employees involved in cases of excess service must notify the appropriate Amtrak Division Officer as soon as possible. The Division Officer notified must ensure that the excess service and all its specifics are documented on the Division's Monthly Hours of Service Report. The Division's Monthly Hours of Service Report must be forwarded to Amtrak's Safety and Environmental Control Administrator in Washington so that it is **received in Washington not less than 20 days following the calendar month in which the excess service occurred.** Amtrak's Safety and Environmental Control Administrator will review each Division's report, then submit a report of all instances where Amtrak employees performed excess service to FRA not less than 30 days after the calendar month

in which the excess service occurred.

It is crucial that the reason for each instance of excess service be thoroughly explained.

The following is an excerpt from the Act which provides guidance on which incidents of excess service are justifiable:

"The provisions of this Act shall not apply in any case of casualty or unavoidable accident or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of the employee at the time said employee left a terminal, and which could not have been foreseen."

This passage is commonly referred to as the "emergency provision". Judicial construction of this sentence has limited the relief it grants to situations which are truly unusual and exceptional. The courts have recognized that delays and operational difficulties are common in the industry and must be regarded as entirely foreseeable. Common operational difficulties which do not provide relief from the Act include, but are not limited to, broken draw bars, locomotive malfunctions, equipment failures, brake system failures, hot boxes, unexpected switching, doubling hills and meeting trains. Nor does the need to clear a main line or cut a crossing justify disregard of the limitations of the Act. Such contingencies must normally be anticipated and met within the 12 hours. Even where an extraordinary event or combination of events occurs which, by itself, would be sufficient to permit excess service, the carrier must still employ due diligence to avoid or limit such excess service. The burden of proof rests with the carrier to establish that excess service could not have been avoided.

CONSEQUENCES OF VIOLATING THE ACT OR FRA'S RECORDKEEPING AND REPORTING REQUIREMENTS

Civil penalty

Any person (including but not limited to a manager, supervisor, official, or other employee) who willfully violates or causes the violation these Hours of Service requirements is subject to a civil penalty between \$650 and \$25,000 per violation.

Where gross negligence creates an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed.

Criminal penalty

In addition, any person who knowingly and willfully **falsifies** an Hours of Service record or report required to be kept under Part 228 of Title 49 of the Code of Federal Regulations may be subject to criminal penalties of up to \$5,000, imprisonment for up to 2 years, or both.