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**Federal Railroad
Administration**

Memorandum

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Subject: Technical Bulletin S-14-01-Guidance Regarding the Federal Hours of Service Laws, Hours of Service Recordkeeping and Reporting Regulations, and Signal Covered Service

To: Regional Administrators, Deputy Regional Administrators, Staff Directors, Signal and Train Control Specialists

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This Federal Railroad Administration (FRA) technical bulletin supersedes the agency's Technical Bulletin, G-00-02, The Hours of Service Act and Signal Service, and is intended to provide guidance for signal employees and their supervisors concerning those requirements of the current Federal hours of service laws related to signal-covered service. In some cases, explanation of these laws requires a statement of interpretation based on the history and purpose of these laws. All such interpretations are those of FRA staff, except where reference is made to controlling judicial decisions or official statements of FRA policy published in the Federal Register.

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THE FEDERAL HOURS OF SERVICE LAWS,
HOURS OF SERVICE RECORDKEEPING AND
REPORTING REGULATIONS,
AND
SIGNAL COVERED SERVICE

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Office of Railroad Safety
Signal and Train Control Division
and
Office of Chief Counsel
Federal Railroad Administration
U. S. Department of Transportation

Table of Contents

1.0	INTRODUCTION	1
1.1	Purpose	1
1.2	Background	1
1.3	Responsibilities of each railroad, or contractor or subcontractor to a railroad ..	2
1.4	Responsibilities of employees	2
2.0	RULES FOR SIGNAL SERVICE.....	4
2.1	Covered service	4
	Other examples of covered and non-covered service follow:.....	6
2.2	Commingled service.....	7
2.3	Limitation on duty hours	8
2.4	Minimum off-duty periods	8
2.5	Interruptions of rest	8
2.6	Other periods available for rest	10
2.7	Travel time in connection with regular duty	10
2.8	Trouble calls and travel	11
2.9	Other travel time connected with signal covered service.....	11
2.10	Travel time in summary	12
2.11	Emergencies	12
2.12	Nonapplication of the hours of service laws – “acts of God”	14
2.13	Exclusion of signal employees driving motor vehicles from Federal Motor Carrier Safety Administration’s hours of service requirements for.....	14
3.0	RECORDS AND REPORTING	16
3.1	Hours of service records.....	16
3.2	Electronic recordkeeping.....	17
3.3	Training	17
3.4	Excess service reports	17
	APPENDIX A – EXAMPLES.....	18
	APPENDIX B – LETTER ON EXCLUSION OF SIGNAL EMPLOYEES DRIVING MOTOR VEHICLES FROM FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION’S HOURS OF SERVICE REQUIREMENTS	25

1.0 INTRODUCTION

1.1 Purpose

This Federal Railroad Administration (FRA) technical bulletin, “The Federal Hours of Service Laws and Signal Covered Service,” supersedes the agency’s Technical Bulletin G-00-02, “The Hours of Service Act and Signal Service,” and is intended to provide guiding information related to signal employees (“employees”), and their supervisors, concerning those requirements of the current Federal hours of service laws related to signal covered service. In some cases, explanation of these laws requires a statement of interpretation based on the history and purpose of these laws. All such interpretations are those of FRA staff, except where reference is made to controlling judicial decisions or official statements of FRA policy published in the Federal Register.

1.2 Background

The original Federal statute limiting the hours of service of certain railroad employees was the Hours of Service Act, which was first enacted in 1907. It was intended to promote the safety of employees and travelers upon railroads by limiting the hours of service of certain railroad employees.¹ The original Hours of Service Act, popularly known for several decades as “the 16-hour law,” covered only employees engaged in or connected with the movement of a train and employees engaged in the transmittal or receipt of train orders. After 1907, the Hours of Service Act was amended several times, with major changes being made in 1969 and 1976. First added to the Hours of Service Act in 1976, the limitations on hours of signal employees were clarified by additional amendments in 1978.

In 1994, the then-current Hours of Service Act was repealed by Congress as part of a broad recodification of the Federal transportation laws,² and its provisions were revised without substantive change, reenacted, and recodified primarily as chapter 211 of title 49 and section 21303 of title 49 of the U.S. Code (U.S.C.). FRA refers to these statutory provisions at 49 U.S.C. chapter 211 and section (§) 21303 as “the Federal hours of service laws” (a term that is shortened in this technical bulletin to read “HS laws”).³ The specific section of the HS laws covering signal employees is 49 U.S.C. § 21104 (Section 21104). The Rail Safety Improvement Act of 2008 (“RSIA”) made the most recent amendments to the HS laws, changes that were quite extensive. FRA subsequently

¹ Public Law (Pub. L.) No. 59-274, 34 Stat. 1415.

² See Act of July 5, 1994, Pub. L. No. 103-272, 108 Stat. 745.

³ Congress made clear that the recodification was not intended to make substantive changes in the affected laws, even though it altered their arrangement and language in certain respects. See Pub. L. No. 103-272, § 6(a), 108 Stat. 1378, H.R. Rep. No. 180, 103d Cong., 1st Sess. 1-5 (1993), reprinted in 1994 U.S. CODE CONG. & ADMIN. NEWS 818-822. The Hours of Service Act was codified in title 45 of the U.S. Code and was the subject of many court decisions, which cite the then-current provisions of the U.S. Code.

amended its regulations governing hours of service recordkeeping in 49 CFR Part 228, as required by the RSIA, to reflect the revised statutory requirements and to provide for electronic hours of service recordkeeping. See Volume 74 of the Federal Register, page 25,330 (74 Fed. Reg. 25,330) (May 27, 2009). FRA also issued a statement of agency policy and interpretation on the HS laws, explaining how FRA interprets the HS laws as amended by the RSIA. See 77 Fed. Reg. 12,408 (February 29, 2012). A second interim statement of agency policy and interpretation addressing additional issues was subsequently issued. See 78 Fed. Reg. 58,830 (September 24, 2013) (Second Interim Interpretations). This technical bulletin incorporates the new reporting and recordkeeping requirements and FRA's statements of agency policy and interpretation on the HS laws. This bulletin includes guidance on the application of these statements of agency policy and interpretation to signal employee covered service, but does not represent any shift in agency policy.

1.3 Responsibilities of each railroad, or contractor or subcontractor to a railroad

Each railroad, or contractor or subcontractor to a railroad, is responsible for assuring that no employee who performs signal covered service is required or allowed to go on duty, or remain on duty, in violation of the HS laws. The railroad is not excused from this obligation by any lack of knowledge of the employee's hours, since "a railroad carrier is deemed to know the acts of its officers and agents," as stated in 49 U.S.C. § 21303(c). A railroad that requires or allows an employee to go or remain on duty in violation of the HS laws is subject to a civil penalty of at least \$650 but not more than \$25,000 for each such occurrence; however, when a grossly negligent violation or pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than \$105,000. See 49 U.S.C. § 21303(a)(2).⁴

Each railroad, or contractor or subcontractor to a railroad, shall provide its train employees, signal employees, and dispatching service employees, and its supervisors of these employees, with initial training and refresher training as provided in 49 CFR § 228.207.

1.4 Responsibilities of employees

Employees are personally responsible under FRA regulations and Federal criminal law for the truthfulness and accuracy of their entries on hours of service records that FRA requires each railroad, or contractor or subcontractor to a railroad, to maintain. The railroad, or contractor or subcontractor to a railroad, is obligated to require all employees performing signal covered service during a duty tour to sign or electronically enter their

⁴ A separate statute, the Federal Civil Penalty Inflation Adjustment Act (28 U.S.C. § 2461, note), requires that agencies adjust civil penalties for inflation by conducting rulemaking revising the penalty amounts. FRA's rulemakings under that statute have raised the minimum from \$500 to \$650 and the aggravated maximum from \$100,000 to \$105,000. See, e.g., 78 Fed. Reg. 9845 (February 12, 2013).

unique personal identifier on each of their hours of service records. The signature or electronic identifier represents an affirmation by the employee that the record is correct, to the best of the employee's knowledge and belief. Any person who knowingly and willfully falsifies a report or record required to be kept by 49 CFR Part 228 may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to 2 years, or both, in accordance with 49 U.S.C. § 21311(a), as well as civil penalties in accordance with 49 CFR Part 209, Appendix A.

Because a railroad is responsible for knowing the acts of its officers and agents, in most cases, FRA takes violations of the HS laws and FRA's recordkeeping regulations against the railroad, contractor, or subcontractor that employs the employee who violated the laws or regulations. However, an employee who willfully violates the HS laws or recordkeeping regulations, or a supervisor or other railroad, contractor, or subcontractor official who intentionally and voluntarily orders an employee to commit an act that the supervisor knows would violate the laws or the regulations or acts with reckless disregard for whether the act violates the laws or the regulations may be subject to individual liability as provided in 49 CFR Part 209, Appendix A.

In addition, an employing railroad, or contractor or subcontractor to a railroad, may prescribe its own rules to assure proper communication between employees and their immediate supervisors, and adherence to the statutory limitations of the HS laws. Employees should cooperate with their supervisors in this regard, since their own personal safety and the safety of co-workers and the public are at stake.

2.0 RULES FOR SIGNAL SERVICE

2.1 Covered service

The HS laws apply to employees engaged in “installing, repairing, or maintaining signal systems.” Signal systems include the following: block signal systems, cab signal systems, train control systems, other related or similar systems, and highway-rail grade crossing active warning systems. See 49 U.S.C. §§ 21101(4) and 21104. An employee who performs any function that has the potential to affect the proper and safe operation of a signal system is subject to the HS laws during the particular duty period in which the function is performed, without regard to the class or craft of the employee or the manner in which the employee is compensated, if at all.

Although the penalty provision of the HS laws states that any person violating a provision of the laws is liable for a civil penalty, and indicates that “an act by an individual that causes a railroad, or a contractor or subcontractor to a railroad, to be in violation, is a violation,” the substantive provisions of the HS laws relating to signal employees impose restrictions upon railroads, contractors, or subcontractors to a railroad, their officers, or agents who require or allow individuals to perform signal employee duties. See 49 U.S.C. §§ 21303, 21101(3) and (4), and 21104. Effective July 16, 2009, Sec. 108(a) and (c) of the RSIA amended the definition of “signal employee” in the HS laws by deleting “employed by a railroad carrier” so as to cover employees of contractors and subcontractors to railroads who perform the functions of signal employees installing, repairing, or maintaining signal systems.

Supervisors are also subject to the HS laws if they perform covered service work. For instance, a supervisor who actively performs tests in satisfaction of the Federal Rules, Standards, and Instructions (49 CFR Part 236) is covered during the duty tour in which the tests are performed. However, if the supervisor merely observes the conduct of tests for the purpose of providing supervisory guidance, the supervisor would not be covered.

“Signal systems” are defined broadly, based on longstanding legislative history of the HS laws. The term includes the following:

1. Automatic block and traffic control systems;
2. Train control, train stop, and cab signal systems, including portions of such systems mounted onboard locomotives;
3. Positive train control systems, including hardware, software, or firmware portions of such systems that provide for the proper functioning of any safety-critical functions within wayside systems and subsystems, onboard systems and subsystems, office systems and subsystems, and communications systems and subsystems;
4. Interlocking signal arrangements;
5. Highway-rail grade crossing active warning systems;
6. Retarders and control systems for remote-control switches in yards;

7. Defect detectors including hot box detectors, dragging equipment detectors, broken flange detectors, slide and snow fences, high water detectors; etc., and
8. Other similar devices, appliances, and systems to the extent they are relied upon to ensure safety (e.g., power-assisted switches, switch position monitoring devices, and track integrity circuits).

As a general rule, the statutory language “installing, repairing, or maintaining” refers to work that could reasonably be expected to have the potential for affecting the proper and safe functioning of signal systems, and is of a nature that requires particular alertness, awareness, and expertise in such signal systems in order for it to be performed properly, as opposed to ordinary manual labor that is incidentally associated with a signal system. Inspecting and testing of a system, subsystem, or safety-critical component will ordinarily be an integral part of covered service, and therefore is also covered service.

Employees of vendors/suppliers/developers will generally not be considered to be performing covered service while performing work off of railroad property (e.g., manufacturing and assembling components and system/subsystem equipment, including onboard locomotives), because such work is not within the functions of installing, repairing, or maintaining signal systems, but such persons are considered to perform covered service if and when actually performing work on railroad property that could reasonably be expected to have the potential for affecting the proper and safe functioning of signal systems.

Work functions that involve the proper functioning of current or future signal systems, subsystems, or safety-critical components of such systems (i.e., wiring signal housings or rebuilding safety-critical signal components in a signal shop) are covered service, even though there may be a subsequent test of the device(s) before its/their being placed in service. However, related general labor not directly affecting the proper functioning of signal systems, subsystems, or safety-critical components of such systems, such as digging trenches for laying signal cable, setting cases or bungalows, or erecting signal masts, would not normally be of themselves signal covered service.

Certain duties fall on the boundary line between covered and non-covered service. Whether or not these types of situations are covered service may be resolved by looking at the task’s relationship to the level of system, subsystem, or safety-critical functional risk, the actual safety conditions that may be affected, the degree of signal expertise required, and the frequency with which such duties are performed by the particular employee. For instance, during the initial installation of a signal system, a signal employee may assist in the securement of signal line wires or aerial cables to poles. Such work is not ordinarily viewed as covered service. On the other hand, the securement and/or splicing of line wire or aerial cable conductors of an operational signal system is covered service.

Other examples of covered and non-covered service follow:

Covered		Not Covered
Installing a new system by splicing energized conductors, testing circuits, and other safety-sensitive functions is covered service...	<u>but not</u>	Ordinary manual labor such as erecting signal masts or laying or stringing cable for a new system without performing other duties.
Repairing the control circuit of a remote-control switch in a yard is covered service...	<u>but not</u>	Converting the switch to temporary manual operation while awaiting the arrival of a maintainer to restore its proper functioning.
Repairing a highway-rail grade crossing active warning system is covered service....	<u>but not</u>	Flagging a crossing or replacing crossbucks or other signage.
Installation, repair, or testing, or otherwise making changes to or potentially affecting, the safety-critical functioning of software or firmware associated with a microprocessor-based system (this may include office, wayside, onboard, or communication systems).	<u>but not</u>	When not affecting the movement of a train, booting up or re-initializing microprocessor-based systems or downloading or viewing system recorded data, logic, or coding where no changes are made to the logic or coding.
Installation, repair, or testing of onboard cab signal or train control systems.	<u>but not</u>	When not affecting the movement of a train, booting up or re-initializing microprocessor-based systems or downloading or viewing system recorded data, logic, or coding where no changes are made to the logic or coding.
Setting calibration heat levels of a hot box detector system.	<u>but not</u>	Ordinary manual labor such as erecting high-wide load detector structures.

A vendor/manufacture representative performing on-site diagnostics and software adjustments or modifications of a train detection device or other safety-critical microprocessor-based system, subsystem, or component.

but not

A vendor/manufacture representative performing off-site development, diagnostics and software adjustments or modifications of a train detection device or other safety-critical microprocessor-based system, subsystem, or component.

2.2 Commingled service

When an employee performs covered service, either as part of a regularly assigned tour of duty, or in response to a trouble call outside the hours of a regularly assigned shift, any other service performed within the same 24-hour period as the covered service is also counted toward the computation of the total time on duty for the 24-hour period. This is known as “commingled service.”

The HS laws do not distinguish between situations in which covered service follows non-covered service and those in which the opposite is true. In either situation, commingled service has occurred.

Other service for the carrier, such as attendance at required rules classes, is non-covered service that may commingle with covered service. If it commingles, the time spent in the noncovered service will become time on duty. The same is true of attendance at a disciplinary or court proceeding, if the employee’s attendance is required by the carrier. The presence or absence of specific compensation is not determinative of the status of such service. Rather, the question is whether the employee is expected to participate as a condition of employment.

Should an employee perform service covered by more than one provision of the HS laws within the same 24-hour period, the most restrictive provision applies as to the limitation on total time on duty in that 24-hour period. For instance, if a signal maintainer performed signal covered service during a portion of a duty tour, and also performed the functions of a dispatching service employee, as defined by 49 U.S.C. § 21101(2),⁵ that is subject to the limitations of 49 U.S.C. § 21105 (Section 21105), within the same 24-hour period in a tower, station, office, or place at which at least two shifts are employed, the more restrictive 9-hour limitation on total time on duty in a 24-hour period of Section 21105 would apply in addition to the usual limitation of 12 hours under Section 21104.

⁵ That subsection provides that "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.

Interpretations of the HS laws relating to train and engine service and dispatcher/operator service can be found at Appendix A to 49 CFR Part 228, as well as in FRA's subsequent statements of agency policy and interpretation referenced above.⁶ Individual copies are available from the Office of Chief Counsel, FRA, and from the Federal Digital System at <http://www.gpo.gov/fdsys/>.

2.3 Limitation on duty hours

The HS laws limit signal employees to 12 hours total time on duty, either performed continuously or in the aggregate, in a 24-hour period. For purposes of this computation, a new 24-hour period begins when the employee returns to duty at the conclusion of an uninterrupted release period of at least 10 hours. Note: a release period may be longer than the permissible minimum number of hours, but when this occurs, the new 24-hour period still does not begin until the employee returns to duty. **(Example 2.3.1) (See Appendix A to this bulletin for all examples.)**

2.4 Minimum off-duty periods

An employee must be released for at least 10 consecutive uninterrupted hours at the conclusion of a period of 12 hours of continuous or broken service within a 24-hour period. Even if the employee has not yet aggregated 12 hours of broken service, an employee must be released for at least 10 consecutive uninterrupted hours at the conclusion of the 24-hour period that began when the individual reported for the first portion of the broken service. **(Example 2.4.1)**

The minimum off-duty period that is required to begin a new 24-hour period and reset an employee's total time on duty is 10 consecutive uninterrupted hours, regardless of whether an employee's time on duty is in continuous or broken service. A period of service is still defined as "continuous" under the HS laws if it is not interrupted by a period of release of more than one hour. See 49 U.S.C. § 21104(b)(7), but, under the HS laws as amended by the RSIA, this distinction has no effect on the statutory minimum off-duty period that is required. **(Example 2.4.2)**

2.5 Interruptions of rest

A required minimum 10-hour period of rest must not be interrupted by the railroad, or contractor or subcontractor to a railroad. An interruption of rest occurs whenever the railroad, or contractor or subcontractor to a railroad, communicates with the signal

⁶Although employees who perform covered service as a signal employee do not commonly also perform covered service as a train employee subject to either the consecutive-days limitations of the HS laws (for freight train employees) or FRA's passenger train employee hours of service regulations (for passenger train employees), it is important to note, for situations in which this may occur, that FRA's Second Interim Interpretations discuss how those consecutive-days limitations apply when an employee who performs covered service as a train employee also performs covered service as a signal employee or a dispatching service employee, either within the same duty tour, or within a series of consecutive duty tours.

employee in any manner reasonably expected to disturb the signal employee's rest. After such an interruption, the required minimum 10-hour period of rest for the signal employee must begin anew in order to avoid subsequent on-duty time commingling with the previous duty tour. **(Examples 2.5.1 and 2.5.2)**

The prohibition on communication during the statutory minimum off-duty period applies to the railroad communicating with an employee. However, an employee may contact the railroad during his or her statutory minimum off-duty period for any purpose, and the railroad may return the employee's call if requested by the employee. However, the railroad's communication with the employee must be limited to the scope of the employee's original communication. The railroad is not permitted to discuss topics other than that about which the employee contacted the railroad, and the railroad may only return the call if requested to do so, and within any other parameters established by the employee (such as if the employee requested the call back within the next hour, or not for at least six hours, etc.), so that the employee can plan his or her rest during the off-duty period. In addition, the railroad's communication with an employee must be in response to a specific contact from the employee. An employee may not give permission in advance to be contacted by the railroad during off-duty periods. **(Example 2.5.3)**

In addition, a railroad may make information available to its employees during their required periods of uninterrupted rest, by sending e-mails, text messages, etc. to an employee's railroad-provided device, so long as the employee is free to turn off the device during his or her off-duty period. A railroad may also make information available on the railroad Web site. Employees may not be required to access or respond to such messages or other information during the period of uninterrupted rest. **(Example 2.5.4)**

Phone calls made by one employee of a railroad, or contractor or subcontractor to a railroad, to another employee for the purpose of seeking guidance or direction associated with signal system work are not only considered an interruption of the rest of the employee answering such calls, but are also considered service for the railroad, which can commingle with prior or future covered service performed by that employee. For example, during a trouble call, an employee may call a fellow employee for the purpose of seeking that employee's guidance. If the person receiving the call is within a required period of rest between duty tours where one or both of the duty tours included covered service, the off-duty period of the employee receiving the call has been interrupted, and the time spent on the call will commingle with any covered service not separated from the call by a statutory minimum 10-hour uninterrupted rest period. The call may or may not constitute a violation of the HS laws, depending on the relationship between the commingled service resulting from the call and the other portion(s) of the employee's duty tour, but would, at minimum, require the statutory minimum off-duty period of 10 continuous uninterrupted hours of rest to be restarted if not already completed. **(Examples 2.5.5 and 2.5.6)**

Lastly, an employee may be expected or instructed to report to his or her normal duty station at the end of his or her 10-hour uninterrupted off-duty period. Because time spent commuting is time off duty, an employee may be expected to travel for his or her normal

commuting time during the off-duty period. (Normal commuting time is defined in Section 2.7 below.) **(Example 2.5.7)**

2.6 Other periods available for rest

The 10-hour off-duty period described above is a minimum period required by law. However, a railroad, or contractor or subcontractor to a railroad, may wish to provide shorter breaks in service, within a duty tour, for its own convenience or the convenience of its employee(s). The following rules describe how those shorter periods of release bear on computations of duty time.

Less than 30 minutes. Periods available for rest of less than 30 minutes are not recognized as meaningful rest under the law. Accordingly, such periods are counted toward the total time on duty time.

At least 30 minutes, but not more than 1 hour. Breaks of 30-60 minutes are not counted in computing total time on duty. However, neither do they break the continuity of the duty period for the purpose of determining continuous service.

More than 1 hour. A period or release of more than 60 minutes is recognized as an off-duty period sufficient to break the continuity of the overall duty tour for the purpose of determining broken service.

Note that the length of the statutory minimum off-duty period, 10 consecutive hours undisturbed by communications from the railroad, does not depend on whether the duty tour was “continuous service” or “broken service.” These terms no longer have legal significance under the HS laws as amended by the RSIA.

2.7 Travel time in connection with regular duty

Normal commuting between the employee’s residence and the regular duty station is considered time off duty, since the employee ordinarily determines the duration of that commute by choice of personal residence.

Transportation from the employee’s residence to a work site other than the normal reporting point (headquarters) outside of scheduled hours is counted as on-duty time, but only to the extent that the time spent in such travel exceeds the individual’s normal period of commuting **(Example 2.7.1)**, and it is connected with covered service performed upon arriving at the site **(Example 2.7.2)**. (Note that this rule applies to travel for a scheduled duty tour; a different rule applies to trouble calls (see below)).

Transportation from an outlying work site to the normal reporting point or residence within scheduled duty hours is counted as time on duty. Such return travel after scheduled duty hours is neither time on duty nor time off duty (i.e., limbo time). **(Example 2.7.3)**

Note that, if an employee begins a period of return travel from an outlying work site to the employee's headquarters at the expiration of his or her scheduled duty hours, the period of "limbo" time ends upon arrival at the headquarters. Assuming that the employee performs no further work for the railroad, contractor, or subcontractor to the railroad, but rather is then free to go home, off-duty time begins at the time that the employee arrives at the headquarters. **(Example 2.7.4)**

2.8 Trouble calls and travel

When an employee receives a call to respond to unexpected "trouble" and immediately begins preparations for departure, the employee is considered to be on duty from the time of the call. The on-duty period will last at least until the conclusion of the performance of covered service at the work site. Travel between successive work sites is also on-duty time.

In general, return travel from the site of a trouble call to the employee's residence, whether or not by way of headquarters, is "limbo" time. That is, that travel time is counted as neither time on duty nor time off duty. **(Example 2.8.1)** There are two exceptions to this rule. When an employee commences a subsequent period of duty by responding to an additional trouble call less than 30 minutes after arriving at his/her home from a previous call, then a meaningful break has not occurred between the two trouble calls, and all time from the employee's receipt of the call to respond to the first trouble call, until the employee's departure from the site of the second trouble call is counted as time on duty. **(Example 2.8.2)** All travel by a signal employee in an on-track vehicle being operated on the track is also time on duty. **(Example 2.8.3)**

An employee receiving a trouble call who has the capability to remotely access a system and review conditions or make repairs is considered on-duty upon receipt of the call if he or she ultimately attempts to remotely access the system. Attempting remote access for diagnosis or repair of computer-based systems before going on site is a normal practice. Should the employee have to leave his or her location and travel to a work site in this scenario, the time spent traveling is also time on duty. **(Example 2.8.4)**

2.9 Other travel time connected with signal covered service

The hours of service laws include a provision at 49 U.S.C. § 21104(e) ("the 'signal exclusivity' provision"), which makes signal employees operating motor vehicles not subject to any hours of service requirements other than the hours of service laws. In FRA's recent Second Interim Interpretations, the agency reconsidered the definition of "signal covered service" as it applies to time spent driving, and now views the "signal employee exclusivity" provision as broadening the scope of what is included as covered service. Specifically, an individual's operation of any motor vehicle for the purpose of allowing that individual to install, repair, or maintain signal systems is a covered service function, regardless of whether the operation of the motor vehicle is within the same duty tour as the direct work on the signal system, or is separated from covered service by a statutory off-duty period of at least 10 hours, and regardless of whether or not the motor

vehicle is considered a “commercial motor vehicle” by the Federal Motor Carrier Safety Administration. Only travel time that is clearly and definitively not connected with other signal employee functions is not signal-employee covered service. (**Examples 2.9.1 and 2.9.2**)

2.10 Travel time in summary

Travel on an on-track vehicle: Any time spent in transportation on an on-track vehicle, including any other type of travel time discussed below, is categorically time on duty.

Commuting time: Normal commuting between the individual’s residence and his or her regular reporting point or headquarters, connected with the regular workday, is not time on duty. Note, however, that when an employee instead travels directly from his or her residence to a location other than his or her regular reporting point or headquarters, the actual travel time, minus the normal length of the individual’s commuting time to the regular reporting point or headquarters, is service and, therefore, time on duty.

Travel time following the end of scheduled duty hours: Travel time that begins either at the end of scheduled duty hours, or when the employee is released prior to the end of scheduled duty hours in order to comply with the HS laws, is neither time on duty nor time off duty, regardless of whether the employee returns to his or her headquarters or directly to his or her residence, and regardless of whether the employee operates a motor vehicle as part of such transportation.

Travel time returning from a trouble call: Travel time returning from a trouble call is neither time on duty nor time off duty, regardless of whether the employee returns to his or her headquarters or directly to his or her residence, and regardless of whether the employee operates a motor vehicle as part of such transportation.

Other travel time: Any other time spent by an individual operating a motor vehicle in order for the individual to engage in installing, repairing, or maintaining a signal system is time on duty, regardless of whether the period of time operating the motor vehicle is connected with the individual’s acts of installing, repairing, or maintaining a signal system. Time spent by an individual riding in a motor vehicle operated by someone else remains noncovered service that can potentially commingle with covered service and therefore become time on duty, if it is not separated from covered service by a statutory minimum off-duty period of at least 10 hours; however, if the time spent riding in the vehicle is separated from covered service by a statutory minimum off-duty period of at least 10 hours, the time spent riding in the vehicle does not commingle, and it is neither time on duty nor time off-duty.

2.11 Emergencies

The HS laws permit an employee performing signal covered service to work up to 4 additional hours in a 24-hour period when an “actual emergency” exists and the work of

the employee is related to the emergency. As a general rule, an emergency ceases to exist when the affected signal system is restored to service.

The availability of this limited exception does not depend on whether relief employees are available. (Contrast this with “acts of God” and other nonapplication situations, discussed in Section 2.12 below. When that exception is claimed, availability of relief employees is relevant to the question of whether the railroad, or contractor or subcontractor to the railroad, has used due diligence to avoid or limit excess service.)

An emergency is an unexpected and unforeseeable event affecting the functioning of a signal system that either (1) causes a material disruption of rail service or (2) constitutes a significant safety hazard. Planned system changeovers and foreseeable requirements for signal work in support of programmed track maintenance are examples of work that does not qualify as an emergency.

In addition, signal employees are prohibited from going on duty or remaining on duty under emergency authority in order to conduct routine repair, routine maintenance, or routine inspection or testing of a signal system.

Common examples of recognized emergencies include the following:

1. False proceed signal indications;
2. System failures resulting in significant train delays;
3. Continuously operating or wholly non-operational highway-rail grade crossing active warning systems (Any unexpected or unforeseeable situation constituting a false activation or activation failure under 49 CFR Part 234); and
4. Major hardware, software, or firmware failure, corruption, or failure of a safety server or associated components (whether they are in the office or in the field), that results in significant disruption of a system (i.e., loss of PTC system or other train control system functionality).

Other situations may also constitute emergencies, depending on the specific facts involved in a given instance. For example, a single false restrictive signal at a rail-to-rail crossing-at-grade within an interlocking could constitute an emergency in certain situations. Depending on factors such as traffic levels, weather conditions, and sight distances involved, this condition could result in significant traffic disruption and necessitate flagging in some circumstances, posing significant hazards to the crew members involved. This is not to suggest, however, that a single false restrictive block signal constitutes an emergency under all circumstances. The determination of whether a situation is an emergency, therefore allowing employees to perform up to 4 additional hours of covered service within a 24-hour period, must always be made on a case-by-case basis.

In every case in which an emergency is claimed and one or more employees go or remain on duty for more than 12 hours in a 24-hour period, it is the obligation of the railroad to

report the occurrence, including the facts upon which the claim of emergency service is made. (See excess service reporting at Section 3.3.)

Note that the emergency provisions do not exempt the railroad from the requirement that the employee be provided full rest at the conclusion of the 24-hour period that began when an employee reported for duty fully rested under the laws. Thus, in some cases where there are periods of broken service without an uninterrupted off-duty period of at least 10 hours, it will not be possible for an employee involved in an emergency to work a full 16 hours in a 24-hour period. **(Example 2.11.1)**

Note also that the emergency provision permits service beyond 12 hours only to the extent that the emergency continues to exist and the employee's service is directly related to the emergency. Emergency service concluded early in a duty tour does not grant authority to exceed 12 hours if no emergency continues to exist at the time that an employee's total time on duty reaches 12 hours.

2.12 Nonapplication of the hours of service laws – “acts of God”

While the emergency provision specifically directed at signal service permits up to 4 hours of additional service by an employee in some cases, the HS laws also contain a provision providing additional relief from the limitations of the laws to any employee covered under the HS laws (whether a train employee, a signal employee, or a dispatching service employee) in a few narrow situations. The nonapplication provision provides that the HS laws do not apply to situations involving “a casualty[,] an unavoidable accident, an act of God, or delay resulting from a cause unknown and unforeseeable at the time an employee left a terminal.” Under judicial decisions, this exception to the HS laws applies only where the railroad, or contractor or subcontractor to the railroad, has employed due diligence to avoid or limit the excess service of each employee involved. Major ice storms, hurricanes, floods, fires, and similar events may fall within the scope of this exception, and, therefore, during such events service is permitted beyond that authorized by the signal emergency provision. However, as noted above, the railroad, or contractor or subcontractor to the railroad, must make every effort to limit the excess service by restoring the system or bringing in the necessary relief personnel as soon as is practicable.

2.13 Exclusion of signal employees driving motor vehicles from Federal Motor Carrier Safety Administration's hours of service requirements for

FRA has provided, within a letter signed by FRA's Chief Counsel and dated October 16, 2009, an interpretation of the exclusion for “signal employees” from the hours of service requirements and limitations of the regulations of the Federal Motor Carrier Safety Administration (FMCSA), including the requirement that the employee maintain and have available for inspection a driver's record of duty status pursuant to 49 CFR § 395.8. A copy of the letter is intended to be provided to a signal employee so that the employee

may in turn provide it to any FMCSA inspector when needed and appropriate. (A copy of this letter is found as Appendix B to this bulletin.)

3.0 RECORDS AND REPORTING

3.1 Hours of service records

Each railroad, or contractor or subcontractor to a railroad, shall keep a record, either manually or electronically, concerning the hours of duty of each employee performing covered service. Each contractor or subcontractor of a railroad shall also record the name of the railroad for which its employee performed covered service during the duty tour covered by the record. Employees who perform more than one type of covered service assignment in a single duty tour must complete the record applicable to each type of the covered service they actually performed, and on each record enter each other type of covered service performed within the same duty period as an activity constituting other service at the behest of the railroad.

Each railroad, or contractor or subcontractor to a railroad, is required to maintain complete hours of service records for each employee performing signal covered service, including:

1. Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname);
2. Each type of covered service performed in a duty tour (Signal, Train Service, or Dispatching Service);
3. Headquarters location for the employee;
4. Amount of time off duty before going on duty or resuming a duty tour;
5. Location, date, and beginning time of each covered service assignment in a duty tour;
6. Location, date, and time relieved for each covered service assignment in a duty tour;
7. Location, date, and time released from each covered service assignment in a duty tour;
8. Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, to or from a duty assignment, and mode of transportation (train, on-track vehicle, railroad-provided motor vehicle, personal automobile, etc.);
9. Beginning and ending location, date, and time of any other service performed at the behest of the railroad;
10. Total time on duty for the duty tour;
11. Reason for any service that exceeds 12 hours total time on duty for the duty tour.

These records may be created and maintained either in hard copy or electronically. Hard copy records must be signed by the employee while electronic records must include electronic identification of the employee, in order to assure their authenticity and accuracy. Each record must be retained for 2 years. (49 CFR §§ 228.9, 228.11, 228.203)

3.2 Electronic recordkeeping

FRA's regulation found at 49 CFR Part 228, Subpart D, added provisions for electronic recordkeeping systems for recording hours of service information as required by Subpart

B. An electronic system must meet the requirements of—

- § 228.201 - Electronic recordkeeping, general;
- § 228.203 - Program components;
- § 228.205 - Access to electronic records; and,
- § 228.207 - Training.

3.3 Training

A railroad, or a contractor or subcontractor to a railroad, shall provide its signal employees and its supervisors of these employees with initial training as well as refresher training as provided in 49 CFR § 228.207. The overall program shall include the practice of a railroad, or contractor or subcontractor to a railroad, monitoring the records of their employees sufficiently to allow supervisors or other managers to find recurrent errors in the employees' records which may indicate an employee's lack of understanding of the hours of service laws or how to complete hours of service records. These findings shall then be included in the employee's refresher training.

3.4 Excess service reports

Each time an employee is permitted to remain on duty in excess of 12 hours, or to go or remain on duty without the required off-duty period, that incident, together with a brief but appropriate explanation of the circumstances or cause, must either be reported on the monthly excess service report filed with FRA, or created and maintained within an electronic recordkeeping system (49 CFR § 228.19). A report of excess service does not necessarily constitute an admission that the laws have been violated, since the signal emergency provision or the nonapplication provision may excuse the excess service in an appropriate instance.

APPENDIX A – EXAMPLES

Example 2.3.1

Facts: Scheduled duty, 7:00 a.m. – 3:00 p.m. Off duty 3:00 p.m. – 1:00 a.m. Scheduled duty 1:00 a.m. – 9:00 a.m.

Effect of law: Alternate periods of 8 hours on, 10 hours off are permitted by the law, since a new 24-hour period begins upon return for duty after having had at least 10 consecutive uninterrupted off-duty hours.

Example 2.4.1

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch period, 12:00 noon – 12:30 p.m. Scheduled duty, 12:30 p.m. – 3:30 p.m. Trouble call, 9:00 p.m. – 10:00 p.m. Trouble call, 5:00 a.m. - ?)

Effect of Law: By 7:00 a.m. on the second day of this example, the employee will have performed 8 hours of scheduled work, responded to a 1-hour trouble call the previous evening, and will be 2 hours into the second trouble call (total: 11 hours). Although the employee will have worked only 11 hours in broken service by 7:00 a.m., the 24-hour period of broken service that began at 7:00 a.m. the previous morning will be over, the employee must be released from the second trouble call no later than 7:00 a.m., and the employee must receive at least 10 continuous uninterrupted hours of off-duty time before performing any other service for the railroad.

Example 2.4.2

Facts: Scheduled duty 7:00 a.m.- 12:00 noon. Lunch period 12:00 – 1:00 p.m. Scheduled duty 1:00 – 8:00 p.m.

Effect of Law: The employee has been on duty for 12 continuous hours, since the lunch period did not exceed 60 minutes. The employee must be provided a release period of 10 hours before performing further duties for the railroad. The required statutory minimum off-duty period would be the same whether the time on duty is continuous or broken, so even if the lunch period were longer than an hour, at least 10 hours off duty of time off duty would be required at the conclusion of the employee's duty tour.

Example 2.5.1

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch break 12:00 – 12:30 p.m. Scheduled duty 12:30 – 3:30 p.m. Trouble call, 9:30 p.m. – 12:30 a.m. The railroad, or contractor or subcontractor to a railroad, telephones employee for a second trouble call at

3:30 a.m., the employee answers the call but, having only 1 hour left in his or her 12-hour limitation, the employee reports there is not sufficient time remaining in the 24-hour period to respond to the call.

Effect of Law: The required 10 uninterrupted hours of rest has been interrupted by the railroad's second call at 3:30 a.m. The call is not a violation of the HS laws; however, the off-duty period must begin anew at or after 3:30 a.m. for a full 10 uninterrupted hours prior to the employee reporting for subsequent duty, or the subsequent time on duty will commingle with the previous duty tour, and will, therefore, result in excess service if it is greater than one hour.

Example 2.5.2

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch break 12:00 – 12:30 p.m. Scheduled duty 12:30 – 3:30 p.m. Trouble call, 9:30 p.m. – 1:30 a.m. The railroad, or contractor or subcontractor to a railroad, telephones the employee for a “non-emergency” second trouble call at 3:30 a.m., the employee answers the call but, having already reached 12 hours on duty, he does not respond to the call.

Effect of Law: The required 10 uninterrupted hours of rest has been interrupted by the second call at 3:30 a.m. Because a call to report for duty, standing alone, does not rise to the level of “service for the railroad,” the call does not result in excess service. However, because the employee's rest has been interrupted, to avoid comingling the employee's previous and subsequent periods of on-duty time, the off-duty period must begin anew at or after 3:30 a.m. for a full 10 uninterrupted hours before the employee reports for subsequent duty, or else the subsequent time on duty will commingle with the previous duty tour, and, regardless of its length, will, therefore, result in excess service.

Example 2.5.3

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch break 12:00 – 12:30 p.m. Scheduled duty 12:30 – 3:30 p.m. Trouble call, 9:30 p.m. – 1:30 a.m. The employee telephones the railroad, or contractor or subcontractor to a railroad at 2:00 a.m., to schedule a vacation day. The railroad, or contractor or subcontractor to a railroad returns the employee's call at 2:30 a.m., and after resolving the request that the employee called about, goes on to discuss issues encountered in responding to the prior trouble call for one hour, with the call ultimately ending at 3:30 a.m.

Effect of Law: The required 10 uninterrupted hours of rest has been interrupted by the return call at 2:30 a.m., because the substance of the call went beyond the issue that the employee contacted the railroad, or contractor or subcontractor to a railroad to discuss. The off-duty period must begin anew at or after 3:30 a.m. for a full 10 uninterrupted hours prior to the employee reporting for subsequent duty.

Example 2.5.4

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch break 12:00 – 12:30 p.m. Scheduled duty 12:30 – 3:30 p.m. Trouble call, 9:30 p.m. – 1:30 a.m. The railroad, or contractor or subcontractor to a railroad, telephones employee for a “non-emergency” second trouble call at 3:30 a.m.; however, recognizing he is unavailable, the employee does not answer the call.

Effect of Law: The required 10 uninterrupted hours of rest has been interrupted by the single second call at 3:30 a.m. despite the employee’s not answering the call, unless the call is made to a railroad-provided device that the employee is free to turn off during the uninterrupted rest period. Provided that the call was not made to such a device, the off-duty period must begin anew at or after 3:30 a.m. for a full 10 uninterrupted hours prior to the employee reporting for subsequent duty.

Example 2.5.5

Facts: A signal employee is out on a trouble call and at 10:30 p.m., phones the signal supervisor for guidance, and talks to the supervisor for 30 minutes. The signal supervisor has performed no signal covered service during his or her duty tour either prior to the call or subsequent.

Effect of Law: The signal supervisor, having performed no covered service, is not subject to the limitations of the HS laws, either as to total on-duty time or as to required periods of rest, and therefore there is no statutory minimum off-duty period to be interrupted.

Example 2.5.6

Facts: A signal employee is out on a trouble call and at 10:30 p.m., phones the signal foreman for guidance, and talks to the foreman for 30 minutes. The signal foreman had previously performed signal covered service during his or her current duty tour of 7:00 a.m. to 3:30 p.m. with a lunch break 11:30 a.m. to 12 noon.

Effect of Law: The signal foreman having performed covered service is subject to comingled service counting toward the calculation of his total time on duty for the 24-hour period, and subject to the required minimal 10 uninterrupted hours of rest. Since only 7 hours had passed since the signal foreman’s rest period began, an additional 30 minutes is to be counted toward his total time on-duty for the duty tour, and an interruption of the signal foreman’s rest has occurred. To be considered a statutory off-duty period, the rest period must begin again at or after the end of the phone conversation with the signal employee. The signal foreman has been on-duty for 8 hours and 30 minutes of broken service, and the statutory minimum off-duty period will not be completed until 9:00 a.m. the following day at the earliest.

Example 2.5.7

Facts: Scheduled duty, 7:00 a.m. – 12:00 noon. Lunch break 12:00 – 12:30 p.m. Scheduled duty 12:30 – 3:30 p.m. Trouble call, 9:30 p.m. – 1:30 a.m. The railroad, or contractor or subcontractor to a railroad, expects or instructs the employee to be at his or her normal duty station at 11:30 a.m. for the employee's next regularly scheduled tour of duty. The employee leaves his or her residence at 10:30 a.m. for the usual 1 hour commute to the normal duty station.

Effect of Law: Because normal commute time is time off duty, the employee's 1 hour of commute time to the regular duty station is counted as the last hour of the employee's 10 uninterrupted hours of rest. No violation of the HS laws has occurred. Note that any instruction to the employee to report back to the normal duty station must not be given to the employee during his or her statutory minimum off-duty period, unless the employee has made contact and requested to be provided with such an instruction (see Section 2.5).

Example 2.7.1

Facts: Scheduled duty tour, 7:00 a.m. – 3:00 p.m. Employee is required to depart from his or her residence to an outlying duty site at 6:00 a.m. for a 7:00 a.m. on-duty time at the site. Regular average commuting time for the individual is 30 minutes. Covered service work is then performed by the employee at the site.

Effect of law: Travel to the site of scheduled duty (other than the headquarters) is on-duty time to the extent it comingles with covered service work then being performed. However, the usual amount of time spent in personal commuting is subtracted from the total travel time. Since, in the example, the employee normally spends 30 minutes commuting to work, the employee is considered to be on-duty at 6:30 a.m.

Note that in the normal case the employee will report to their normal duty station before going to an outlying work site for scheduled service. In such a case, the employee is on duty upon reporting as directed to his or her headquarters.

Example 2.7.2

Facts: Scheduled duty tour, 7:00 a.m. – 5:00 p.m. Employee is required to depart his or her residence for an outlying duty site at 6:00 a.m. and experiences 6 hours of travel in order to reach the remote duty site by noon. The employee has no regular commuting time due to his or her residence being his or her regular duty station. Covered service work is then performed during the remainder of the employee's duty tour.

Effect of law: Travel to the site of scheduled duty (other than the headquarters) is time on duty to the extent it comingles with covered service work then being performed by the employee. Since, in the example, there is no regular commuting time to subtract, the employee is on duty at 6:00 a.m.

Example 2.7.3

Facts: Scheduled duty hours 7:00 a.m. – 3:00 p.m. Employee departs outlying work site at 2:30 p.m., and then arrives at his or her residence at 3:45 p.m.

Effect of law: The employee was on duty for 8 hours, the scheduled duty period. The off-duty period began at 3:45 p.m., upon the employee's arrival home. Note that, had the employee returned by way of the headquarters, the time off duty would have commenced on the employee's departure from the headquarters. The period from 3:00 p.m. to 3:45 p.m. is treated as limbo time (neither time on duty nor time off duty).

Example 2.7.4

Facts: Scheduled duty hours, 7:00 a.m. – 3:00 p.m. Employee departs the outlying work site at 3:00 p.m., arrives at the headquarters at 3:30 p.m. and leaves immediately for personal residence, arriving at 4:00 p.m.

Effect of law: The employee was on duty for 8 hours, the scheduled duty period. From 3:00 p.m. to 3:30 p.m. is limbo time, neither time on duty nor time off duty. The off-duty period began at 3:30 p.m.

Example 2.8.1

Facts: Trouble call received 8:30 p.m., travel to work site 8:40 – 8:55 p.m.; covered service 8:55 – 9:30 p.m.; return travel 9:30 – 9:45 p.m.

Effect of law: The employee was on duty from 8:30 to 9:30 p.m. with 15 minutes of limbo time until 9:45 p.m. Therefore, time off duty began at 9:45 p.m.

Example 2.8.2

Facts: Scheduled duty, 7:00 a.m. – 3:00 p.m. First trouble call 7:00 – 8:30 p.m.; return travel 8:30 – 9:00 p.m.; second trouble call, 9:15 – 11:00 p.m.; return travel 11:00 – 11:30 p.m.

Effect of law: The employee was on duty for a total of 12 hours in broken service. The period of return travel from the first trouble call was not followed by a break in service of at least 30 minutes, and therefore the return travel and 15 minute break in service remain time on duty. The on-duty period that started on receipt of the first trouble call continued without interruption through until 11:00 p.m. The 30 minutes of travel time from the second trouble call was limbo time. The employee's off-duty period begins at 11:30 p.m.

Example 2.8.3

Facts: Scheduled duty, 7:00 a.m. – 3:00 p.m. Trouble call 10:00 p.m. – 12:00 midnight to a remote location accessible only via on-track vehicle. Work completed at the site at 12:00 midnight followed by 30 minutes of travel via on-track vehicle, then 30 minutes of travel via highway to the employee residence arriving at 1:00 a.m.

Effect of law: The employee was on duty for the regular duty period, plus 2 hours of time on duty from the trouble call coupled with the 30 minutes of return travel via on-track vehicle. The following 30 minutes of travel via highway was limbo time. The employee's off-duty period begins at 1:00 a.m.

Example 2.8.4

Facts: Scheduled duty, 7:00 a.m. – 3:00 p.m. Trouble call 10:00 p.m. – 12:00 midnight, during which the employee dialed in to a processor-based component at a remote location for the purpose of determining what was wrong with the location and uploaded a more recent version of software to the remote equipment. The employee never left his or her residence and the work was completed at 12:00 midnight.

Effect of law: The employee was on duty for the regular duty period, plus the 2 hours of the trouble call during which the remote connection to the processor-based equipment at the remote site was analyzed and updated. The employee's off-duty period begins at 12:00 midnight.

Example 2.9.1

Facts: An individual drives himself or herself to, and attends, a rules class at the outlying work site during one duty tour, and then performs signal-employee covered service at the same outlying work site during the next duty tour.

Effect of law: Despite the intervening rules class, the individual's drive to the outlying work site facilitated his or her subsequent performance of signal-employee covered service, and accordingly the driving time is time on duty subject to the FRA-administered HS laws rather than FMCSA's HS Regulations.

Example 2.9.2

Facts: An individual drives from his or her headquarters at Location A to a rules class at Location B, attends the rules class, and receives a statutory minimum off-duty period at Location B. After the conclusion of the statutory minimum off-duty period, the individual then drives from Location B to Location C, where he or she repairs signal systems at Location C.

Effect of law: The time spent driving from the employee's headquarters to the rules class is not signal-employee covered service, because the travel to the rules class location is not clearly connected to the performance of signal-employee covered service, since the employee is required to travel from the rules class location to another location in order for the employee to perform the covered service. However, the time spent driving from location B (the location of the rules class) to location C (where repairs are performed) is covered service.

Example 2.11.1

Facts: Scheduled duty, 7:00 a.m. – 3:00 p.m. Trouble call 10 p.m. – 12:00 midnight.
Emergency call (valid continuing emergency), 3:00 a.m. – 7:00 a.m.

Effect of law: The employee must be released for 10 consecutive uninterrupted hours not later than 7:00 a.m., even though time on duty will then total only 14 hours. The 24-hour period that began at 7:00 a.m. the previous morning will have expired, and the emergency provision does not eliminate the requirement that the employee not remain on duty at the expiration of that 24-hour period.

**APPENDIX B – LETTER ON EXCLUSION OF
SIGNAL EMPLOYEES DRIVING MOTOR
VEHICLES FROM FEDERAL MOTOR CARRIER
SAFETY ADMINISTRATION’S HOURS OF
SERVICE REQUIREMENTS**

APPENDIX C – RELEVANT EXCERPTS FROM THE
HOURS OF SERVICE LAWS -- 49 U.S.C. §§ 21101(4),
21102(a), 21104, and 21303