



U.S. Department
of Transportation

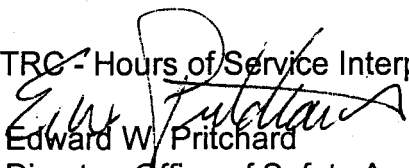
Federal Railroad
Administration

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-27

Subject: TRC - Hours of Service Interpretations

From: 
Edward W. Pritchard
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

Attached is Operating Practices Technical Bulletin OP-04-27, which is also OPSA-96-03, which contains FRA's, application of the Federal hours of service laws concerning train service employees for the following issues:

1. Yardmasters
2. Train and Engine Service Employee Tie-ups After Maximum Statutory On-duty Time
3. Bridgetenders
4. Relaying "Orders" between Railroad Employees
5. Flaggers

FRA Inspectors are to utilize the contents of this bulletin as guidance in their inspection and compliance-assurance efforts. It must be understood that enforcement actions involving recommendations for the assessment of civil penalties by FRA's Office of Chief Counsel cannot be initiated against a railroad or an individual based solely upon information contained in this bulletin. Civil penalty recommendations to FRA's Office of Chief Counsel must reference one or more of the following:

1. A statutory provision of the Federal hours of service laws (i.e., 49 U.S.C. Sub-sections 21101 - 21108), wherein the "plain meaning" of the words of the provision establish the basis for the alleged violation;
2. An interpretation published in Appendix A to 49 CFR Part 228; or
3. Prior correspondence to that railroad or individual, wherein FRA explained the basis for its interpretation that the conduct in question constitutes a violation of the Federal hours of service laws.

Federal Railroad Administration
Operating Practices Technical Bulletin (OP-04-27)
Operating Practices Safety Advisory (OPSA-96-03)
(Revised February 3, 2004)

**49 USC Chapter 211
Hours of Service**

Yardmasters

FRA's application of the Federal Hours of Service Laws concerning Yardmasters is functional. Therefore, if a yardmaster performs service either connected with or affecting the movement of a train, the yardmaster is subject to the constraints of either the train employee or dispatching service employee provisions of the Federal Hours of Service Laws (HSL). See 49 U.S.C. Sub-sections 21101(2 and 5), 21103, and 21105.

FRA Policy: Yardmaster positions will be considered as performing covered service when their duties involve:

1. Activities that affect the repositioning of switches either remotely or manually [See 49 U.S.C. Sub-sections 21101(5) and 21103].

NOTE: Usually, the repositioning of main track or yard track switches, either remotely or manually, brings the Yardmaster under the HSL's train employee provisions as either a trainman or switchtender. However, when both main track switches and signals are remotely repositioned by a yardmaster, the HSL's dispatching service employee requirements apply.

2. Activities in which the yardmaster functionally becomes a member of a train or yard crew on a temporary basis [See 49 U.S.C. Sub-sections 21101(5) and 21103].

NOTE: These activities include, but are not limited to, relaying signals, making couplings or uncouplings, lining switches ahead or behind, or protecting a shoving movement.

3. Activities that control the aspect of a signal authorizing train movement [See 49 U.S.C. Sub-section 21105].

4. Activities in which the Yardmaster is functionally involved in the communication of "orders", i.e., Train Orders, Track Warrants, Manual Block Authority, and verbal authority to pass a Stop Signal, that affects the movement of a train [See 49 U.S.C. Sub-section 21105].

NOTE: "Functionally involved" means the Yardmaster is either creating or relaying an "order." Removal of an "order" from a printer or facsimile machine and delivering the directive to an addressed crewmember is **not** considered covered service. In addition, instructions (either verbal or written), issued to facilitate the routine flow of yard movements are not considered as "orders." These instructions may involve train movements on a main track inside Yard Limits where movement is authorized and restricted by railroad operating rules.

An exception occurs in multiple track scenarios where current of traffic is established and train movements are authorized by either signal indication or rule. Should the Yardmaster elect to operate a yard movement against the current of traffic without signal protection, the Yardmaster's instructions contravene signal and rule authority, and therefore become an "order." This action would bring the Yardmaster under the HSL's "dispatching service employee" provisions. Obviously, other procedures to ensure safe operation must be initiated by the Yardmaster prior to the move against the current of traffic. Most of those activities would also bring the Yardmaster under the HSL's dispatching service employee provisions.

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Train and Engine Service Employee Tie-ups After Maximum Statutory On-Duty Time.

This issue involves the performance of limited incidental service relative to tie-up, as compared to required administrative duties usually associated with timekeeping, crew management, and train delay reporting by train and engine crews after the expiration of the 12-hour duty limitation. Out of necessity in this instance, crewmembers must accomplish some tasks after arrival at their tie-up point. FRA recognizes that a certain amount of data exchange is necessary for the benefit of both the employee and the railroad carrier. To that end, FRA has traditionally "permitted" incidental service such as a brief tie-up call to inform the railroad carrier when to start the employee's Statutory Off-Duty Period and make the railroad aware of when the employee may return to duty. As an alternative to a brief tie-up telephone call, FRA has "permitted" the faxing of a completed timeslip/delay report to either a train dispatcher or crew management.

Today, technological advancements have eliminated many handwritten records pertaining to a train crew's duty tour. It is also becoming customary for a conductor and/or engineer to use a computer terminal to input train/crew related information. The input of this data is considered vital to the operations of some railroad carriers, particularly for crew management and payroll functions. However, some railroad carriers have begun to require the conductor and/or engineer to input more and more data prior to being released from duty. This has resulted in increased instances in which excess service is performed under the HSL's commingled service provisions [See 49 U.S.C. Sub-section 21103(b)(3)].

Since technology is driving the evolution in tie-up procedures, the solution, out of necessity, must be applicable to railroad controlled environments such as the electronic hours of duty recordkeeping systems utilizing a "quick tie-up screen." In this environment, the railroad carriers are responsible for providing adequate resources, such as, telephones, FAX machines or computer terminals, to facilitate an immediate tie-up on crew arrival.

FRA Policy: FRA will consider as "incidental service" the transmission of the following information (either in person, via telephone, fax, or quick tie-up screen in electronic systems) by a crewmember that has reached his/her statutory on duty limit of 12 hours:

- **Relieved time** (time employee stopped performing covered or commingled service) **OR** the amount of **statutory off-duty time required** (8 or 10 hours) before the employee can return to duty. (On some railroad carriers, the employee has the right to request an off-duty period in excess of the statutory minimum. In these cases, the requested off-duty time period may be transmitted);

- **Released time** (time employee begins his or her Statutory or Interim Release Off-Duty period);
- **Board positioning/placement time;** and
- **Telephone number/contact location,** if different from the number listed with crew management.

FRA has consistently maintained that even limited administrative duties, despite their de minimis nature, are considered as time on duty under the HSL. And, in the event that even limited administrative duties are performed after the expiration of 12 hours of on-duty time, FRA will continue to exercise its prosecutorial discretion in deciding which cases warrant recommendations for the assessment of civil penalties (See 49 CFR Part 209 Appendix A).

However, a railroad's procedures that **exceed** the scope of the above defined "incidental" service **and** unavailability of immediate tie-up facilities to provide tie-up information will be viewed by FRA as mandatory "administrative" duties. Therefore, time spent performing these administrative duties **and/or** waiting on tie-up facilities will be considered as time on duty under the HSL's commingled service provisions and subject the railroad carrier to possible civil penalty liability and the excess service reporting requirements under 49 CFR Part 228 relative to Form 6180.3.

Administrative duties include:

1. Preparing or submitting work reports or accident reports;
2. Any administrative tasks required of an employee by a railroad in conjunction with a covered service duty tour, other than that defined above as "incidental" service; and
3. All waiting periods associated with the unavailability of tie-up facilities, such as, telephone, FAX machine or computer terminal.

Normally, time spent in deadhead transportation from covered service to a point of final release is considered as neither on-duty nor off-duty time, but instead as "limbo time." When administrative duties follow limbo time, the time spent deadheading must be reclassified as deadheading **to duty**. Therefore, the time spent in deadhead travel plus the time spent performing administrative duties must be considered as time on duty in calculating an employee's Total Time On Duty.

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Bridgetenders:

FRA's application of the Federal Hours of Service Laws (HSL) concerning bridgetenders is functional. Therefore, if a bridgetender performs service that is connected with or affects the movement of a train, the bridgetender is subject to the constraints of either the train employee or dispatching service employee provisions of the Federal hours of service laws (HSL).

FRA Policy: A bridgetender will be considered as performing covered service when his or her duties involve:

1. Activities that affect the repositioning of switches either remotely or manually [See 49 U.S.C. Sub-sections 21101(5) and 21103].
2. Activities in which the bridgetender gives hand signals associated with a required visual inspection of switches and bridge locking devices to indicate the bridge is properly aligned and secured for train movement [See 49 U.S.C. Sub-sections 21101(2) and 21105].
3. Control of the aspect of a signal authorizing train movement [See 49 U.S.C. Sub-sections 21101(2) and 21105].

NOTE: In Automatic Block Signal systems, electrical switches used by a bridgetender to "run time" on the opposing signals prior to being able to unlock a bridge for repositioning is not considered covered service under the HSL's dispatching service provisions.

4. Activities in which a bridgetender is functionally involved in the communication of "orders", i.e., Train Orders, Track Warrants, Manual Block Authority, and verbal authority to pass a Stop Signal, that affect the movement of a train [See 49 U.S.C. Sub-sections 21101(2) and 21105].

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Relaying "Orders" Between Railroad Employees

This clarification addresses the HSL provision applicable to any individual relaying "orders" from a dispatching service employee to a train employee whose train movement is affected by the "orders."

A "dispatching service employee" is defined by the HSL as:

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. [Emphasis added] [See U.S.C. Sub-section 21101(2)].

FRA interprets "orders" to mean:

directives affecting the movement of trains, i.e., Track Warrants, Track Bulletins, Track and Time Authority, Direct Traffic Control Authorities, and any other method of conveying authority for trains and engines to operate on a main track, controlled siding, or other track controlled by a dispatching service employee.

Relaying an "order" means:

Electronically or mechanically receiving an "order" from a dispatching service employee and then transmitting that order to a train service employee(s) whose train movement is affected by the "order."

FRA's application of the HSL to individuals relaying "orders" is functional. When an employee performs duty as a train service employee or a signal service employee and also relays "orders," the HSL provisions applicable to dispatching service employees apply to all time on-duty during the 24-hour period involved. When an employee in non-covered service is utilized to relay an "order" by an electrical or mechanical device during a tour of duty, that person is subject to the limitations of the HSL's dispatching service employee provisions during the 24-hour period involved.

FRA Policy: When an individual, who is not normally covered by the HSL's dispatching service employee provisions, uses an electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders related to or affecting train movements, that individual has performed service as a dispatching service employee.

NOTE: Train employees who copy train orders affecting the movement of their train are not subject to the HSL's more restrictive dispatcher/operator provisions.

The following are examples of situations that inspectors may encounter while in the performance of their duties. These are only some examples of the various different situations which may occur on a daily or periodic basis.

Example No. 1:

The train dispatcher of XYZ Railroad is unable to make radio contact with the crew of XYZ Train No. 20. However, the train dispatcher is able to communicate with the crew of XYZ Train No. 51, and Train Nos. 20 and 51 are able to communicate with each other. The train dispatcher issues an "order" for Train No. 20 to the conductor on Train No. 51. The conductor of Train No. 51 receives the "order" for Train No. 20 from the train dispatcher and then transmits the "order" for Train No. 20 to the conductor on Train No. 20.

FRA Position on Example 1:

The conductor of Train No. 51's hours of service status changes from that of a train employee to a dispatching service employee. Under this example, the conductor is subject to the dispatching service "one shift" provision, and is limited to 12 hours on duty in a 24-hour period consistent with 49 U.S.C. Sub-section 21105(b)(2).

Example No. 2:

The train dispatcher of XYZ Railroad is unable to make radio contact with the crew of XYZ Train No. 20; however the train dispatcher is able to send an "order" to Station ABC by facsimile. The dispatcher directs a non-covered service railroad employee at Station ABC to remove the "order" from the facsimile machine and hand carry it to the crew of Train No. 20. As directed, the employee hand delivers the "order" to the crew of Train No. 20 who reads and acts on the "order."

FRA Position on Example 2:

The employee who hand delivered the "order" has not performed covered service. The employee did not receive nor transmit the "order", nor could the employee have materially affected the contents of the "order."

Example No. 3:

The train dispatcher of XYZ Railroad is unable to make radio contact with the crew of XYZ Train No. 20; however, the train dispatcher is able to make telephone contact with an Officer of the railroad located at an intermediate station. The Officer confirms with the dispatcher that he is able to contact the train by radio. The train dispatcher issues

an "order" for Train No. 20 to the Officer to be relayed to Train No. 20. The Officer copies the "order" on the prescribed form, repeats the "order" to the train dispatcher, and receives both a complete time and the dispatcher's initials. The Officer then repeats this process in relaying the "order" to a crew member of XYZ Train No. 20.

FRA Position on Example 3:

The railroad Officer has performed service covered by the HSL's dispatching service employee provisions. Under this example, the Officer is subject to the dispatching service "one shift" provision, and is limited to 12 hours on duty in the affected 24-hour period including all other service for the railroad consistent with 49 U.S.C. Sub-section 21105(b)(2).

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Flaggers

As a result of changes within the railroad industry over the past several years, traditional craft lines have become less distinguishable. Employees, who in the past were traditionally not covered by the provisions of the HSL due to craft restrictions, are now considered covered when FRA applies its HSL functional approach across craft lines. Flagging is one such area that now may include railroad carrier employees not previously considered to be in covered service. FRA considers the function of covered flaggers important to railroad employee safety and the safe operation of trains.

Railroad carrier employees traditionally referred to as "flagmen" (flaggers) perform a variety of duties which may or may not bring them under the HSL's provisions. Flaggers may be assigned from a variety of crafts, and perform functions which range from non-covered service to train employee, to dispatching service employee functions.

FRA Policy: Railroad employees will be considered as performing covered service as "Flaggers" when their duties involve:

1. Activities that affect the repositioning of switches for the movement of trains or engines [See U.S.C. Sub-sections 21101(5) and 21103].
2. Activities in which the employee (Flagger) is functionally involved in the communication of "orders" that affect the movement of a train [See U.S.C. Sub-sections 21101(2) and 21105].
3. Conveying information to a train dispatcher/operator that is necessary for the issuance of an "order," i.e., "OS Trains", e.g. reporting trains clear of affected portion of track.

The following examples are furnished to assist in the understanding of the above listed functional qualifiers.

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Example 1:

A Flagger is assigned to protect a work gang performing maintenance activities, which do not affect the stability of the track, but require the gang to occasionally "foul" a main track. Trains operate through the work area at normal speed and are not required to communicate with the Flagger. The Flagger's principal responsibility is to notify the work gang when he observes or is aware of an approaching train, in order for the workers to clear or remain in the clear of the affected track.

FRA position on Example 1:

This activity is NOT covered service under the HSL provisions.

Example 2:

Two Flaggers are assigned to protect an out of service work area in double track automatic block system territory. The employees are stationed at manual switches several miles apart. Employee No. 1 contacts trains in both directions by radio to grant authority for movement by or through the work area. At the direction of Employee No. 1, Employee No. 2 positions the switch in his charge for train movements, but is not responsible for contacting trains.

FRA position on Example 2:

FRA views the granting of main track movement authorities conveyed by radio by Employee No. 1 to be the issuance of an "order." Therefore, Employee No. 1 is covered by the HSL's dispatching service employee requirements. On the other hand, since Employee No. 2 did not convey directives, he or she is not covered by the HSL dispatching service employee provisions, but is covered by the HSL's train employee provisions as a switchtender.

Example 3:

A Flagger is assigned to report to the train dispatcher the departure or passage of trains (OS trains) from a fixed location to facilitate the issuance of "orders" to opposing or following trains through the Flaggers location.

FRA position on Example 3:

The employee is covered by the HSL's dispatching service provisions.

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