



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-29

Subject: Hours of Service Interpretations

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

To: Regional Administrators

Attached is Operating Practices Technical Bulletin OP-04-29, which is also identified as Operating Practices Agency Interpretation OPAI-98-01, which **cancel**s Operating Practices Technical Bulletin OP-97-31 (formerly OP-96-01, which was also formerly Safety Advisory SA-96-01). This bulletin contains FRA's application of the Federal hours of service laws concerning train service employees for the following issues:

1. Call and Release
2. Interrupted Off Duty Period
3. Reporting Points
4. Travel Time - Railroad Provided or Authorized Transportation for Train, Engine and Yard employees

FRA Inspectors are to utilize 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.

This Technical Bulletin, is being distributed to our rail industry customers through the Association of American Railroads, the United Transportation Union, the Brotherhood of Locomotive Engineers (including the American Train Dispatcher's Department), and the American Short Line and Regional Railroad Association.

**Federal Railroad Administration
Operating Practices Technical Bulletin (OP-04-29)
Operating Practices Agency Interpretation (OPAI-98-01)**

**49 USC Chapter 211
Hours of Service**

The Federal Railroad Administration (FRA) hereby **cancels** Technical Bulletin OP-97-31 (formerly OP-96-01) and Operating Practices Safety Advisory SA-96-01. This document clarifies FRA's application of the Federal hours of service laws concerning issues previously addressed in the cancelled publications.

This document is divided into the following four parts and pertains **only** to train service employees.

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PART A

CALL AND RELEASE

Call and Release is the railroad act of issuing an employee a **Report-for-Duty Time**, then **Releasing** the employee from the requirement to report **PRIOR** to the **Report-for-Duty Time**.

Call and Release is known by other names, such as “Busted Call” and “Set Back.” In all cases, both the call and the release occur prior to the **Report-for-Duty Time**.

A release, busted call, or set back occurring **on or after** the **Report-for-Duty Time** is an **EARLY Release from duty**.

FRA Policy:

FRA will generally view a brief call from the railroad to the employee that establishes a **Report-for-Duty Time** as incidental, i.e., not a material disruption of the employee's off-duty period. In addition, FRA will generally view as incidental a brief call to **CHANGE** the original **Report-for-Duty Time**, or to **RELEASE** the employee from the original **Report-for-Duty Call**, provided the employee **RECEIVES the call PRIOR to DEPARTURE from his or her place of rest**.

When the railroad changes or releases the employee from his or her original **Report-for-Duty Time** after the employee has arrived at the duty location, but prior to the **Report-for-Duty Time**, FRA will view the travel time to the duty point as **LIMBO TIME** (neither on- nor off-duty time). If all or part of the limbo time occurs during the employee's statutory off-duty period, FRA will view the limbo time as a material disruption of the employee's opportunity to secure meaningful rest.

Railroad Options:

Generally, the railroad may utilize one of the following options when notifying a train service employee of a release from a Report-for-Duty Call after his or her arrival at the duty point but before the Report-for-Duty Time:

Option 1: The employee may be released to begin a new **8- or 10-hour statutory off-duty period**.

NOTE: The off-duty period will begin when the employee completes the required duty record and establishes a Final Release time with the railroad. Although the **original** call no longer exists, the railroad is required to maintain a record of the employee's activity under the **COMMINGLED SERVICE** provisions of the Federal hours of service laws. See 49 U.S.C. Sub-section 21103(b)(3). As a result of considering travel time as limbo time, the **administrative duties** involved in establishing a new release time may **commingle** with the previous **covered service** to produce **excess service**. In these cases, the "quick tie-up" process described in Operating Practices Safety Advisory OP-96-03 and Technical Bulletin OP-97-34 should be used to avoid excess service.

Option 2: The employee may be allowed to begin duty at the original Report-for-Duty Time and immediately be given a **qualifying interim release**.

NOTE: The release period is subject to the provisions of the Federal hours of service laws, and FRA's interpretation set forth in Operating Practices Safety Advisory OP-96-06 and Technical Bulletin OP-97-37. Also, the release will not begin until the employee has established a new **Release Time** with the railroad.

Option 3: The railroad may maintain the **original Report-for-Duty Time** and utilize the employee in service for which he or she is qualified.

A release, busted call, or set back occurring **at or after** the **Report-for-Duty Time** is an **EARLY Release** that is subject to the reporting requirements for covered service and future Total Time On-Duty considerations imposed by the Federal hours of service laws. In this scenario, the following will apply.

1. A new **Report-for-Duty Time** issued to take effect within four hours of the release will continue the employee in **CONTINUOUS On-Duty Status** calculated from the **ORIGINAL Report-for-Duty Time**.
2. A new **Report-for-Duty Time** issued to take effect on or after 4 hours but not more than 7 hours and 59 minutes from the release will constitute a **valid Interim Release** and continue the employee in **AGGREGATE On-Duty Status** calculated from the **ORIGINAL Report for Duty Time**.
3. A release of eight hours or more qualifies as a **Statutory Off-Duty Period** that resets the employee's subsequent on-duty availability to the maximum 12 hours.

The following scenarios are provided as examples of how FRA will apply the Federal hours of service laws with respect to **Call and Release (C&R)** issues covered in Operating Practices Agency Interpretations OPAI-98-01, Part A. While FRA cannot foresee all possible scenarios, the examples presented are intended to aid the understanding of the reader. Any changes in the specifics of a scenario **MAY** or **MAY NOT** change FRA's application of the laws as applied to the original example. Where doubt as to FRA's application to an actual issue is present, the reader is encouraged to contact FRA for further analysis and policy guidance.

Call and Release Examples for Train Service Employees

C&R #1: At 10 p.m., Engineer A and Conductor B are called and given a Report-for-Duty time of 12:01 a.m. for train XYZ. At the Report-for-Duty Time, Engineer A would have 17 hours and 36 minutes of time off duty, while Conductor B would have completed her **Statutory Off-Duty Period** at 11:30 p.m. Shortly after the Report-for-Duty Call was issued, the railroad became aware of operating problems that would delay departure of Train XYZ by several hours, whereupon, the railroad decided to terminate the 12:01 a.m. Report-for-Duty Time. Crew Management contacted Engineer A at 10:25 p.m. and Conductor B at 10:28 p.m., prior to departure from their respective residences (places of rest) and informed each person that the Report-for-Duty Time had been cancelled.

FRA Application: FRA will view the Report-for-Duty Call as incidental. The Release Call is also viewed as incidental and an **effective release** that does not break the continuity of each employee's off-duty period. Each employee may be re-called at a later time without acquiring an additional Statutory Off-Duty Period.

C&R #2: Same scenario as **C&R #1** except the railroad attempted, but was unable to contact Engineer A at 11:20 p.m. and Conductor B at 11:22 p.m. to give them an effective release. Due to driving distances, Engineer A departed his place of rest at 10:55 p.m. and Conductor B departed her place of rest at 11:05 p.m. Engineer A arrived at the on-duty location at 11:40 p.m. Conductor B arrived at the on-duty location at 11:45 p.m. On arrival at the on-duty location each employee was informed that the Report-for-Duty Time of 12:01 a.m. had been cancelled. Since the notification of the cancelled Report-for-Duty Time was delivered after the employees arrived at the on-duty site but **BEFORE** the original Report For Duty Time, FRA will apply the Federal hours of service laws in the following manner.

FRA Application relative to Engineer A: While FRA considers Engineer A's travel time of 45 minutes as LIMBO, it did not erode the Statutory Off-Duty Period that had

been acquired earlier. Therefore, the railroad may employ any one of the THREE options listed in this advisory.

FRA Application relative to Conductor B: Since part of Conductor B's travel (11:05 p.m. to 11:30 p.m.) occurred during her **Statutory Off-Duty Period**, FRA considers the total travel time as both LIMBO and an EROSION of her Statutory Off-Duty Period below the minimum required by the Federal hours of service laws. Therefore, the railroad must consider Conductor B's previous Total Time On Duty prior to determining which of the three options are available. In this application, Conductor B's Previous Off-Duty Period becomes an Interim Release of 7 hours and 35 minutes, which will commingle ALL previous activities with any activity that occurs within a new Statutory Off-Duty Period beginning when Conductor B establishes a new Final Release Time with the railroad's crew management.

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PART B

INTERRUPTED OFF-DUTY PERIOD

Statutory Off-Duty Period Train Service Employees

The **statutory off-duty period**, either eight or 10 **consecutive** hours, is the **minimum** time required to start a new duty tour.

The statutory off-duty period, either eight or 10 consecutive hours, is determined by the length of the previous duty tour, i.e., the total amount of covered and commingled service for the ending duty tour. The statutory period will always begin at the time the employee is **finally released from duty** and will consume the first eight or 10 hours of the **total off-duty period**.

Total Off-Duty Period Train Service Employees

The **total off-duty period** is the amount of **off-duty** time between **duty tours**.

The total off-duty period is a period equal to or greater than the required **statutory off-duty period**. This period will always start at the time of the employee's **final release** and terminate when the employee begins covered or commingled service.

Duty Tour Train Service Employees

A **duty tour** is the period(s) of **covered** and **commingled service** occurring between **TWO** qualifying **statutory off-duty periods**.

A **duty tour** is the **total time** consumed in one or more railroad-required activities, one of which **must** be covered service, that occurs between **two statutory off-duty periods**. All activity occurring between statutory off-duty periods, regardless of the time **or** number of runs, trains, jobs or shifts worked, is considered **ONE duty tour**. A duty tour may also contain one or more **interim releases**. All activity occurring in a duty tour, covered and commingled, contributes to the calculation of **Total Hours On Duty**.

FRA Policy:

1. A brief **call to report** and a brief **call to release** are viewed by FRA as calls “**at the behest of the railroad**” that require the employee to perform service for the benefit of the railroad. As such, these calls represent the **only** calls initiated by the railroad during the employee’s **total off-duty period** that FRA will generally treat within its prosecutorial discretion as incidental events. Therefore, the time spent receiving the calls would **not** be treated as commingled with previous or future **duty tours**.
2. All other calls “**at the behest of the railroad**” beyond the scope of these calls will be considered on a case-by-case basis to determine the impact on the total off-duty period.
3. Calls initiated by the railroad or the employee that do not require the employee to perform duty or service “**at the behest of the railroad**” will be considered incidental and not a material disruption. Examples are notification of a seniority displacement or notification of a bulletin-awarded position.
4. Calls **generated by the employee** to determine board placement, train line up, or pay issues are considered “**at the behest of the EMPLOYEE**” and do not disrupt the off-duty period.
5. Any **material disruption** of the opportunity to secure “meaningful rest” intended by the statute will be viewed by FRA as a disruption of the **consecutiveness requirements** of the statutory off-duty period. In establishing the existence of a material disruption, FRA will consider the **purpose, frequency** and **duration** of calls **initiated** by the railroad during an employee’s **total off-duty period**.

EXPLANATION OF FRA’S APPLICATION

The Federal hours of service laws require a minimum **statutory off-duty period** of either **eight or 10 consecutive** hours off duty for Train Service employees to provide them an opportunity to secure meaningful rest.

Train Service statutory off-duty periods **reset** the employee’s **maximum** allowable time available for duty to 12 hours. The Federal hours of service laws are silent regarding **undisturbed statutory off-duty periods**, but by mandating specific periods of **consecutive hours off duty**, FRA interprets the laws as requiring railroads to give employees meaningful rest opportunities.

FRA will utilize its prosecutorial discretion on a case-by-case basis to determine if the railroad’s activity has broken or interrupted the **consecutiveness** of the applicable employee’s minimum

statutory requirement. In most instances, these railroad-initiated activities involve a **call to report for duty** at or soon after the employee's statutory off-duty period has expired. FRA has traditionally treated a brief **call to report for duty** as incidental and not a material disruption of the statutory off-duty period.

In other instances, calls to determine operational issues relative to previous duty tours may be initiated by representatives of the railroad during any part of the employee's **off-duty period**. FRA views the calls as "**at the behest of the railroad**" and the time spent by the employee in responding to these calls will **commingle** with previous or future **covered service, IF POSSIBLE**. The call **cannot commingle** for Train Service and Signal Service employees if a statutory off-duty period exists prior to and after the call. In the event that a call can commingle for Train Service, the amount of time between the call and covered service will determine the existence of **CONTINUOUS** or **AGGREGATE duty tours**.

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APPENDIX TO PART B

The following scenarios are provided as examples of how FRA will apply the Federal hours of service laws with respect to **Interrupted Off-Duty Period (IODP)** issues covered in Operating Practices Agency Interpretation OPAI-98-01, Part B. While FRA cannot foresee all possible scenarios, the examples presented are intended to aid the understanding of the reader. Any changes to the specifics of a scenario **MAY** or **MAY NOT** change FRA's application of the Federal hours of service laws as applied to the original example. Where doubt as to FRA's application to an actual issue is present, the reader is encouraged to contact FRA for further analysis and policy guidance.

Interrupted Off-Duty Period Examples

Train Service Employees

IODP #1: After having been in Off-Duty status for 11 hours and 40 minutes, Engineer A is called by the railroad's Road Foreman of Engines. The call began at 9:42 a.m. and terminated at 9:54 a.m., during which the engineer was questioned regarding his operation of the locomotive consist for the previous duty tour.

FRA Application: FRA will consider this call "**at the behest of the railroad**" and an activity that **MAY** commingle with future COVERED SERVICE provided the covered service occurs before 5:54 p.m. Since the call occurred after the engineer's Statutory Off-Duty Period, it **CANNOT COMMINGLE** with the previous duty tour.

IODP #2: After having been in Off-Duty status for six hours and 15 minutes, Conductor B is called by the railroad's Road Trainmaster. The call began at 7:14 a.m. and terminated at 7:31 a.m. during which the Trainmaster questioned Conductor B about the circumstances involved in an on-duty injury to one of Conductor B's crew members.

FRA Application: FRA will consider this call "**at the behest of the railroad**" and an activity that **WILL** commingle with the previous covered service and restart the **previous duty tour** to add an additional **17 minutes** in commingled service to the Total On-Duty Time for Conductor B. Also, the **consecutiveness** of Conductor B's **Statutory Off-Duty Period** has been broken, necessitating a revised **Release Time** with the railroad and a **restart** of Conductor B's **Statutory Off-Duty Period**. If the additional 17 minutes results in a Total-On-Duty-Time in excess of 12 hours, the railroad is required to report the event to FRA under 49 C.F.R. Part 228.

NOTE: If this call had occurred during the **first three hours and 59 minutes** of Conductor B's Off Duty Period, the 17 minutes would commingle with the previous covered service to produce **CONTINUOUS** on-duty time for Conductor B.

IODP #3: After having been in Off-Duty status for six hours and 40 minutes, Conductor C is

called by a Crew Dispatcher who informs Conductor C that she has been displaced by a senior conductor via a seniority move. The conductor is asked if she wishes to exercise her seniority over junior conductors. Conductor C declines for the present time and advises crew management that she will exercise her seniority within the collective bargaining agreement time limits.

FRA Application: FRA will consider this call “**at the behest of the railroad.**” However, since the call is of an “informative” nature and does not require the conductor to perform duty for the railroad, the call **WILL NOT COMMINGLE** with **PREVIOUS** or **FUTURE** covered service.

NOTE: When Conductor C places the future call to exercise her seniority, FRA will consider that call “**at the behest of the employee**” and its duration will not commingle with previous or future covered service.

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PART C

REPORTING POINTS Train Service Employees

A **Reporting Point** is a precise physical location where an employee **reports for duty to begin or restart** a duty tour.

Reporting points are further defined as **regular** and **other-than-regular**.

A **regular reporting point** is the **permanent** on-duty location of the employee's **regular assignment** that is established through a job bulletin assignment (job award or forced assignment) or seniority placement. The assigned regular reporting point for extraboard and pool crew employees will always be a single fixed location identified by the railroad.

Other-than-regular reporting point(s) are all **other** on-duty reporting points within a railroad-defined geographic area, usually established under the collective bargaining process.

NOTE: Reporting Points should not be confused with **Designated Terminals**. Reporting points are employee specific, and identify one or more on-duty locations for all covered service employees. Designated terminals apply only to Train Service employees, are **job or run** oriented, and refer to the terminal (city or area) where employees may be released for statutory off duty purposes. A designated terminal may contain multiple reporting points.

Deadheading is an employee relocation (or repositioning) activity primarily related to train and engine personnel. It identifies the physical **nonworking** relocation of the employee from one point to another as a result of carrier-issued verbal or written directives.

FRA Policy:

1. **TRAIN SERVICE** employees may have only **one regular reporting point**.
 - a. **assigned employee:** the assigned on-duty location for the job or run is the **regular reporting point** for the assigned (incumbent) employees.
 - b. **extraboard employee:** the precise assigned location of the extraboard is the **regular reporting point** for every employee assigned to that extraboard.
2. **Regular reporting points may change, but must always change** through either bulletin or seniority placement that establishes the employee as an incumbent on a job or run rather than on a temporary assignment.
3. For purposes of calculating Total Time On Duty under the Federal hours of service laws, the following will apply:

All travel time between the employee's residence and his or her regular reporting point is considered as commuting time and, therefore, part of the employee's off-duty period; and

Travel time between the employee's residence and **ALL other-than-regular points** is given special treatment in calculating Total Time On Duty (See Total Time On Duty Calculations, page 15 in this Part).

EXPLANATION OF FRA'S APPLICATION

The following is an explanation of FRA's application of the Federal hours of service laws regarding **temporary assignments** involving extraboards and extended vacancy hold downs for **train service** employees plus Train Service Employee pool crews. Certain **forced assignments** are treated as **regular assignments**.

TEMPORARY ASSIGNMENTS

1. **Extraboard** - Extraboard employees receive temporary assignments on a daily basis. If the temporary assignment is at the assigned location of the extraboard, all travel time between the employee's residence and the regular reporting point is commuting time and is considered part of the off-duty period. If the temporary assignment is at a location other than the assigned regular reporting point, travel time is subject to the provisions of the appropriate section of the Federal hours of service laws. Normally, the railroad should identify **one** of the reporting points as the regular reporting point for all incumbents of the extraboard. If the railroad does not establish one regular reporting point location, travel time to **all** reporting points served by the extraboard is subject to the on-duty provisions of the Federal hours of service laws.
2. **Hold Downs - train service extraboard employees** may receive more long-term temporary assignments generally referred to as "hold downs." Hold downs are temporary assignments made "**at the behest of the railroad**" for a period of time greater than one shift. The length of a hold down is usually determined by a collective bargaining agreement. **The length of the hold down does not affect its temporary status.** In these temporary assignments, FRA considers the employee an **incumbent of the extraboard and its fixed location as the employee's regular reporting point.** Travel time is considered in the same context as a temporary one-day assignment.
3. **Pool Crew - Pool Crew** is unique to Train Service Employee assignments and is the **crew** version of a craft extraboard. A train pool crew or an engine pool crew operates as a unit on a "**first in, first out**" basis similar to extraboards for individual train and engine personnel. While employees may be assigned to a specifically identified Pool Crew, this assignment does not constitute a regular assignment in the context of this advisory. Pool crews may receive calls for varied start times and locations. As in the explanation for extraboard employees, all travel time between a pool crew member's residence and his or her **Regular Reporting Point** is considered commuting time. Conversely, all travel time to **other-than-regular reporting points** is subject to FRA's application of the deadheading provisions of the Federal hours of service laws.

(Continued on next page)

Unlike temporary assignments, a covered service extraboard employee, junior in seniority, may be **force assigned** to a job or run as the result of no senior applicants to a bulletin announcement. The junior employee, once force assigned, must remain on the assignment until he or she is: (1) displaced (bumped) by a senior employee; or (2) “bids on” and acquires another position through seniority rights. In this scenario, FRA considers the **force assigned employee** to be an incumbent of the newly assigned job or run and **will have the job or run’s assigned on-duty location as his or her regular reporting point**. As such, all travel time between the force assigned employee’s residence and the new reporting point is considered commuting time.

TRAVEL

In many cases an employee’s travel to an other-than-regular point is through his or her regular reporting point. In this scenario, that part of the travel from the employee’s residence to his or her regular reporting point is **commuting time**. Further travel to the other-than-regular reporting point **will be on-duty time**.

When the employee either **chooses** or is **instructed** to travel directly from his or her residence to an other-than-regular reporting point, **part or all of the actual travel time** is considered **on-duty**. If **covered service** is performed within eight hours after arrival, the travel is considered **deadheading to duty**, and the travel time is counted in calculating Total-Time-On-Duty.

TOTAL TIME ON DUTY CALCULATIONS

1. If the travel time from the employee’s residence to the other-than-regular reporting point is **less than** the travel time from his or her regular reporting point to the other-than-regular reporting point, then the **total travel time from his or her residence to the other-than-regular reporting point** is considered deadheading.
2. If the travel time from the employee’s residence to the other-than-regular reporting point is **greater than** the travel time from the employee’s regular reporting point to the other-than-regular reporting point, then **only the travel time from the regular reporting point** is considered as deadheading. In this application, a reasonable estimate of the travel time **under existing conditions** (considering weather and time of day) should be used for the travel time from the employee’s regular reporting point to the other-than-regular reporting point. Collective bargaining times used for pay purposes should not be used.
3. In the event a regular reporting point is not established by the railroad for an extraboard or pool crew employee, **all** travel between the employee’s residence and all his or her on-duty locations is considered deadheading.
4. In certain instances, the return travel from the other-than-regular reporting point to the employee’s off-duty location may be treated as part of the Total Time On Duty [See: Title 49 Code of Federal Regulations, Part 228, Appendix A, regarding use of Privately Owned Vehicle (POV)].

APPENDIX TO PART C

The following scenarios are provided as examples of how FRA will apply the Federal hours of service laws with respect to **Reporting Point (RP)** issues covered in Operating Practices Agency Interpretation (OPAI) 98-01, Part C. While FRA cannot foresee all possible scenarios, those presented are intended to aid the understanding of the reader. Any changes to the specifics of a scenario **MAY** or **MAY NOT** change FRA's application of the Federal hours of service laws as applied to the original example. Where doubt, as to FRA's application to an actual issue is present, the reader is encouraged to contact FRA for further analysis and policy guidance.

Reporting Point Examples Train Service Employees

RP #1: Conductor C, previously displaced by a senior conductor, called the railroad's Crew Management and advised that she would exercise her seniority as conductor on outlying job YABC. The new assignment is approximately 20 miles from her previous regular assignment.

FRA Application: FRA considers the conductor as an assigned employee on job YABC with a regular reporting point at the outlying location. FRA will consider all travel between her residence and the new reporting point as commuting.

NOTE: Since the change in reporting points is accomplished through either a seniority move or a bulletin assignment, a Deadhead record is **NOT** required to reposition the conductor from the former assignment to the new assignment.

RP #2: The railroad's Train Service employee extraboards are located at Reporting Point Z, from which temporary vacancies at Reporting Points Z, X, and Y are filled. On Monday morning at 3:00 a.m., extraboard Brakeman C is called to fill a "five day hold down" at Reporting Point Y, approximately 3 hours and 30 minutes travel time from Reporting Point Z and 2 hours and 45 minutes from Brakeman C's residence. On Friday, after being released from the hold down, Brakeman C returns to Reporting Point Z.

FRA Application: FRA considers Brakeman C an "**incumbent**" of the extraboard at Reporting Point Z during the five day hold down. The duration of the hold down does not change the "extraboard incumbency" status of Brakeman C, because a bulletined assignment was not made. The employee was called "**at the behest of the railroad**" and will return to the extraboard at Z after the five day hold down. At the end of Brakeman C's duty tour on Monday, Brakeman C will "**remain**" at Reporting Point Y **for hours of duty recordkeeping purposes**. All travel from Z to Y on Monday and from Y to Z on Friday is deadheading and subject to the Federal hours of service laws.

NOTE 1: Since the hold down is at a location a significant distance from Brakeman C's home terminal, food and lodging becomes an issue. It is assumed that Reporting Point Y is **IN** a designated terminal with suitable food and lodging. As such, if the food and lodging is **not within a reasonable walking distance of the release point**, the railroad **IS REQUIRED** to provide transportation between the duty site and the location of suitable food and lodging. The Federal hours of service laws are silent on who pays for food and lodging in these cases. If the travel time to or from food and lodging is 30 minutes or less, it is considered **commuting time**. If the travel time is more than 30 minutes, it is **subject to the deadhead provisions** and FRA's application of the Federal hours of service laws.

NOTE 2: If Reporting Point Y is not a designated terminal, Brakeman C, and the

remainder of the crew, cannot be released for off-duty purposes at Y. In this case, Brakeman C and the remainder of the crew may be **Relieved** at Y and **Deadheaded** to a designated terminal for **Statutory Off-Duty** purposes.

NOTE 3: The railroad is not compelled to deadhead Brakeman C back and forth between Z and Y on a daily basis because he is an incumbent of the extraboard at Z. The railroad is only required to furnish transportation to food and lodging. In addition, a collective bargaining agreement may exist that gives Brakeman C the choice of using his privately-owned vehicle in transportation between Z and Y in lieu of carrier-provided transportation. In most cases, FRA considers this action to be voluntary on the part of the employee, and therefore the return trip from Y to Z will not commingle with Friday's covered service to extend the duty tour's Total-Time-On-Duty period, unless Administrative Duties associated with the tie-up process are performed after arriving at Z.

NOTE 4: The duty tour for the first day, Monday, must include: (1) a deadhead record from Z to Y; (2) the service trip; and (3) any deadheading (Limbo) time associated with travel to food and lodging. Friday's duty tour must include: (1) any deadheading (to duty) associated with travel from food and lodging; (2) the service trip; and (3) deadhead from Y to Z, if applicable. If travel to and from suitable food and lodging is more than 30 minutes, the duty tours for Tuesday, Wednesday and Thursday must include: (1) travel from food and lodging as deadheading to duty; (2) the service trip; and (3) travel to food and lodging as deadheading from duty.

RP #3: Engineer D was certified and assigned to the engineer's extraboard at Reporting Point U on March 31. As such, Engineer D is the **junior engineer on the extraboard at U**. The extraboard at U supplies engineers for jobs working at Reporting Points S, T, U, and W. On April 1, Engineer D receives a Report-for-Duty Time for Job J554 at Reporting Point U.

FRA Application: Since the extraboard and Job J554 are both located at Reporting Point U, all travel between Engineer D's residence and Reporting Point U is considered as commuting.

RP #4: On April 2, Engineer D received a Report-for-Duty Time for Job K263 at Reporting Point T. Reporting Point T is 45 minutes travel time (under existing conditions) from Regular Reporting Point U and 55 minutes (under existing conditions) from Engineer D's residence.

FRA Application: Since Reporting Point U is the regular reporting point for Engineer D, travel to and from Reporting Point T is considered deadheading.

NOTE: If Engineer D travels to Reporting Point U and then to Reporting Point T, 45 minutes is considered as deadheading to duty. If Engineer D elects to drive his privately-owned vehicle (POV) directly from his residence to Reporting Point T, 45 minutes of the 55 minute travel is considered as deadheading to duty.

RP # 5: On April 3, Engineer D receives a Report-for-Duty Time for Job B116 at Reporting Point S. Reporting Point S is 40 minutes travel time (under existing conditions) from Regular Reporting Point U and 25 minutes travel time (under existing conditions) from Engineer D's residence.

FRA Application: Since Reporting Point U is the regular reporting point for Engineer D, travel to and from Reporting Point S is considered deadheading.

NOTE: If Engineer D travels to Reporting Point U and then to Reporting Point S, 40 minutes is considered as deadheading to duty. If Engineer D elects to drive his personally owned vehicle (POV) directly from his residence to Reporting Point S, 25 minutes travel time is considered as deadheading to duty.

RP #6: Using the same Engineer D and his status as the junior engineer on the extraboard at U, the engineer's current collective bargaining agreement with this railroad permits the railroad to assign the junior engineer to a job in the event that no applicants (bids) are received on a bulletin advertising an engineer's job. At 12:01 p.m., on April 4, railroad Job Bulletin 10, advertising the engineer position for Job R633 at Reporting Point W, closed. The railroad did not receive "bids" from any applicants for this position. Under the provisions of the current collective bargaining agreement, **the railroad may FORCE assign Engineer D to Job R633 at Reporting Point W.**

FRA Application: Prior to the bulletin assignment, Engineer D was considered an "incumbent" of the engineer's extraboard at Reporting Point U, with U as the engineer's regular reporting point. After the forced assignment as the result of a bulletin notice, FRA will consider Engineer D as the **incumbent engineer on Job R633 at Reporting Point W.** W becomes the regular reporting point for Engineer D.

NOTE: Engineer D assumes the location, start time and job frequency of Job R633. The assignment exhibits the permanency as if Engineer D had "bid" on Job R633. The test of permanency is that Engineer D cannot leave this position without being displaced (bumped) or bidding on and acquiring another position through seniority rights. Since the engineer is no longer an incumbent of the extraboard, Engineer D is immune to any further forced assignments.

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PART D

TRAVEL TIME RAILROAD-PROVIDED OR AUTHORIZED TRANSPORTATION Train Service Employees

Deadheading is an employee relocation (or repositioning) activity primarily related to train and engine personnel. It identifies the physical ***nonworking*** relocation of the employee from one point to another as a result of carrier-issued verbal or written directives.

Commuting is the time spent by an employee in travel between his or her residence and the employee's **Regular Reporting Point**. In certain instances it is also the time spent by the employee in carrier provided or authorized transportation between his or her release point and the lodging facilities at the away-from-home terminal.

The Federal hours of service laws require that **deadhead travel time** to duty (covered service), **not commuting time**, is counted as **time on duty** and generally, deadheading from duty is treated as **limbo time**. These applications usually involve departures and arrivals at the employee's home or away-from-home terminals. However, travel circumstances at the **away-from-home terminal** are unique and warrant special consideration.

Title 49 Code of Federal Regulations, Part 228, Appendix A states:

Transit time from the employee's residence to his regular reporting point is not considered deadhead time.

An employee with a regular reporting point is free to select a residence either near to or far away from the reporting point, and thereby control the amount of off-duty time consumed by travel. Because the Federal hours of service laws do not authorize FRA to dictate where an employee must live in relation to his or her regular reporting point, time spent in travel to and from that point is a matter of employee choice and properly considered time off duty.

At the **away-from-home terminal**, the employee is **not** free to select lodging, and thereby cannot control the travel time between the **release point** and the **lodging facility**. Historically, the railroads have provided employees with lodging facilities at the away-from-home terminals. At first, the lodging was in the form of assigned cabooses in which the crew was housed at the away-from-home terminal. Later, on-site "dormitory" style lodging and nearby hotel facilities under contracts were provided by the railroads. Competitive hotel contracts evolved through economics and collective bargaining agreements, and they are now prevalent in the industry. However, many of the contracted hotels are a significant distance from the crew's release point, thus requiring transportation in both directions. Although the employee may have a voice in the selection of the hotel through his or her union representative, the employee has limited control, if any, over the travel time and distance to these hotels.

FRA recognizes the unique circumstances of away-from-home terminal travel and the potential for eroding the statutory off duty period. While this travel is not specifically addressed in the Federal hours of service laws, FRA will utilize the deadheading provisions of the Federal hours of service laws to limit away-from-home terminal commuting time.

The following is FRA's application of the Federal hours of service laws in situations where railroad provided or authorized transportation is employed.

TRAVEL TIME AT THE AWAY-FROM-HOME TERMINAL

FRA Policy:

FRA will continue to utilize a “**thirty-minute commuting time**” application of the laws to travel between the away-from-home **release/on duty point** and the crew's lodging facilities. One way travel time of thirty minutes or less, **including delays** associated with transportation availability and reliability and lodging availability, will be considered as **COMMUTING**. Any one-way travel time **in excess of thirty minutes, including delays** associated with the availability of transportation (e.g., time spent awaiting the arrival of the transportation vehicle) and/or lodging will be considered as either **On-Duty** or **Limbo Time**, as specified in the laws.

Travel From The Off-Duty Location To The Lodging Facility

- **Travel time** is calculated from **Final Release Time** to the **arrival time at the hotel or lodging facility**.
 - If the **travel time** is thirty minutes or less, the entire period is considered commuting time and is part of the off-duty period.
 - If the **travel time** is more than thirty minutes, the entire period is considered Limbo Time, i.e., neither time on- nor off-duty, and the Final Release Time must be readjusted to reflect the employee's arrival time.
 - In the event room accommodations are not readily available after arrival at the lodging facility, **all time spent waiting for room availability** will be considered part of the travel time. If room availability occurs more than thirty minutes after the Final Release Time, the entire period is considered Limbo Time and the Final Release Time must be readjusted to reflect the room availability time.
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Travel From The Hotel Or Lodging Facility To The On-Duty Location

- **Travel time** is calculated from **departure** or **required to-be-ready** time at the hotel or lodging facility to the **Report-for-Duty Time** at the **on-duty location**.
 - If the travel time is thirty minutes or less, then the entire period is considered part of the off-duty period.
 - If the travel time is more than thirty minutes, then the entire period is **deadheading to duty** and included in the calculation of **Total On-Duty Time**.
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TRAVEL FROM AN ON-LINE-OF-ROAD LOCATION DIRECTLY TO THE HOTEL OR LODGING FACILITY

Generally, this scenario involves employees who have reached their statutory on-duty limits of the Federal hours of service laws while on line-of-road and are deadheading to their **point of Final Release**.

FRA Policy:

- If after arriving at the lodging facility, the employee utilizes the “quick tie-up” process outlined in FRA Industry Advisory OPASA-96-03, dated May 14, 1996, the entire deadhead is considered **Limbo Time**.
 - If after arriving at the lodging facility, the employee is required to complete administrative or other activities that exceed the scope of OPASA-96-03, the entire period converts to **deadheading-to-duty time** and must be included in the calculation of Total Time On Duty.
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TRAVEL VIA A CIRCUITOUS ROUTE TO THE POINT OF FINAL RELEASE

FRA Policy:

The railroad should exercise “due diligence” in the transporting of employees from the **Relieved** point on line-of-road to the **Final Release** point. While transporting employees via a circuitous route would not, in and of itself, subject railroads to violations of the Federal hours of service laws, and would therefore not subject the railroads to the imposition of civil penalties, FRA expects the railroads to employ due diligence in order to provide the most suitable means and route available. While certain situations may warrant a circuitous route, the railroad officials should favor reducing the effects of fatigue on employees instead of only considering railroad operating conveniences.