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Subject: Reissue of Hours of Service
Signal Interpretations Booklet

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To: All Regional Directors of Railroad Safety

The booklet, "The Hours of Service Act and Signal Service" was originally issued by the Federal Railroad Administration in 1981. It was subsequently revised and reissued in 1983 without a date on the front cover.

To eliminate any misunderstanding concerning the most recent publication, the dated booklet is being reissued as General Technical Bulletin G-91-02.

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Attachment

THE HOURS OF SERVICE ACT
AND SIGNAL SERVICE

As Revised
in 1983

Office of Safety
and
Office of Chief Counsel
Federal Railroad Administration
Department of Transportation

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1.0 INTRODUCTION

1.1 Purpose.

This booklet is intended to provide information to railroad employees and their supervisors concerning those requirements of the Hours of Service Act related to signal service. In some cases, explanation of the Act requires the statement of interpretations based on the history and purpose of the Act. All such interpretations are those of FRA staff, except where reference is made to controlling judicial decisions.

1.2 Background.

The Hours of Service Act was first enacted in 1907. The original Act, popularly known as "the 16-hour law," covered only certain operating employees and employees engaged in the transmittal or receipt of train orders. The Act has been amended several times, with major changes being made in 1969 and 1976. First added to the law in 1976, the limitations on hours of signal employees were clarified by the 1978 amendments. The purpose of the Act is "to promote the safety of employees and travelers upon railroads"

1.3 Responsibilities of railroad companies.

Each common carrier by railroad is responsible for assuring that no employee who performs covered service is required or permitted to go on duty, or remain on duty, in

violation of the Act. The carrier is not excused from this obligation by any lack of knowledge of the employee's hours, since the actions of the employee are considered actions of the carrier itself. A carrier that requires or permits an employee to go or remain on duty in violation of the Act is subject to a civil penalty of \$500 for each such occurrence.

1.4 Responsibilities of employees.

While the conduct of individual employees is not regulated directly by the Act, an employing railroad may prescribe its own rules to assure proper communication between employees and their immediate supervisors and adherence to the statutory limitations. Employees should cooperate with their supervisors in this regard, since their safety and the safety of co-workers and the public are at stake.

Employees are personally responsible under Federal criminal law for the truthfulness of entries on hours of service records that FRA requires carriers to maintain. The carrier is obligated to require each employee performing covered service during a duty tour to sign the time record. The signature represents an affirmance by the employee that the record is correct, to the best of the employee's knowledge and belief. Participation by an employee in deliberately making a false entry constitutes a felony punishable by a fine of up to \$5,000, or imprisonment for up to two years, or both.

2.0 RULES FOR SIGNAL SERVICE

2.1 Covered service.

The Act applies to employees engaged in "installing, repairing or maintaining signal systems." An employee who performs any such functions is subject to the Act during the particular duty period the function is performed, without regard to the class or craft of the employee, nor the manner in which the employee is compensated.

Only actual employees of the common carrier are covered. Bona fide independent contractors and their employees are not subject to the Act.

Supervisors are subject to the Act if they perform covered service. For instance, a supervisor who performs tests in satisfaction of the Federal Rules, Standards and Instructions 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 the legislative history of the Act. The term includes:

1. Automatic block and traffic control systems;
2. Train control, train stop, and cab signal systems, including portions of such systems mounted on locomotives;
3. Interlockings;
4. Rail-highway grade crossing active warning devices;
5. Retarders and control systems for remote-control switches in yards;
6. Hot box detectors, broken flange detectors; and
7. Similar devices, appliances and systems, to the extent they are relied upon to ensure safety.

"Installing, repairing or maintaining" refers to work that could reasonably be expected to affect the safe functioning of signal systems and that requires expertise in signal systems in order to be performed properly. Inspecting and testing of a system or component will ordinarily be an integral part of such work. Duties that involve quality control (such as rebuilding signal components in a signal shop) are covered, even though there may be a subsequent test of the device before it is used. However, related labor, such as digging trenches for signal cable, is not covered service.

Certain duties fall on the boundary line between covered and non-covered service; these doubtful cases are resolved by looking at the task's relationship to actual safety conditions, the degree of signal expertise it requires, and the frequency with which it is performed by the particular employee. For instance, during the installation of a system a signal helper might assist in the mechanical securement of signal line wires to poles without making any splices of energized conductors. Such work would not ordinarily be viewed as covered service. On the other hand, the securement of conductors of an operational system would be covered service.

Other examples of covered and noncovered service follow:

<u>Covered</u>		<u>Not Covered</u>
(Installing a new system (by splicing energized (conductors, testing <u>but not</u> (circuits, and other (safety-sensitive func- (tions is covered service...		(Ordinary manual labor (such as erecting (signal masts or (laying cable for a (new system without (performing other (duties.
(Maintaining signal- (specific apparatus (to interface terminals (that input or extract <u>but not</u> (coded controls trans- (mitted on a "host" (telecommunications (system is covered (service...		(Maintaining the (microwave transmitter (or conductor used as (the communications (medium.

(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.
(Inspecting switches (to assure proper (closure under the (RS&I is covered (service...	<u>but not</u>	(Sweeping snow from (switches or main- (taining switch (heaters.
(Repairing an active (grade crossing pro- (tection system is (covered service...	<u>but not</u>	(Flagging a crossing (or replacing cross- (bucks.

As discussed in the next subsection, where an employee performs covered service during a 24-hour period, all other service for the carrier is counted toward the computation of on-duty time. Therefore, the fact that an employee performs both kinds of service does not deprive the employee of the protection of the Act.

2.2 Commingled service.

When an employee performs covered service (whether as part of a regularly scheduled duty tour or a trouble call) during a 24-hour period, any other service performed during that period is also counted toward the computation of on-duty time. This is known as the principle of "commingled service."

The Act does not distinguish between situations in which covered service follows noncovered service and those in which the opposite is true. In either situation, the principle applies.

Like other service for the carrier, attendance at required rules classes is duty time subject to "commingling." The same is true of attendance at a disciplinary or court proceeding 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 Act, the most restrictive provision applies. For instance, if a signal maintainer were also to be assigned duties of an operator or dispatcher under Section 3 of the Act, the more restrictive 9-hour provision of that section would apply. (Interpretations of the Act relating to train and engine service and dispatcher/operator service can be found at Appendix A to Part 228 of Title 49 of the Code of Federal Regulations. Individual copies are available from the Office of Chief Counsel, FRA.)

All service performed for any common carrier by railroad must be counted toward the on-duty time of an employee who performs signal service. If an individual works for two railroads, the individual's total time in both jobs must be recorded and counted toward the statutory limitations with regard to service for each.

2.3 Limitation on duty hours.

The Act limits employees in signal service to 12 hours of duty, either 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 a release period of at least 8 or 10 hours--depending on which is required. Note that a release period may be longer than the permissible minimum number of hours but that, even when this occurs, the new 24-hour period does not begin until the employee returns to duty. (Example 2.3) (See Appendix A for all examples.)

2.4 Minimum off-duty periods.

In practical application, there are three distinct requirements for minimum off-duty periods. First, if an employee has been on duty continuously for 12 hours or more, the employee must be given a minimum period of release of 10 hours. A period of service is "continuous" if it is not interrupted by a period of release of more than one hour.

(Example 2.41.)

Second, at the end of 12 hours of broken (discontinuous) service, the employee must be released for a minimum of 8 hours. (Example 2.42.)

Third, even if the employee has not yet aggregated 12 hours of broken service, an employee must be released for at least 8 hours at the conclusion of the 24-hour period beginning when that individual reported for the first portion of the broken service. (Example 2.43.)

2.5 Other periods available for rest.

The 8 and 10-hour release periods described below are minimum periods required by law. However, a railroad may wish to provide shorter breaks in service, between the 8 or 10-hour release periods, for its own convenience or the convenience of its employees. 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 Act. Accordingly, such periods are counted toward on-duty time. (Example 2.51.)

At least 30 minutes, but not more than one hour. Breaks of 30-60 minutes are not counted in computing on-duty time. However, neither do they break the "continuity" of the duty period for purposes of determining whether a 10-hour release will be required at the end of 12 "continuous" hours. (Example 2.52.)

More than 1 hour. A period of release of more than 60 minutes is recognized as an off-duty period sufficient to break the continuity of the overall duty tour. (Example 2.53.)

A common rule applies to all periods of release that qualify for exclusion from on-duty time. That is, employees must be free of responsibilities to the carrier and free to come and go as they please. However, the employer may require that an employee leave a telephone number where the employee

can be reached during "on call" periods. Telephone contacts by the carrier would not constitute an interruption of a rest period unless their frequency or duration were so great as to substantially interfere with the off-duty period. Of course, a telephone call resulting in an employee's immediately going on a trouble call would end the off-duty period (see 2.7, below).

2.6 Travel time in connection with regular duty.

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

Transportation by ontrack vehicle is always considered on-duty time, since the employee normally has a duty either to operate the vehicle or to protect it by watching out for trains. (Accordingly, the discussion that follows relates only to off-track transportation.)

Transportation to and from an outlying work site in connection with regular duty is subject to special rules. Transportation within scheduled hours, like all other service, is always on-duty time.

Transportation 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 it exceeds the individual's normal period of commuting. (Example 2.61.) (Note that this rule applies to travel to perform 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 on-duty time. Such return travel after scheduled duty hours is neither on-duty nor off-duty time. (Example 2.62.)

Note that, if an employee begins a period of return travel to headquarters at the expiration of scheduled duty hours, the period of "limbo" (neither on-duty nor off-duty time) ends upon arrival at headquarters. Assuming that the employee is then free to go home, off-duty time begins at that time. (Example 2.63.)

2.7 Trouble calls and travel.

When an employee receives a call to respond to unexpected "trouble" and immediately begins preparations for departure, the employee is said to be on duty from the time of the call. The on-duty period will last at least until the conclusion 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 treated as "limbo" time. That is, that travel time is counted as neither on-duty nor off-duty time. (Example 2.7.) There are three exceptions to this rule.

First, up to one hour of return travel from the final trouble call of a period of continuous or broken service may be counted as off-duty time and credited toward the required 8 or 10-hour period of release. (Examples 2.72 and 2.73.)

Second, if the employee commences duty by responding to another trouble call less than 30 minutes after arriving home from a previous call, then the return travel from the previous call must be counted as on-duty time. This is actually an application of the rule, rather than an exception, since the rule that return travel is "limbo" depends on the association of travel time with a subsequent period of rest. Where the employee almost immediately departs the residence after arriving from a previous call, all travel involved has been exclusively for the convenience of the railroad, and the employee has received no meaningful opportunity for rest. (Example 2.74.) The same is true where an employee is required to perform substantial additional service (i.e., something more than ordinary clerical chores that can be handled quickly) at headquarters while enroute to his residence from a trouble call.

Third, as noted above, all travel by ontrack vehicle is on-duty time.

2.8 Emergencies.

The Act permits an employee in signal 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", discussed in section 2.9, below; when that exception is claimed, availability of relief employees is relevant to the question of whether the carrier 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 changeovers and foreseeable requirements for signal work in support of programmed track maintenance are not emergencies.

Common examples of recognized emergencies are:

- o False proceed indications;
- o System failures resulting in significant train delays; and
- o Continuously operating or wholly non-operational grade crossing protection devices.

Other situations may constitute emergencies, depending on all the facts involved. For instance, a single false restrictive signal at a rail crossing within an interlocking

could necessitate flagging in circumstances posing significant hazards to the crewmembers involved, depending on traffic levels, weather conditions, and sight distances involved. This is not to suggest that a single false restrictive will constitute an emergency under all circumstances; the determination of whether a situation is an emergency must always be made on a case-by-case basis.

In every case an emergency is claimed it is the obligation of the railroad to report the facts upon which the claim is made (see below).

Note that the emergency provision does not except the railroad from the requirement that the employee be provided full rest at the conclusion of the 24-hour period when the period of broken service began. Thus, in some cases it will not be possible for an employee involved in an emergency to work a full 16 hours. (Example 2.81.)

Note also that the emergency provision permits service beyond 12 hours only while the emergency exists. Emergency service concluded early in a duty tour does not provide license to exceed 12 hours if no emergency exists at the expiration of 12 hours.

2.9 "Acts of God."

While the emergency provision specifically directed at signal service permits 4 hours additional service in some cases, the Act also contains a provision providing additional

relief from the limitations of the Act in a very few narrow situations. This exception applies to "any case of casualty or unavoidable accident or the Act of God" Under judicial decisions, the exception applies only where the carrier has employed due diligence to avoid or limit the excess service.

Major ice storms, hurricanes, and similar events may fall within this exception and permit service beyond that authorized by the signal emergency provision. However, as noted above, 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.

3.0 RECORDS AND REPORTING

3.1 Hours of service records.

Each railroad is required to maintain complete hours of service records for each employee in signal service, including:

- (1) Identification of employee;
- (2) Place, date and beginning and ending time for hours of duty in each occupation;
- (3) Total time on duty in all occupations;
- (4) Number of consecutive hours off duty prior to going on duty; and
- (5) Beginning and ending times of periods spent in transportation, other than personal commuting, to or from a duty assignment.

These records must be signed by the employee to assure their accuracy and must be retained for two years. (49 CFR §§ 228.9, 228.11)

Time records are required to be maintained to assure that the railroad has the information necessary to comply with the Act and to facilitate monitoring by FRA of carrier compliance.

3.2 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 an explanation, must be reported on the monthly excess service report filed with the FRA. (49 CFR § 228.19.) A report of excess service does not necessarily constitute an admission that the Act has been violated, since the signal emergency provision or the Act of God provision may excuse the excess service in an appropriate instance.

APPENDIX A -- EXAMPLES

Example 2.3

Facts: Scheduled duty, 7:00 a.m. - 3:00 p.m. Off duty 3:00 p.m. - 11:00 p.m. Scheduled duty 11:00 p.m. - 8:00 a.m.

Effect of law: Alternate periods of 8 hours on, 8 hours off are permitted by the law, since a new 24-hour period begins at the end of each 8 hour release.

Example 2.41

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.

Example 2.42

Facts: Scheduled duty, 7:00 a.m. - 3:00 p.m. Trouble call, 6:00 p.m. - 10:00 p.m.

Effect of law: By 10:00 p.m., the employee has worked 12 hours in broken service (8 hours in a regular duty tour plus 4 hours on the trouble call). The employee must be provided a full 8-hour off-duty period.

Example 2.43

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. 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, and the employee must receive 8 full hours of off-duty time.

Example 2.51

Facts: Scheduled duty, 7:00 a.m. - 12:00. Lunch break 12:00 - 12:20 p.m. Scheduled duty 12:30 - 3:20 p.m. Trouble call, 3:45 - 6:00 p.m. Trouble call, 8:00 p.m. -)

Effect of law: The 20 minute lunch break, and the 25 minute interval between the regular duty tour and first trouble call, were not of sufficient length to be deducted from the overall period of service to the carrier. Prior to the second trouble call, the employee had been on duty continuously from 7:00 a.m. to 6:00 p.m., a period of 11 hours. Accordingly, the employee will reach 12 hours of broken service at 9:00 p.m. and must be released at that time.

Example 2.52

Facts: Scheduled duty, 7:00 a.m. - 12:00 noon. Lunch period 12:00 - 12:30 p.m. Scheduled 12:30 - 3:30 p.m. Trouble call, 4:20 - 8:20 p.m.

Effect of law: Since neither the lunch break nor the interval between scheduled service and the trouble call exceeded one hour, the period of service from 7:00 a.m. through 8:20 p.m. is considered to be "continuous." The total on-duty time is 12 hours ($5+3+4=12$). Therefore, the employee must receive a 10-hour off-duty period beginning at 8:20 (See, also, Example 2.41.)

Example 2.53

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

Effect of law: Although the lunch break was not sufficient to break the continuity of service through the normal work day, it is deducted from on-duty time. (Total scheduled hours: 8.) The 1 1/2-hour interval between the scheduled work day and the trouble call does break the continuity of service. Accordingly, when the employee accumulates 12 hours broken service at 9:00 p.m. ($8+4=12$), a release period of only 8 hours is required.

Example 2.61

Facts: Scheduled duty tour, 7:00 a.m. - 3:00 p.m. Employee required to depart for outlying duty site at 6:00 a.m. for 7:00 a.m. start. Regular average commuting time for individual: 30 minutes.

Effect of law: Travel to the site of scheduled duty (other than the headquarters) is on-duty time. However, such travel outside of scheduled duty hours is discounted by the normal period of personal commuting. Since in the example the employee normally spends 30 minutes driving to work, the employee is considered in duty status for hours of service purposes at 6:30 a.m.

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

Example 2.62

Facts: Scheduled duty hours 7:00 a.m. - 3:00 p.m. Employee departed outlying work site 2:30 p.m.; arrived residence 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 off-duty time 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 on-duty nor off-duty time).

Example 2.63

Facts: Scheduled duty hours, 7:00 a.m. - 3:00 p.m. Employee departed the outlying work site at 3:00 p.m., arriving at the headquarters at 3:30 and leaving immediately for personal residence.

Effect of law: The employee was on duty for 8 hours, the scheduled duty period. The off-duty period began at 3:30 p.m.

Example 2.71

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. Assuming that employee responded to another trouble call several hours later, the return travel from 9:30 to 9:45 p.m. treated as "limbo" time. Therefore, off-duty time began at 9:45 p.m.

Example 2.72

Facts: Scheduled duty, 7:00 a.m. - 3:00 p.m. Trouble call 1, 4:30 - 5:30; return travel 5:30 - 6:00; Trouble call 2, 8:00 - 11:00 p.m.; return travel 11:00 - 12:00 midnight. Scheduled duty 7:00 a.m. - 3:00 p.m.

Effect of law: The employee was on duty a total of 12 hours (8+1+3). Return travel from Trouble call 1 was limbo time. The hour of return travel from Trouble call 2, the last trouble call of the duty tour, is credited toward the required off-duty period of 8 hours. Therefore, the employee was available to commence the scheduled work day at 7:00 a.m. the next morning (the beginning of a new 24-hour period).

Example 2.73

Facts: Scheduled duty, 7:00 a.m. - 3:00 p.m. Trouble call 1, 4:30 - 5:30 p.m.; return travel 5:30 - 6:00 p.m.; Trouble call 2, 8:00 - 10:30; return travel 10:30 - 12:00 midnight. Scheduled duty, 7:00 a.m. - 3:00 p.m.

Effect of law: The last 60 minutes of return travel from Trouble call 2 is credited toward the 8-hour off-duty period necessary to make the employee available for the regular work day beginning at 7:00 a.m. the next morning. That is, the employee is considered off duty effective 11:00 p.m.

Example 2.74

Facts: Scheduled duty, 7:00 a.m. - 3:00 p.m. Trouble call 1, 7:00 - 8:30 p.m.; return travel 8:30 - 9:00 p.m.; trouble call 2, 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 (8+4). The period of return travel

from trouble call 1 was not followed by a recognized period of rest of at least 30 minutes. The practical effect of the trip from the work site to the residence was merely to position the employee for the second trouble call (i.e., the employee was essentially on a continuous journey between trouble calls). The on-duty period that started on receipt of the first trouble call continued without interruption through 11:00 p.m.

Example 2.81

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

Effect of law: The employee must be released for 8 full hours not later than 7:00 a.m., even though total on-duty time will then total only 14 hours (8+2+4). The 24-hour period that began at 7:00 a.m. the previous morning will have expired, and the emergency provision does not waive the requirement that an 8-hour release be provided at the expiration of that 24-hour period.