



U.S. Department
of Transportation

Federal Railroad
Administration

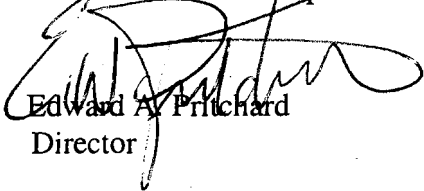
Office of Safety Assurance and Compliance

Memorandum

Date: **AUG 16 2005**

Reply to Attn of: **OP-05-01**

Subject: **Hours of Service Interpretations**

From: 
Edward A. Pritchard
Director

To: **Regional Administrators**

Attached is Operating Practices Technical Bulletin OP-05-01. The attached bulletin contains two recent FRA Chief Counsel letters. These letters respond to 18 questions from the United Transportation Union requesting the agency's application of the Federal hours of service laws relating to specific Yardmaster duties.

This technical bulletin is also Operating Practices Agency Interpretation OPAI-05-01 which 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 Railroad Association.

FRA Inspectors are to utilize the contents of this bulletin as guidance in their inspection and compliance-assurance efforts. Please distribute to Deputy Regional Administrators, Operating Practices Specialists, Chief Inspectors, Operating Practices Inspectors/Trainees, and State Participation partners within your region. Regional OP Specialists have the responsibility for ensuring regional OP technical personnel are familiar with this technical bulletin.

Technical Bulletins and Agency Interpretations may be issued simultaneously. Technical Bulletins are for internal FRA use and may contain enforcement guidelines. Agency Interpretations are primarily designed for external customers. Regional personnel should distribute copies of Agency Interpretations to local railroad managers and labor.

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Attachment



U.S. Department
of Transportation

**Federal Railroad
Administration**

1120 Vermont Ave., N.W.
Washington, D.C. 20590

JUN 10 2005

Mr. James R. Cumby
Vice President, United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

I write in response to your letter seeking FRA's position regarding the application of the Hours of Service Law, 49 U.S.C. §§ 21101 *et. seq.*, (HSL) to yardmasters. In your letter, you asked eighteen (18) specific questions about various duties, and whether they would bring a yardmaster performing them within the coverage of the HSL. I will address many of the fact patterns that you asked about in this letter, and will send a second letter to address the rest on Monday. In addition, the most recent Operating Practices Technical Bulletin (OP-04-27) and Operating Practices Safety Advisory (OPSA-96-03) relevant to these issues, revised February 3, 2004, is enclosed for your reference.

As you are aware, the HSL contains substantive provisions applicable to "train employees" (49 U.S.C. § 21103), "signal service employees" (49 U.S.C. § 21104) and "dispatching service employees." (49 U.S.C. § 21105). These employees are defined in the HSL as follows:

A "train employee" is defined as "an individual engaged in or connected with the movement of a train, including a hostler." 49 U.S.C. § 21101 (5).

A "signal service employee" is defined as "an individual employed by a railroad carrier who is engaged in installing repairing or maintaining signal systems." 49 U.S.C. § 21101(4).

A "dispatching service employee" is defined under the statute as "an operator, 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." 49 U.S.C. § 21101(2).

As these definitions illustrate, FRA takes a functional approach in its application of the HSL, meaning that it is the nature of the work performed by an employee, rather than the employee's job title, that determines whether that employee is subject to the provisions of the HSL. Therefore, as the technical bulletin makes clear, Yardmasters may be performing covered service as train employees or as dispatching service employees, or may not be performing covered service depending on the function they are performing. However, if a Yardmaster engages in one or more covered service activities

in a 24-hour period, his time spent performing other duties for the carrier is also considered time on duty for the purposes of the HSL, and when added to the time spent in covered service, it may not exceed the maximum time allowed under the relevant provision of the HSL. See 49 U.S.C. §§ 21103(b)(3); 21104(b)(2); and 21105(c).

Yardmasters who perform covered service within the definition of a train employee are limited to a total time on duty of 12 hours in a 24-hour period, with a minimum required off-duty period of 8 hours after less than 12 hours on duty, and 10 hours after 12 consecutive hours on duty. 49 U.S.C. 21103(a). Yardmasters who perform covered service within the definition of a dispatching service employee have a maximum time on duty of 9 hours in a 24-hour period at a location where at least 2 shifts are employed, and 12 hours where only one shift is employed. 49 U.S.C. § 21105(b). If a yardmaster performs covered service under more than one provision of the HSL in the same 24-hour period, the most restrictive provision applies.

Now, turning to the various situations described in your letter, the provisions discussed above will determine in each instance, whether the Yardmasters involved are performing covered service under the HSL, and if they are performing covered service, which provision of the HSL limits their time on duty.

1. Yardmaster who issues track warrants.

A Yardmaster who issues a track warrant is delivering an order related to or affecting train movement, which is within the definition of a dispatching service employee. See 49 U.S.C. § 21101(2). Thus, a Yardmaster performing this function would be subject to the limitations in the HSL for dispatching service employees. See 49 U.S.C. § 21105. He would be limited to a maximum on duty period of 9 hours in any 24-hour period if two or more shifts are employed, and 12 hours if there is only one shift. See also Numbered paragraph 4, on page 2 of the enclosed technical bulletin, which sets forth FRA's position that communication of track warrants is covered service under the HSL, subject to the requirements of 49 U.S.C. § 21105.

2. Yardmasters who issue and communicate mandatory directives that affect the movement of a train.

All train orders are mandatory directives. However, not all mandatory directives are train orders for the purposes of the HSL. Communication of mandatory directives affecting the movement of a train is an activity that would bring a Yardmaster within the restrictions of 49 U.S.C. § 21105 governing dispatching service employees. The definition of dispatching service employee includes anyone who dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements." See 49 U.S.C. § 21101(2). While some mandatory directives might not come within this category, those affecting the movement of a train are the functions of a dispatching service employee, and a Yardmaster involved in this activity would be limited to a maximum on duty period of 9 hours in any 24-hour period if two or more shifts are employed, and 12 hours if there is only one shift. See 49 U.S.C. § 21105(b). See also

Numbered paragraph 4, on page 2 of the enclosed technical bulletin, which sets forth FRA's position that communication of orders affecting train movement is covered service under the HSL, subject to the requirements of 49 U.S.C. § 21105.

5. Yardmasters requesting train orders, sending or faxing to T & E crews.

Yardmasters who request, send or fax train orders to train crews are usually not transmitting orders to the train crew, which is within the definition of a dispatching service employee. See 49 U.S.C. § 21101(2). As such, the Yardmaster performing these activities would not be performing covered service under the HSL subject to the limitations of 49 U.S.C. § 21105. However, see also p. 2 of the enclosed technical bulletin, in which FRA explained that if the Yardmaster is involved in creating or relaying orders to the train crew, he is functionally involved in the communication of train orders and is therefore performing covered service

6. Yardmasters ordering or printing train orders, securing off printer for T & E crews.

As noted above, a dispatching service employee for the purposes of the HSL is an employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements." 49 U.S.C. § 21101(2). In this instance, the Yardmaster would not be doing any of these things, and therefore would not be performing covered service under the HSL. FRA addressed this issue on p.2 of the enclosed technical bulletin, indicating that a Yardmaster is performing covered service as a dispatching service employee when he is functionally involved in the communication of orders affecting the movement of a train, and that removal of an order from a printer or fax machine and delivering it to an addressed crew member is not covered service.

7. Yardmasters protecting zones, RCO Foreman quits for the day, gives the zone to the Yardmaster – it's never deactivated and when the next RCO foreman comes on duty Yardmaster passes the activated zone.

If a Yardmaster retains control of an active zone for remote control operations between shifts of RCO operations, the application of the HSL depends on what the Yardmaster permits to occur in the zone. Simply having control of the zone does not constitute covered service, unless the Yardmaster issues orders affecting train movements into or within the zone.

8. Yardmaster handling control points, handling automatic or computer controlled switches.

The repositioning of switches, whether remotely or manually, is an activity "engaged in or connected with the movement of a train" which brings the Yardmaster within the definition of a "train employee." See 49 U.S.C. § 21101(5). As such, he is subject to the limitations of the provision of the HSL applicable to train employees. See 49 U.S.C. § 21103. Thus, they are limited to a total time on duty of 12 hours in a 24-hour

period, with a minimum required off-duty period of 8 hours after less than 12 hours on duty, and 10 hours after 12 consecutive hours on duty. 49 U.S.C. 21103(a). However, if both main track switches and signals are remotely controlled by the Yardmaster, then the dispatching service employee restrictions of 49 U.S.C. § 21105 apply instead, because controlling signals is a dispatching service employee function, rather than a function of a train employee engaged in or connected with the movement of a particular train. FRA's position on this issue is also explained on page 1 of the enclosed technical bulletin, and particularly numbered paragraph 1 and the accompanying note.

9. When yardmasters are covered by a 12 hour hours of service restriction, how does the 15 minutes turnover affect the Hours of Service Law?

When a Yardmaster performs functions that cause him to be restricted to 12 hours total time on duty under the HSL, the 15 minutes turnover time between Yardmaster shifts must be counted as part of that total time on duty. If a Yardmaster worked 12 hours and then remained for the turnover an additional 15 minutes, the total time on duty would exceed 12 hours and this would constitute excess service in violation of the HSL, for which FRA could potentially take enforcement action.

11. Yardmasters assisting crews, such as watching shoves, EOTs, throwing switches, relaying communications and supplanting utility employees.

In most of the activities described above, the Yardmaster functionally becomes a temporary member of the train crew. Activities such as watching shoves and EOTs, throwing switches and supplanting utility employees are activities "engaged in or connected with the movement of a train" which place the Yardmaster within the definition of a train employee. See 49 U.S.C. § 21101(5). Thus, he would be subject to the limitations of the HSL applicable to train employees found in 49 U.S.C. § 21103, and would be limited to a total time on duty of 12 hours in a 24-hour period, with a minimum required off-duty period of 8 hours after less than 12 hours on duty, and 10 hours after 12 consecutive hours on duty. 49 U.S.C. 21103(a). FRA addressed activities of this nature on p. 1 of the enclosed technical bulletin, and particularly in numbered paragraph 2.

However, when a Yardmaster relays communications to the train crew, this function is within the definition of a dispatching service employee. See 49 U.S.C. § 21101(2). In this situation, the Yardmaster would be subject to the limitations of the HSL's provision applicable to dispatching service employees, 49 U.S.C. § 21105. Under this provision, the Yardmaster would be limited to a maximum on duty period of 9 hours in any 24-hour period if two or more shifts are employed, and 12 hours if there is only one shift. FRA explained its position with regard to employees relaying orders, and provided a number of examples on pp. 6-8 of the enclosed technical bulletin. It is unclear from your question which of these fact patterns may come closest to the situation you have in mind, but hopefully these examples will be useful to you.

12. Dispatcher communications are out, Yardmasters relaying communications with crews or dispatchers.

Relaying orders affecting train movement between the dispatcher and the train crew would bring the Yardmaster within the definition of dispatching service employee. See 49 U.S.C. 21101 (2). Therefore, the Yardmaster in this situation would be subject to the limitations of 49 U.S.C. § 21105, governing dispatching service employees. FRA addressed its position with regard to employees relaying orders on p. 6 of the enclosed technical bulletin. There are also a number of examples in the technical bulletin illustrating how this would apply to various employees who might relay orders. The closest example to the one you asked about may be Example No. 3, found on pp. 7-8.

13. Yardmaster causing a switch to be lined either electronically or manually that affects train movements.

Yardmasters causing switches to be lined either electronically or manually are “engaged in or connected with the movement of a train” within the definition of a train employee. See 49 U.S.C. § 21101 (5). The Yardmaster would therefore be subject to the HSL’s restrictions on train employees found in 49 U.S.C. § 21103. However, when both main track switches and signals are repositioned by a Yardmaster, these activities come within the definition of a dispatching service employee. See 49 U.S.C. § 21101(2). In that instance, the dispatching service employee provision of the HSL, 49 U.S.C. § 21105, would apply.

14. Yardmaster duties when protecting tracks for T & E, M of W and mechanical employees.

The application of the HSL to protecting for these groups of employees depends on the means by which they are protected. If he has a control panel, and can either throw a switch or operate a signal to block out a track, the he would be performing covered service subject to the HSL, either as a train employee, or as a dispatching service employee. If the Yardmaster has the ability to control switches, then he would be functioning as a train employee and subject to the limitations of 49 U.S.C. § 21103. If he is able to control signals, then he would be subject to the limitations on a dispatching service employee found in 49 U.S.C. § 21105. However, if the means of protecting the employees are through the use of roadway worker or blue signal protection, then these methods would not be controlled by the Yardmaster and he would not be performing covered service.

15. Yardmasters covered by 9 or 12 hours of service position, what needs to be included in reporting in the hours of service log?

The requirements for the hours of service log depend on which provision of the HSL applies to the covered service involved. If the Yardmaster works only as a dispatching service employee, then he would only need to record 1) prior time off before coming on duty, 2) the time he went on duty, 3) the time he went off duty, and 4) total time on duty. If he worked as a train employee, the recordkeeping requirement is more complex, as he would also need to show each train worked, a relieved time, any

deadheading which may have occurred, and a final release time after any deadheading. If the Yardmaster performs covered service as both a dispatching service employee and a train employee in the same 24 hour period, the most restrictive hours of service limitation, that for dispatching service employees, found in 49 U.S.C. § 21105, would apply. However, the recordkeeping requirements applicable to train employees should also be observed to the extent they applied to his activities.

It is my understanding that Dan Norris of FRA's Office of Safety intends to provide a presentation during your upcoming conferences to assist with this issue. You are also welcome to contact Colleen Brennan of my staff for further information. You will find her telephone number at the end of this letter.

16. Educate our members on proper filling out Hours of Service forms.

Hopefully the answer to the previous question provides some assistance in this regard. Dan Norris will also be available to assist with this during your upcoming conferences, and I understand he will address this issue in his presentation. You are also welcome to contact Colleen Brennan of my staff if you have specific questions.

17. Yardmaster responsible as bridge tender for raising and lowering drawbridges.

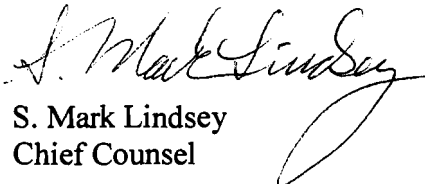
Movement of the bridge itself is not a covered function. The Yardmaster may have to request a signal indication to operate the bridge, but only if he can actually control the signals, and they are not automatically controlled, would he come under the dispatching service employee provision of the HSL, found in 49 U.S.C. § 21105. Additionally, if he can control movement across the bridge, by operating switches or signals, he may be covered as a dispatching service employee subject to 49 U.S.C. § 21105 (if he controls signals) or as a train employee subject to 49 U.S.C. § 21103 (if he controls switches). See p. 5 of the attached technical bulletin for some illustrative examples.

18. Yardmasters that affect the repositioning of switches either remotely or manually that affect train movement.

This question appears to address the same issue raised in question 13 above, and FRA's response would be the same. If you intended to raise a different issue, I would suggest that you contact either Dan Norris or Colleen Brennan for assistance.

Should you have further questions about any of the above, Colleen Brennan of my staff can be reached at (202) 493-6028.

Sincerely,


S. Mark Lindsey
Chief Counsel



U.S. Department
of Transportation

**Federal Railroad
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1120 Vermont Ave., N.W.
Washington, D.C. 20590

JUL 15 2005

Mr. James R. Cumby
Vice President, United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Dear Mr. Cumby:

I write in response to your letter seeking FRA's position regarding the application of the Hours of Service Law, 49 U.S.C. §§ 21101 *et. seq.*, (HSL) to yardmasters. In your letter, you asked eighteen (18) specific questions about various duties, and whether they would bring a yardmaster performing them within the coverage of the HSL. I previously provided a response addressing fifteen (15) of your questions, and the remaining questions are addressed in this letter.

3. Yardmaster's responsibility when issuing 704 authority when operating under Rule 93.

From the context of your question, I assume that when you refer to "Rule 93," you mean the railroad operating rule authorizing trains to enter and occupy main track, which some, but not all, railroads designate as Rule 93. On CSX, for example, this is Rule 193. This rule provides that trains have the authority to enter and move within main track yard limits on signal indication or permission of the dispatcher. There is also a corresponding Federal rule governing such movements. This rule requires that trains be operated at restricted speed. *See* 49 C.F.R. § 218.35. Thus, if a Yardmaster takes the place of a dispatcher in these circumstances, he is granting *permission* to the train to exercise the authority it already has, which is governed by the operating rule. He is not issuing an order "related to or affecting train movements," because the train movements are already governed by the rules. The "704 authority" referred to in your question, is the permission granted to on-track equipment to enter and occupy yard limits. This also does not constitute an order related to or affecting train movements, because the on-track equipment is not a train. Thus, neither of these functions fit within the definition of a dispatching service employee, as the train movements involved are authorized by rule, and not by the Yardmaster. These activities are not covered service under the HSL.

This interpretation is discussed on page 2 of the technical bulletin enclosed with my prior response, in which FRA stated that "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." However, as FRA also noted in the technical bulletin, if a Yardmaster elects to allow a yard movement

against the current of traffic, his instructions would contravene the rule or signal authority and the movement would be authorized based on his instructions. In this circumstance, the instructions would constitute an "order affecting train movement" which would bring him within the definition of a dispatching service employee in 49 U.S.C. § 21101(2), and therefore subject him to the restrictions of 49 U.S.C. § 21105, governing dispatching service employees, meaning that he would be limited to a maximum on duty period of 9 hours in any 24-hour period if two or more shifts are employed, and 12 hours if there is only one shift.

4. Yardmaster who supervises main line trackage covered by Roadway Workers Act.

If the Yardmaster is issuing orders to train crews affecting train movements which are not already authorized by rule or signal indication, then this function would be subject to the HSL limitations on dispatching service employees. He would be limited to a maximum on duty period of 9 hours in any 24-hour period if two or more shifts are employed, and 12 hours if there is only one shift. See 49 U.S.C. § 21105.

However, any instructions issued to roadway workers regarding access to the track would be governed by railroad operating rules, and the requirements of FRA's Roadway Worker Protection regulation, found in 49 C.F.R. Part 214. While roadway workers may be required under those rules to contact the Yardmaster in certain circumstances, he would merely be granting permission for them to use the authority already provided by the applicable rules. These instructions by themselves would not be orders affecting train movement and would not constitute covered service under the HSL, though as discussed above, the orders to train crews affecting train movements would constitute covered service.

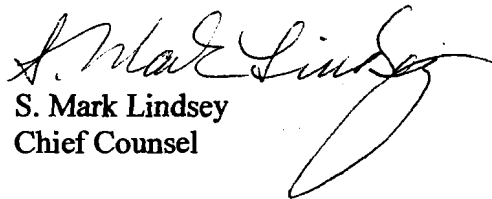
10. Yardmaster providing protection (track & time) within the yard limits on main track operating under Rule 93.

As FRA stated on p. 6 of the technical bulletin enclosed with my prior response, the issuance of track and time authority on main track would normally be an order affecting train movement, within the definition of a dispatching service employee under the HSL. See 49 U.S.C. § 21101(5). However, as was discussed above in response to Question 3, where trains are operating within yard limits and Rule 93 or its equivalent applies, the Yardmaster's instructions do not give the train the authority to operate. That authority is granted by the railroad operating rule and the Federal rule on yard limits, 49 C.F.R., § 218.35. In that instance, as in Question 3 above, the Yardmaster is not performing the function of a dispatching service employee, and is not performing covered service for the purposes of the HSL.

The positions expressed herein constitute FRA's official position on these issues, as do the positions expressed in my June 10, 2005 letter addressing the other yardmaster

questions that you raised. I hope this information is helpful to you. Should you have further questions about any of the above, Colleen Brennan of my staff can be reached at (202) 493-6028.

Sincerely,


S. Mark Lindsey
Chief Counsel