land at Pocahontas Municipal Airport under the provisions of Title 49, U.S.C. 47153(c).

DATES: Comments must be received on or before July 27, 2009.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward N. Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Gary Crocker, Mayor of Pocahontas, at the following address: City of Pocahontas, 410 North Marr, Pocahontas, AR 72455.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Burns, Federal Aviation Administration, Airports Development Office, ASW–630, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pocahontas Municipal Airport.

On June 18, 2009, the FAA determined that the request to release property at Pocahontas Municipal Airport submitted by the City of Pocahontas met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than July 30, 2009.

The following is a brief overview of the request:

The City of Pocahontas requests the release of 5.1 acres of airport property. The release of property will allow Pinnacle Frames, a local manufacturing facility, to improve its existing facilities which are on lands previously released by the Federal Aviation Administration. The release will also allow the airport to receive, in exchange for the 5.1-acres tract, a cash payment in the amount of $25,000.00, which the City will use for a 2010 capital improvement project to construct 1-hangars at Pocahontas Municipal Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pocahontas Municipal Airport.

Issued in Fort Worth, Texas on June 19, 2009.

Lacey D. Spriggs,

Acting Manager, Airports Division.

[FR Doc. E9–15130 Filed 6–25–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. 2009–0057, Notice No. 1]

Interim Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Proposed Interpretation; Request for Public Comment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim statement of agency policy and interpretation; request for public comment.

SUMMARY: In this document FRA informs the public at large of the agency's interim position on certain interpretive questions arising out of the complex and important amendments enacted in 2008 to the Federal railroad safety laws that govern such matters as how long an employee in a certain category may remain on duty and how long the employee must be given off duty before the employee may go on duty again. In addition, FRA proposes an interpretation of one very significant provision of those amended laws that differs from FRA's existing interpretation of the laws before the 2008 amendments. Finally, FRA requests public comment on both the interim interpretations and the proposed interpretation.

DATES: This document is effective on July 16, 2009. Comments on the interim interpretations are due by July 27, 2009. Comments on the proposed interpretation are due by October 26, 2009. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments on the interim interpretations set forth in this document or the proposed interpretation set forth in this document, identified by the docket number FRA–2009–0057, by any of the following methods:

- *Web Site:* The Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this interim statement of agency policy and interpretation and the proposed interpretation. Note that all petitions received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Norris, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6242); or Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background

On October 16, 2008, the Rail Safety Improvement Act of 2008 (RSIA of 2008) was enacted. *See* Public Law 110–432, Div. A, 122 Stat. 4848. Section 108, Hours-of- service reform, of the RSIA of 2008 made important changes to 49 U.S.C. ch. 211, Hours of service, as amended through October 15, 2008 (the old hours of service laws). *See* 122 Stat. 4860–4866. Some of these changes became effective immediately on the date of enactment, and others became effective nine months later, on July 16, 2009. In particular, under section 108(g) of the RSIA of 2008, subsections (d), (e), (f), and (g) of the section became effective on the date of enactment of the RSIA of 2008, and subsections (a), (b), and (c) of the section become effective nine months later, on July 16, 2009. Because of the significance of the amendments to the old hours of service laws made by section 108 of the RSIA of 2008, FRA is publishing this interim statement of agency policy and interpretation to address questions of statutory interpretation that have arisen since their enactment.

Currently, FRA is not addressing the amendments to the old hours of service laws made by section 420 of the RSIA

of 2008, which changed 49 U.S.C. 21106, Limitations on employee sleeping quarters, effective October 16, 2008. Nor is FRA presently revising either appendix A of 49 CFR part 228, which contains FRA's previously published interpretations of the old hours of service laws, known until the 1994 recodification as the Hours of Service Act (*see* Pub. L. 103–272), nor FRA's previously published interpretations concerning the limitations on hours of service of individuals engaged in installing, repairing or maintaining signal systems, an interim statement of agency policy and interpretation at 42 FR 4464 (Jan. 25, 1977). FRA is also not interpreting its recently issued regulations revising its hours of service recordkeeping requirements, published in the **Federal Register** on May 27, 2009 (74 FR 25330).

FRA seeks comment on this interim statement and the proposed interpretation and has sought informal input on many of the interpretive issues addressed in this document through the agency's Railroad Safety Advisory Committee (RSAC). On May 27, 2009, FRA published a regulation, mandated by section 108(f) of the RSIA of 2008, revising the hours of service recordkeeping requirements to support compliance with the hours of service laws as amended by the RSIA of 2008 (the new hours of service laws); to authorize electronic recordkeeping, and reporting of excess service, consistent with appropriate considerations for user interface; and to require training of affected employees and supervisors, including training of employees in the entry of hours of service data. 74 FR 25330, 25345 (May 27, 2009). FRA utilized the RSAC and an RSAC working group (Working Group) in the development of this regulation, and while the task of the Working Group was officially limited to developing the regulatory text related to hours of service recordkeeping, FRA sought the input of the members of the Working Group on the interpretive issues it was considering. FRA also shared with the Working Group its preliminary thoughts on some of the interpretive questions, and FRA's interpretations have been made in consideration of the feedback from the Working Group.

It is FRA's intention that the interpretations provided in this interim statement of agency policy and interpretation will go into effect on July 16, 2009, the effective date of some of the most important substantive changes to the old hours of service laws resulting from the RSIA of 2008. FRA will consider comments received in response to these interim interpretations of the new hours of service laws, and may modify these interpretations based on comments or if experience with the new statutory requirements indicates that a change in interpretation is needed.

However, FRA is specifically seeking comment with regard to one issue to be discussed in this document related to the limitation on hours of both train employees and signal employees, specifically, the beginning of the 24-hour period in which the maximum allowed time on duty and minimum required time off duty are calculated. As will be explained below, FRA proposes to interpret the 24-hour period within which an employee must have had the minimum statutory off-duty period as lying within the 24-hour period during which not more than 12 hours of covered and commingled service may accrue. FRA believes that this new approach, which may be described as ''continuous lookback,'' conforms to the plain meaning of the law, which by its terms prohibits an employee from going or remaining on duty unless the employee has received 10 hours of rest in the prior 24 hours. This would be a significant change from FRA's previously published interpretation. While FRA believes its proposed interpretation is consistent with the statutory language, it is seeking comment as to the effect that this proposed change of interpretation would have on the industry, and, if adopted by FRA, this change in interpretation would not go into effect until FRA has had the opportunity to consider any comments received.

II. Changes in the Old Hours of Service Laws Made by Section 108 of the RSIA of 2008

A. Extending Hours of Service Protections to Employees of Contractors and Subcontractors to Railroads Who Perform Certain Signal-Related Functions

Effective July 16, 2009, section 108(a) of the RSIA of 2008 (Section 108(a)) amends the definition of ''signal employee'', to eliminate the words ''employed by a railroad carrier''. To be codified at 49 U.S.C. 21101(4). With this amendment, employees of contractors or subcontractors to a railroad who are engaged in installing, repairing, or maintaining signal systems (the functions within the definition of signal employee in the old hours of service laws) will be covered by the new hours of service laws, because a signal employee under the new hours of service laws is no longer by definition only a railroad employee.

It should be noted that an employee of a contractor or subcontractor to a railroad who is ''engaged in or connected with the movement of a train'' was considered a ''train employee'' under the old hours of service laws and continues to be considered a train employee under the new hours of service laws. 49 U.S.C. 21101(5). Likewise, an employee of a contractor or subcontractor to a railroad who ''by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements'' was considered a ''dispatching service employee'' under the old hours of service laws and continues to be considered a ''dispatching service employee'' under the new hours of service laws. 49 U.S.C. 21101(2).

B. Changing Hours of Service Requirements Related to Train Employees

Section 108(b) of the RSIA of 2008 (Section 108(b)) amends the old hours of service requirements for train employees in many ways, all of which amendments are effective July 16, 2009, except with respect to train employees providing commuter or intercity passenger rail service, whom section 108(d) of the RSIA of 2008 makes subject initially to the old hours of service laws and then to regulations if issued timely and, if not, to the new hours of service laws. To be codified at 49 U.S.C. 21103 and 21102, respectively. (*See* further discussion of the exception in this II.B, below.) Section 108(b) limits train employees to 276 hours of time on-duty, awaiting or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier per calendar month. To be codified at 49 U.S.C. 21103(a)(1). The provision retains the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 hours consecutive hours during the prior 24-hour period. To be codified at 49 U.S.C. 21103(a)(2), (3).

Section 108(b) also requires that after an employee initiates an on-duty period each day for six consecutive days, the employee must receive at least 48 consecutive hours off duty at the employee's home terminal, during which the employee is unavailable for any service for any railroad; except that if the sixth on-duty period ends at a location other than the home terminal, the employee may initiate an on-duty period for a seventh consecutive day, but must then receive at least 72 consecutive hours off duty at the employee's home terminal, during

which time the employee is unavailable for any service for any railroad. To be codified at 49 U.S.C. 21103(a)(4).

Section 108(b) further provides that employees may also initiate an on-duty period for a seventh consecutive day and receive 72 consecutive hours off duty if such schedules are provided for in existing collective bargaining agreements for a period of 18 months, or after 18 months by collective bargaining agreements entered into during that period, or a pilot program that is either authorized by collective bargaining agreement, or related to work rest cycles under section 21108 of the new hours of service laws. To be codified at 49 U.S.C. 21103(a)(4).

Section 108(b) also provides that the Secretary may waive the requirements of 48 and 72 consecutive hours off duty if the procedures of 49 U.S.C. 20103 are followed, if a collective bargaining agreement provides a different arrangement that the Secretary determines is in the public interest and consistent with safety. *Id.*

Section 108(b) also significantly changes the old hours of service requirements for train employees by establishing for the first time a limitation on the amount of time an employee may spend awaiting and in deadhead transportation. To be codified at 49 U.S.C. 21103(c)(1). In particular, a railroad may not require or allow an employee to exceed 40 hours per month awaiting or in deadhead transportation from duty that is neither time on duty nor time off duty from the July 16, 2009 effective date of the provision through October 15, 2009,[1] with that number decreasing to 30 hours per employee per month beginning October 16, 2009, except in certain situations. These monthly limits do not apply if the train carrying the employee is directly delayed by casualty, accident, act of God, derailment, major equipment failure that keeps the train from moving forward, or other delay from unforeseeable cause. To be codified at 49 U.S.C. 21103(c)(2). Railroads are required to report to the Secretary all instances in which these limitations are exceeded. To be codified at 49 U.S.C. 21103(c)(3). In addition, the railroad is required to provide the train employee with additional time off duty equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours. To be codified at 49 U.S.C. 21103(c)(4).

[1] The language of Section 108(b) must be read in conjunction with the language of Section 108(g), which provides that Section 108(b) becomes effective on July 16, 2009.

Finally, Section 108(b) restricts communication with train employees except in case of emergency during the minimum off-duty period, statutory periods of interim release, and periods of additional rest required equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours. To be codified at 49 U.S.C. 21103(e). However, the Secretary may waive this provision for train employees of commuter or intercity passenger railroads if the Secretary determines that a waiver would not reduce safety and is necessary to efficiency and on time performance. *Id.*

However, as was alluded to earlier, section 108(d) of the RSIA of 2008 (Section 108(d)), which became effective on October 16, 2008, provides that the requirements described above for train employees will not go into effect on July 16, 2009, for train employees of commuter and intercity passenger railroads. 49 U.S.C. 21102(c). Section 108(d) provides the Secretary with the authority to issue hours of service rules and orders applicable to these train employees, which may be different than the statute applied to other train employees. 49 U.S.C. 21109(b). Section 108(d) further provides that these train employees who provide commuter or intercity passenger rail service will continue to be governed by the old hours of service laws (as they existed immediately prior to the enactment of the RSIA of 2008) until the effective date of regulations promulgated by the Secretary. 49 U.S.C. 21102(c). However, if no new regulations have been promulgated before October 16, 2011, the provisions of Section 108(b) would be extended to these employees at that time. *Id.*

C. Changing Hours of Service Requirements Related to Signal Employees

Section 108(c) of the RSIA of 2008 (Section 108(c)) amends the hours of service requirements for signal employees in a number of ways, effective July 16, 2009. To be codified at 49 U.S.C. 21104. As was noted above, by amending the definition of ''signal employee,'' Section 108(a) extends the reach of the substantive requirements of Section 108(c) to a contractor or subcontractor to a railroad carrier and its officers and agents. To be codified at 49 U.S.C. 21101(4). In addition, as Section 108(b) does for train employees, Section 108(c) retains for signal employees the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 hours consecutive hours during the prior 24-hour period. To be codified at 49 U.S.C. 21104(a)(1), (2). Further, Section 108(c) deletes the prohibition in the old hours of service laws at 49 U.S.C. 21104(a)(2)(C) against requiring or allowing a signal employee to remain or go on duty ''after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.''

Section 108(c) also eliminates language in the old hours of service laws stating that last hour of signal employee's return from final trouble call is time off duty, and defines ''emergency situations'' in which the new hours of service laws permits signal employees to work additional hours not to include routine repairs, maintenance, or inspection. To be codified at 49 U.S.C. 21104(b), (c).

Section 108(c) also contains language virtually identical to that in Section 108(b) for train employees, prohibiting railroad communication with signal employees during off-duty periods except for in an emergency situation. To be codified at 49 U.S.C. 21104(d).

Finally, Section 108(c) provides that the hours of service, duty hours, and rest periods of signal employees are governed exclusively by the new hours of service laws, and that signal employees operating motor vehicles are not subject to other hours of service, duty hours, or rest period rules besides FRA's. To be codified at 49 U.S.C. 21104(e).

The requirements of the old hours of service laws for dispatching service employees (49 U.S.C. 21105) were not modified by the RSIA of 2008.

III. Proposed Change in Interpretation of Prohibition Against a Train or Signal Employee Being on Duty Without Having Had a Minimum Number of Hours Off Duty During the Prior 24 Hours; Proposed Interpretation of That Prohibition in Context of New Prohibition Against Communication With Train and Signal Employees; and Request for Comments

A. Questions Presented and Short Answers

1. Must the Full 10-Hour Period of Uninterrupted Rest Fall Wholly Within the 24-Hour Period During Which Covered Service May Be Performed?

Short Answer: No, if FRA applies to the new 10-hour statutory provision the agency's longstanding interpretation of the old 8-hour statutory provision, the 10-hour uninterrupted rest period would not diminish the 24-hour period

during which covered service may be performed.

Yes, if FRA adopts its proposed interpretation of the new 10-hour statutory provision, which would require that the full 10-hour undisturbed off-duty period occupy 10 hours of the 24-hour period during which covered service may be performed.

2. Is the 10-Hour Period of Undisturbed Rest for Train Employees and Signal Employees Required To Be Provided Immediately After the Employee Goes Off Duty—Meaning That if the Off-Duty Period Continues Beyond 10 Hours, the Railroad May Communicate With the Employee After the First 10 Hours Off Duty?

Short Answer: Yes, if FRA applies to the new 10-hour statutory provision the agency's longstanding interpretation of the old 8-hour statutory provision, then the 10-hour period of undisturbed rest may be given immediately after the employee goes off duty, and the railroad may communicate with the employee after the first 10 hours off duty.

Not necessarily, if FRA adopts its proposed interpretation of the 10-hour statutory provision, because for the railroad to maximize the work window during which a train or signal employee may be on duty to a 14-hour period, the railroad must give notice of the employee's next reporting time before the employee begins the 10-hour rest period.

B. The Old 8-Hour Rest Requirement and the Treatment of Calls To Report for Duty

1. The Old Statutory Language Establishing the 8-Hour Rest Requirement

Section 21103(a)(1) of title 49, U.S.C., in effect through July 15, 2009, reads as follows: ''Except as provided in subsection (c) of this section [pertaining to emergencies], a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty * * * unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours.''

Section 21104(a)(2)(A) of title 49, U.S.C., in effect through July 15, 2009, provides the identical requirement for signal employees.[2]

[2] In addition, section 21104(a)(2)(C) of title 49, U.S.C., provides that a railroad carrier, its officers and agents may not require or allow a signal employee to remain or go on duty ''after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.''

2. FRA's Existing, Previously Published Interpretation of the 8-Hour Requirement

The existing interpretation of the equivalent provision for train employees in the Hours of Service Act [3] reads as follows:

Limitations on Hours. The Act establishes two limitations on hours of service. First, no employee engaged in train or engine service may be required or permitted to work in excess of twelve consecutive hours. After working a full twelve consecutive hours, an employee must be given at least ten consecutive hours off duty before being permitted to return to work.

Second, no employee engaged in train or engine service may be required or permitted to continue on duty or go on duty unless he has had at least eight consecutive hours off duty within the preceding twenty-four hours. This latter limitation, when read in conjunction with the requirements with respect to computation of duty time (discussed below) results in several conclusions:

(1) When an employee's work tour is broken or interrupted by a valid period of interim release (4 hours or more at a designated terminal), he may return to duty for the balance of the total 12-hour work tour during a 24-hour period.

(2) After completing the 12 hours of broken duty, or at the end of the 24-hour period, whichever occurs first, the employee may not be required or permitted to continue on duty or to go on duty until he has had at least 8 consecutive hours off duty.

(3) The 24-hour period referred to in paragraphs 1 and 2 above shall begin upon the commencement of a work tour by the employee immediately after his having received a statutory off-duty period of 8 or 10 hours as appropriate.

[Emphasis supplied.]

FRA's existing interpretation of the language related to signal employees reads as follows:

LIMITATIONS ON HOURS

No individual employed by a common carrier in installing, repairing or maintaining signal systems may be required or permitted to work in excess of twelve continuous hours, After working twelve continuous hours, an individual must be given at least ten consecutive hours off duty before being permitted to return to work.

[3] Section 2(a) of the Hours of Service Act provided:

It shall be unlawful for any common carrier, its officers or agents, subject to this Act—

''(1) To require or permit an employee, in case such employee shall have been continuously on duty for fourteen hours, to continue on duty or to go on duty until he has had at least ten consecutive hours off duty, except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour duty period shall be reduced to twelve hours; or

''(2) To require or permit an employee to continue on duty or to go on duty when he has not had at least eight consecutive hours off duty during the preceding twenty-four hours.

No individual engaged in covered work may be required or permitted to continue on duty or go on duty unless he has had ''at least eight consecutive hours off duty within the preceding twenty-four hours.'' The clear spirit and intent of the quoted language lead to the conclusions that:

(1) When the time on duty is broken or interrupted by off-duty periods of less than 8 consecutive hours, the individual may be on duty up to a maximum of 12 hours during a 24 hour period, so long as such individual has had a statutory off-duty period of at least 8 or 10 consecutive hours immediately prior to reporting for work.

(2) After completing the 12 hours of broken duty, or at the end of, the 24 hour period, whichever occurs first, the employee may not be required or permitted to continue on duty or to go on duty until he has had at least 8 consecutive hours off duty.

(3) The 24-hour period referred to in paragraphs 1 and 2 above shall begin when an employee reports for work immediately after his having had a statutory off-duty period of 8 or 10 hours.

42 FR 4464, 4466 (Jan. 25, 1977).

3. Discussion of FRA's Current Interpretation of the 8–Hour Rest Provision and Calls To Report to Duty

Under the old hours of service laws, and the current FRA interpretations, as cited above, a 24-hour period begins when an employee reports for duty. At the instant that the employee reports for duty, FRA looks back at the 24-hour period before the employee reported for duty to see that the employee had at least 8 consecutive hours off (or 10 consecutive hours off if the employee worked 12 consecutive hours) following the prior duty assignment. If so, then the employee has a maximum of 12 hours to work in the next 24 hours, and must get 8 or 10 hours off either after working that 12 hours or at the end of the 24-hour period, whichever occurs first, before going on duty again. After the employee receives a statutory off-duty period (*i.e.,* at least 8 or consecutive 10 hours, whichever is applicable), when the employee next reports for duty, a new 24-hour period begins for the purpose of calculating time on duty, and the requirement of the statutory off-duty period.

Therefore, an employee who works in broken service (*e.g.,* 8 hours on, then 4 hours off, then 4 hours on) just has to get the 8 or 10 hours off somewhere within the 24-hour period before the employee begins the tour of duty. FRA has not required the 8 or 10 hours to be any particular set of hours in the 24-hour period before commencing the current duty tour. If the employee continues off duty after having received at least the minimum statutory off-duty period, the railroad may call the employee repeatedly before the

employee comes on duty. While these contacts would break the continuity of the off-duty period, and might commingle with the next duty tour if the employee does not receive a statutory off-duty period, the calls themselves would not violate the law, once the minimum statutory off-duty period is completed.

Further, a settled FRA interpretation adopted shortly after the 1969 amendments to the Hours of Service Act, with encouragement from the industry parties, has permitted the railroad to address one call to an employee during the rest period for the purpose of advising the employee concerning the place and time that the employee is to appear for the next assignment, without that call being considered an interruption of the required 8- or 10-hour statutory release. (This interpretation is emphatically extinguished for train employees in freight service, beginning on July 16, as result of enactment of a provision in Section 108(b) to be codified at 49 U.S.C. 21103(e). FRA proposes to continue it in effect for train employees in passenger service to maintain the status quo pending further rulemaking, as the Congress intended in enacting, effective October 16, 2008, 49 U.S.C. 21102(c).)

The purpose and effect of FRA's interpretation regarding the issue of 8 consecutive hours off duty within the prior 24 hours were to ease planning by permitting railroads to look forward from the time that the employee reported for work. The interpretation assumed that 8 or 10 hours of rest immediately preceded the time that the employee went on duty, which was ordinarily the case (there having been a single call for the assignment, which by interpretation did not interrupt the period of rest). Where there were multiple calls outside the basic period of rest, they were commingled with subsequent service, so in fact the commencement of the duty tour immediately followed the statutory rest.

As a practical matter, the prior interpretation had little effect on hours worked, since as a practical matter only a highly unusual pattern of broken service (*e.g.,* 4 on, 6 off, 4 on, 6 off, 4 on) could result in work occurring in defiance of the literal language of the law, as the employee would have worked 12 hours in the 24-hour period without ever having 8 hours off duty in the prior 24 hours. This seldom if ever has occurred, and at no time since publication of interpretations in appendix A to 49 CFR part 228 in 1977 has FRA had occasion to question the wisdom of this approach.

C. The New 10–Hour Rest Provision and the Prohibition on Communication During That Rest

1. Overview

Under the hours of service laws as amended by the RSIA of 2008, the minimum statutory off-duty period for train employees and signal employees, for purposes of what will be codified at 49 U.S.C. 21103(a)(3) and 49 U.S.C. 21104(a)(2) is 10 hours, regardless of how many hours are worked and whether service is consecutive or broken, and any interruption of a rest period before its desired duration has been achieved (10 hours for full rest, 4 hours for a train employee's interim release, etc.) restarts the clock for the minimum full rest period because of the new prohibition to be codified at 49 U.S.C. 21103(e) and 21104(d).[4]

2. The Statutory Language of the New 10-Hour Rest Provision

Effective July 16, 2009, the RSIA of 2008 amends 49 U.S.C. 21103(a) to provide, *inter alia,* that ''[e]xcept as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to * * * (3) remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours * * *'' The predecessor provision is 49 U.S.C. 21103(a)(1). The changes made to this predecessor provision are fairly minor: redesignating subsection (c), regarding emergencies, as subsection (d); transferring the phrase ''remain or go on duty'' in the introductory text of the subsection (a) to the beginning of subsection (a)(3); transferring all the language in subsection (a)(1) (''unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours'') to subsection (a)(3); and then changing ''8'' to ''10'' in the minimum off-duty period.

Effective July 16, 2009, the RSIA of 2008 also amends 49 U.S.C. 21104(a) to provide that ''[e]xcept as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty * * * (2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.'' For purposes of this discussion, the changes are minor, the most salient of which are to change ''8'' to ''10'' as the minimum off-duty period.

3. Discussion of Proposed Interpretation of New 10-Hour Rest Provision

FRA is concerned that, as applied to the revised laws, the existing, ''fresh start'' interpretation conflicts with the plain meaning of laws by excluding the 10-hour period from the ''prior 24 hours'' to which the revised statute refers. Although the ''fresh start'' approach may have had some merit to simplify planning under the old hours of service laws, it does not appear to track the purpose or intent of the new, more stringent statute. Accordingly, FRA proposes to enforce the plain meaning of the revised statute, i.e., no train employee or signal employee may be required or permitted to go or remain on duty unless that employee had received at least 10 consecutive hours of rest within any of the 24-hour periods prior to any of the moments in question (*i.e.,* any instant that the employee goes or remains on duty during the duty tour), rather than the one 24- hour period prior to the one moment that the employee commences the duty tour.

This new approach, which may be described as ''continuous lookback,'' conforms to the plain meaning of the law, which by its terms prohibits an employee from going or remaining on duty unless the employee has received 10 hours of rest in the prior 24 hours.[5]

[4] Effective July 16, 2009, section 21103(e) of title 49 U.S.C. will provide as follows:

''Communication During Time Off Duty.—During a train employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.''

Effective July 16, 2009, section 21104(d) of title 49 U.S.C. will provide as follows:

''Communication During Time Off Duty.—During a signal employee's minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.''

[5] Indeed, FRA acknowledged this when issuing its current interpretation, providing, ''A very literal reading of the statute would require that the required 8-hour release period be within the ''preceding twenty-four hours'' described in section 2(a)(2) of the statute * * * in every instance. That

It appears that this interpretation would also best address the acute fatigue of employees working at different times of day and night, by ensuring that their best opportunity for rest, free from interruptions by the railroad, comes just prior to their going back on duty, so that they are well rested when they go to work, and better able to remain reasonably so throughout the duty tour.

There would be practical challenges associated with the continuous lookback approach, and the utilization of employees could be constrained. First, it would be particularly important that crews be scheduled precisely in order to obtain best use of their available time, particularly for extended assignments (*i.e.,* those approaching the maximum 12 hours on duty, or exceeding 12 hours total time on duty when on-duty time is combined with time spent waiting for deadhead transportation or in deadhead transportation to the place of final release). For typical over-the-road assignments, railroads might either have to notify the employee of the time to report 10 or more hours before the time the employee is wanted, so that the last 10 or more hours would be uninterrupted,[6] or else have to call immediately at the conclusion of a known period of rest, providing notice of the next assignment within a short time prior to its beginning. A typical maximum pattern might be a ''2-hour'' call (*i.e.,* a call from the railroad notifying the employee to report for duty 2 hours later), followed by an on-duty period of 12 consecutive hours. This approach would effectively eliminate the possibility of 12 hours of broken service, because the interim period of release would also occur within the 24-hour period. (For example, with a 2-hour call, 8 hours of work, and 4 hours off, any resumption of work would be barred because following the aggregate period of 14 hours (2+8+4) any ''look back'' to find a continuous 10-hour period of release within the prior 24 hours would be futile.) By contrast, lesser periods of aggregate service might be plausible (*e.g.,* a call prior to the 10-hour rest period, 5 hours on duty, 4 hours off duty, 5 hours on duty, allowing a total of 10 hours of on-duty time before the 24-hour duty period would have to end, because an instant later the prior 24-hour period would not include a period of 10 consecutive hours off).

Clearly the means by which ''pool crews'' and ''extra board'' assignments are managed would need to be altered if the railroad wished to get full use of the employee's allowed 12 hours. To accomplish this, among the options available to the railroad would be to tell the employee when to come back before the employee is released from the previous duty tour, or to notify the employee when he or she is about 10 hours out from the next call. If the projected time is later set back, the railroad would need to notify the employee of the setback up to 10 hours before the new time that the employee would need to report, because those next 10 hours would be the uninterrupted rest.

FRA has identified the following positive aspects of the proposed interpretation:

- Appears most faithful to the literal language of the statute.
- The legislative history of the RSIA of 2008 reiterates the statutory language, which has not significantly changed, the literal meaning of which FRA has always believed supports the proposed interpretation.
- Best ensures that meaningful rest closely precedes the period of work, supporting the safety purpose of the laws.
- Creates a strong incentive for employers to plan their operations in such a way that employees can effectively plan their rest.
- Prevents periods of aggregate service potentially extending for up to 24 hours without substantial rest.

FRA has identified the following negative aspects of the proposed interpretation:

- Departs from a settled interpretation, which could require significant training and adjustment in expectations regarding the operation of the law.
- During periods of stress on rail operations, could limit availability of employees and efficiency of operations.
- To the extent that employers notify employees of assignments precisely 10 hours prior to the time for reporting, the rest period could be compromised by the requirement to accomplish travel to the report-for-duty location within the 10 hours.
- Might not produce uniformly positive outcomes in terms of safety (*e.g.,* to the extent that an employee is released from service in the late evening hours, the best time for rest could be immediately, rather than just before the onset of the duty tour).[7]

FRA requests comments on this proposed change in interpretation, including the options for adapting to the interpretation if adopted, the operational difficulties presented by the proposed interpretation, and the circumstances most likely to present such difficulty. FRA asks that those objecting to the proposed interpretation provide their views as to the better interpretation that would satisfy the language and the intent of the statute.

FRA wishes to note that, even under the present interpretation, railroads would not be free to simply provide 10 interrupted hours of rest and then repeatedly set back calls over a long period of time. The current interpretation is that the beginning of the duty tour following statutory rest starts the clock. Statutory rest will now clearly be uninterrupted rest, and so even one call ''busting'' or ''setting back'' an assignment will be commingled with the subsequent service unless a new 10-hour period of rest ensues. Whichever interpretation is finally adopted, railroads will need to do a better job of planning crew utilization.

IV. FRA's Interim Policies and Interpretations of the Hours of Service Laws as Amended by the RSIA of 2008

A. Other Questions Related to the Prohibition on Communication With Train Employees and Signal Employees

These questions apply to sections 108(b)(3) and (c)(4) of the RSIA of 2008, which amend sections 49 U.S.C. 21103 and 49 U.S.C. 21104 effective July 16, 2009, to provide that a railroad carrier or a contractor or subcontractor to a railroad carrier, and its officers and agents, are prohibited from communicating with a train employee or a signal employee by telephone, pager, or in any other manner that could reasonably be expected to disrupt the employee's rest. To be codified at 49 U.S.C. 21103(e) and 21104(d). This prohibition applies during—

- A train employee's or a signal employee's minimum off-duty period of 10 consecutive hours;
- A train employee's period of interim release of at least 4 hours that is available for rest; and
- A train employee's required additional rest, in the amount by which

would mean that broken service would have to be distributed within the remaining 16 hours in every instance. (For instance, 4 hours on duty, 4 hours off duty—the minimum permitted and 4 hours on duty.).'' 42 FR 27594, 27595 (May 31, 1977).

[6] More than 10 hours uninterrupted rest would be required for a train employee if additional rest is required as a result of time spent awaiting or in deadhead transportation after 12 hours on duty. To be codified at 49 U.S.C. 21103(c)(4).

[7] This is a formal concern, but FRA is not persuaded that it is a practical concern, as the employer will have little reason to contact the employee until next assignment is approaching, and the employee's circadian pattern will tend to support quality sleep during the nighttime hours.

the sum of on-duty and limbo time exceeds 12 hours.

The section does not prohibit communication necessary to notify an employee of an emergency situation, and the provision may be waived as to train employees of commuter or intercity passenger railroads if the Secretary determines a waiver will not reduce safety and is necessary to maintain such railroads' efficient operation and on-time performance.

1. Does the Prohibition on Communication With Train Employees and Signal Employees Apply to Every Statutory Off-Duty Period No Matter How Long the Employee Worked?

Yes, except for the 48- or 72-hour rest requirement. This prohibition on communication applies to every off-duty period of at least 10 hours under 49 U.S.C. 21103(a)(3) or 21104(a)(2) and to any additional rest required for a train employee when the sum of on-duty time and limbo time exceeds 12 hours. For train employees it also applies to every lesser off-duty period that qualifies as an interim release.

2. Is the Additional Rest for a Train Employee When On-Duty Time Plus Limbo Time Exceeds 12 Hours Mandatory, or May the Employee Decline It?

The additional rest is mandatory and may not be declined. Alternate proposed versions of the legislation gave the employee the option, but the statute (*i.e.,* the legislation as passed), makes the additional rest mandatory.

3. If an Employee Is Called To Report for Duty, But Then Receives a Call Canceling the Call To Report Before He or She Leaves the Place of Rest, Is a New Period of 10 Uninterrupted Hours Off Duty Required?

If the employee has not left the place of rest, the employee has not accrued on-duty time, and would still be off-duty, with the exception that the time spent in the call could commingle with a future duty tour. However, if FRA adopts the proposed interpretation discussed in section III, above, the railroad's options might be more limited, because the beginning of the uninterrupted rest of 10 hours would continue to serve as the beginning of the 24-hour period within which the employee may be utilized.

4. What If the Call Is Cancelled Just One Minute Before Report-for-Duty Time?

The answer to this scenario is the same as the answer to the preceding question.

5. What If the Employee Was Told Before Going Off Duty To Report at the End of Required Rest (Either 10 Hours or 48 or 72 Hours After Working 6 or 7 Days), and Is Released From That Call Prior to the Report-for-Duty Time?

The answer to this scenario is the same as the answer to the preceding question.

6. Are Text Messages or E-Mail Permitted During the Rest Period?

The employee may not be required to receive any communication of any sort, or to access information of any kind. However, FRA encourages provision of information that can be accessed at the employee's option, especially in the case of unscheduled or uncertain assignments, so that the employee can plan rest. The alerts provided by most devices when an e-mail or text message is received might reasonably be expected to disturb an employee who may be trying to obtain rest. However, an employee might be reluctant to turn the devices off, because that would also prevent their receiving personal messages that they would want to receive even during rest. One solution may be railroad-provided communication devices that can be turned off, so that the employee will not be disturbed, but can access the messages at other times, and will not interfere with personal communication. However, there must be no expectation of a response during the uninterrupted rest period.

7. May the Railroad Return an Employee's Call During the Rest Period Without Violating the Prohibition on Communication?

Yes. If the employee initiated the contact, then the railroad's receipt of the communication from the railroad is voluntary on the part of the employee, and a railroad will not be penalized for responding to an employee's request. However, the content of the communication must be limited to the issue about which the employee called. A call from an employee about one issue does not open the door to unlimited communication on other matters that would otherwise be prohibited.

Railroads may also push data to an employee at a particular time of day selected by the employee, or in a specific situations requested by the employee, such as if an employee requested, for example, to receive information when he or she is a certain number of crews out from being called, provided that (1) the receipt of the information is voluntarily chosen by the employee and is purely for the employee's convenience and (2) the railroad does not require the employee to access this information or respond to it within the period of required uninterrupted rest.

8. May the Railroad Call To Alert an Employee to a Delay (Set Back) or Displacement?

No. The railroad may not call the employee for these purposes during the employee's 10 hours of uninterrupted rest, without violating the prohibition on communicating with the employees. However, the railroad may make the information available by some means by which the employee may voluntarily access it, or would have it available at the conclusion of the uninterrupted rest. The ideal situation would be that if the setback provides sufficient time before the employee would now need to report for duty, the railroad would make the call, and then provide 10 hours of uninterrupted rest before the employee is to report for duty at the new time.

9. If the Railroad Violates the Requirement of Undisturbed Rest, Is the Undisturbed Rest Period Restarted From the Beginning?

Yes.

10. Should Any Violation of Undisturbed Rest Be Documented by an Electronic Record?

Yes. The communication and the time involved in it must be recorded as an activity on the employee's hours of service record, as required by 49 CFR 228.11(b)(9) for train employees and 49 CFR 228.11(e)(9) for signal employees, which provisions become effective on July 16, 2009. For those railroads not participating in electronic recordkeeping, this activity must be captured on their paper records.

11. Is the Additional Rest Required When On-Duty Time Plus Limbo Time Exceeds 12 Hours (During Which Communication With An Employee Is Prohibited) To Be Measured Only in Whole Hours, So That the Additional Rest Requirement Is Not a Factor Until the Total Reaches 13 Hours?

No. Section 108(b)(2) of the RSIA of 2008 requires that when the employees total time on duty, awaiting deadhead transportation, and in deadhead transportation exceeds 12 consecutive hours, the railroad shall provide the employee with additional time off duty ''equal to the number of hours by which such sum exceeds 12 hours.'' FRA believes that it is consistent with the Congressional intent of this provision to interpret a fraction of an hour as a ''number of hours.'' Therefore, the

additional undisturbed time off that an employee must receive includes any fraction of an hour that is in excess of 12 hours.

B. Questions Related to the Requirements Applicable to Train Employees for 48 or 72 Hours Off at the Home Terminal

In particular, these questions involve the requirements that train employees receive—

(1) 48 hours off at their home terminal after initiating an on-duty period on 6 consecutive days,

(2) 72 hours off at their home terminal after initiating an on-duty period on 7 consecutive days, and

(3) 72 hours off at their home terminal after initiating an on-duty period on 6 consecutive days, completing their on-duty time at other than the home terminal, and then working the 7th consecutive day.

Section 108(b)(1) and (g) of the RSIA of 2008, amend 49 U.S.C. 21103(a)(4) effective on July 16, 2009, to provide that—

- In general, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty after the employee has initiated an on-duty period each day for 6 consecutive days unless the employee has had at least 48 consecutive hours (48 hours) off duty at the employee's home terminal during which the employee is unavailable for service for any railroad carrier.
- However, an employee may work a seventh consecutive day if the employee ends the sixth consecutive day at a location other than the employee's home terminal. After that, the employee must be given 72 consecutive hours (72 hours) off duty at the home terminal.
- An employee may also work 7 consecutive days if a collective bargaining agreement or pilot project allows such a schedule.
- If an employee initiates an on-duty period each day for 7 consecutive days, the employee must receive 72 hours off duty at the employee's home terminal, during which the employee is unavailable for service for any railroad carrier.

FRA may waive both the 6-consecutive-day and 7-consecutive-day provisions if a collective bargaining agreement provides for a different arrangement and that arrangement is in the public interest and consistent with railroad safety.

1. Is a ''Day'' a Calendar Day or a 24-Hour Period for the Purposes of This Provision?

Although arguments could be made for either interpretation of this language, FRA interprets this provision as related to initiating an on-duty period on 6 or 7 consecutive calendar days. This interpretation should promote administrative simplicity, and is consistent with what has seemed to be the understanding of the industry.

2. If an Employee is Called for Duty But Does Not Work, Has the Employee Initiated an On-Duty Period? Is There a Call and Release? What if the Employee Has Reported?

If an employee is called to report for duty at a particular time, but is notified of his or her release from that call prior to the time the employee is scheduled to report for duty, then the employee has not accrued any time on duty, and has the full time remaining to work without having to receive another statutory off-duty period. The employee has not initiated an on-duty period. This is true whether or not the employee has yet arrived at the location at which he or she was to report for duty, so long as the employee is notified of the release prior to the time he or she was to report.

However, if the employee reports for duty at the time that he or she is scheduled to report, and then is released at a time after that, the period from the report time until the release time is time on duty, by which amount of time the time remaining for that employee to work before a statutory off-duty period is required must be reduced, and the employee has initiated an on-duty period for the purpose of the 6- or 7-day limitation.

3. Does Deadheading From a Duty Assignment to the Home Terminal for Final Release on the 6th or 7th Day Count as a Day That Triggers the 48-Hour or 72-Hour Rest Period Requirement?

Scenario 1: An employee initiates an on-duty period for five consecutive days. On the next day the employee deadheads from a duty assignment to the place of final release that is the employee's home terminal. Does the deadheading on the 6th day count as initiating an on-duty period so that afterwards the employee is entitled to a minimum of 48 hours off duty?

Analysis of Scenario 1

Deadheading from a duty assignment to a place of final release is neither time on duty, nor time off duty. Therefore, such a deadhead could not itself constitute initiating an additional on-duty period, separate from the one from which the employee was deadheaded.

Similarly, if the deadhead was unconnected to a duty tour, meaning that the employee had received at least a statutory off-duty period before being deadheaded back to the home terminal, the deadhead would still be neither time on duty nor time off duty, and would not constitute initiating an on-duty period.

Therefore, if an employee is deadheaded back to the home terminal on the 6th day, the 48-hour rest requirement would not be triggered by the deadhead transportation, because the employee would not have initiated an on-duty period on 6 consecutive days.

However, if an employee is deadheaded to the home terminal and then performs covered service without having received at least a statutory off-duty period, then the deadhead would be a deadhead to duty, which is time on duty under the statute, and would constitute initiating an on-duty period. In addition, if, after being deadheaded to the home terminal, the employee receives a statutory off-duty period, and then initiates an on-duty period in the same calendar day, the employee will have initiated an on-duty period on a 6th consecutive day.

Scenario 2: An employee initiates an on-duty period for six consecutive days and completes his or her final period of on-duty time at a terminal other than the employee's home terminal. On the next day the employee deadheads from a duty assignment to the place of final release that is the employee's home terminal. Does the deadheading on the 7th day count as initiating an on-duty period or working so that afterwards the employee is entitled to a minimum of 72 hours off duty?

Analysis of Scenario 2

Deadheading from a duty assignment to a place of final release, or deadheading unconnected to the previous duty tour would remain neither time on duty nor time off duty as described in Scenario 1 above. However, the statute provides that an employee may ''work'' a 7th consecutive day, and then receive 72 hours off duty at the home terminal, rather than ''initiate an on-duty period'' on a 7th day, if the 6th day ends at a terminal other than the employee's home terminal. Deadheading is still service for the carrier, so FRA believes it is reasonable to say that the employee ''worked'' a 7th consecutive day back to the home terminal, whether the employee is deadheaded on that day or actually operates a train. An employee

who works a 7th consecutive day to get back to the home terminal must receive at least 72 consecutive hours off duty.

4. Does Attendance at a Mandatory Rules Class or Other Mandatory Activity That Is Not Covered Service But Is Non-Covered Service, Count as Initiating an On-Duty Period on a Day?

No. As in the previous question, the rules class or other mandatory activity is other service for the carrier (non-covered service) that is not time on duty and would not constitute initiating an on-duty period if it is preceded and followed by a statutory off-duty period.

Likewise, if the rules class or other mandatory activity commingled with covered service during either the previous duty tour or the next duty tour after the rules class (because there was not a statutory off-duty period between them), the rules class or other mandatory activity would not itself constitute initiating a separate on-duty period, but would be part of the same on-duty period with which it is commingled.

Therefore, if an employee attends a rules class or performs other service for the carrier that is not covered service and does not count as time on duty, but does not initiate an on-duty period in that calendar day, this breaks the string of consecutive days of initiating an on-duty period for the purposes of this provision.

5. If an Employee Is Marked Up on an Extra Board for 6 Days But Only Works 2 Days Out of the 6, Is the 48-Hour Rest Requirement Triggered?

No. The employee must actually initiate an on-duty period. Being marked up does not accomplish this unless the employee actually reports for duty.

6. If an Employee Initiates an On-Duty Period on 6 Consecutive Days, Ending at an Away-From-Home Terminal and Then Has 28 Hours Off at an Away-From-Home Terminal, May the Employee Work Back to the Home Terminal? The Statute Says That After Initiating an On-Duty Period on 6 Consecutive Days the Employee May Work Back to the Home Terminal on the 7th Day and Then Must Get 72 Hours Off, But What if the Employee Had a Day Off at the Away-From-Home Terminal After the 6th Day?

The answer to this question would depend on whether the 28 hours off resulted in a full calendar day in which the employee did not initiate an on-duty period, before the employee worked back to the home terminal.

The statute says that the employee may work on the 7th day to get back to the home terminal and then must get 72 hours off. If the employee first has at least a full calendar day off at the away-from-home terminal, the consecutiveness is broken, and the employee has neither initiated an on-duty period, nor otherwise worked 7 consecutive days and would not be entitled to 72 hours off after getting back to the home terminal. However, the time off at the away-from-home terminal would not count toward the 48 hours off that the employee must receive after getting back to the home terminal.

If the 28 hours off at the away from home terminal did not result in a full calendar day in which the employee had not initiated an on-duty period, then the consecutiveness would not be broken and the work back to the home terminal would count as a seventh consecutive day, and would require the employee to receive 72 hours off duty at the home terminal. For example, if an employee initiates an on-duty period at 1 a.m., and is released from duty at the away-from-home terminal at 11 a.m., the employee would not have broken the consecutiveness until the next calendar day had ended and the employee had not initiated an on-duty period. That period, in this example, would be 37 hours. If the employee initiated an on-duty period to work back to his or her home terminal after 28 hours off duty, or at 3 p.m. the next day, the employee has not had a complete calendar day in which he or she has not initiated an on-duty period.

7. May an Employee Who Works 6 Consecutive Days Vacation Relief at a ''Temporary Home Terminal'' Work Back to the Regular Home Terminal on the 7th Day?

Yes, the employee may work the seventh day and then receive 72 hours off at the home terminal. FRA believes this is consistent with the statutory purpose of allowing the employee to have the extended rest period at home. To that end, although the statute refers to the home terminal, FRA expects that in areas in which large terminals include many different reporting points at which employees go on and off duty, the railroad would make every effort to return an employee to his or her regular reporting point, so that the rest period is spent at home.

8. Employees Are Not Allowed To Perform ''Any Service for Any Railroad Carrier'' During These Required 48-Hour or 72-Hour Rest Periods. This Language Is Not Applied to Rest Periods Elsewhere in the Statute. Does This Mean That If an Employee Is Employed by More Than One Railroad, Then Employing Railroad A Must Aggregate the Time the Employee Spends Working for Any Other Railroad With the Time the Employee Works for Railroad A?

It will be the responsibility of the railroad to require employees to report any service for another railroad. It will be the responsibility of the employee to report to inform each railroad for which the employee works of its service for another railroad.

The employee will be required to record service for Railroad A on the hours of service record for Railroad B, and vice versa. Service for any railroad other than the railroad whose record is being completed would be recorded as other mandatory service, which occurred between periods of covered service, and would alter the ''prior time off'' indicated on the record. However, FRA will only consider enforcement action where service for another carrier is performed during the required 48 or 72 hours off duty that an employee must receive after initiating an on-duty period for six or 7 consecutive days, because the new hours of service laws do not address service for another carrier during the other required off-duty periods.

Hours of service recordkeeping programs will need to flag prior time off of less than the required 48 or 72 hours off duty when records show the initiation of an on-duty period for 6 or 7 consecutive days.

C. Questions Related to the 276–Hour Monthly Maximum for Train Employees of Time on Duty, Waiting for or Being in Transportation to Final Release, and in Other Mandatory Service for the Carrier

Section 108(b)(1) of the RSIA of 2008 amends 49 U.S.C. 21103(a)(1) effective July 16, 2009 to provide that a railroad carrier and its officers and agents may not require or allow a train employee to—

- Remain or go on duty;
- Wait for deadhead transportation;
- Be in deadhead to final release; or
- Be in any other mandatory service for the carrier—

in any calendar month in which the employee has spent a total of 276 hours—

- On duty;
- Waiting for deadhead or in deadhead from duty to final release; or

• In any other mandatory service for the carrier.

1. If an Employee Reaches or Exceeds 276 Hours for the Calendar Month During a Trip That Ends at the Employee's Away-From-Home Terminal, May the Railroad Deadhead the Employee Home During That Month?

The literal language of the statute might seem to prohibit deadheading an employee who has already reached or exceeded the 276-hour monthly maximum, because time spent in deadhead transportation to final release is part of the time to be calculated toward the 276-hour maximum, and one of the activities not allowed after the employee reaches 276 hours. However, the intent of the statute seems to favor providing extended periods of rest at the home terminal. Therefore, in most cases, FRA would allow the railroad to deadhead the employee home in this circumstance, rather than requiring the employee to remain at an away-from-home terminal until the end of the month.

FRA expects the railroad to make every effort to plan an employee's work so that this situation would not regularly arise, and FRA reserves the right to take enforcement action if a pattern of abuse is apparent.

2. How Will FRA Apply the 276-Hour Cap to Employees Who Only Occasionally Perform Covered Service as a Train Employee, But Whose Hours, When Combined With Their Regular Shifts in Non-Covered Service, Would Exceed 276 Hours?

This provision in the RSIA of 2008 does not specifically provide any flexibility for employees who only occasionally perform covered service as a train employee. Such employees would still be required, as they are now, to complete an hours of service record for every 24-hour period in which the employee performed covered service, and the employee's hours will continue to be limited as required by the statute for that 24-hour period. *See* 74 FR 25330, 25348 (May 27, 2009), to be codified at 49 CFR 228.11(a), effective July 16, 2009.

FRA will likely exercise some discretion in enforcing the 276-hour monthly limitation with regard to employees whose primary job is not to perform covered service as a train employee, as most of the hours for such employees would be comprised of the hours spent in the employee's regular ''non-covered service'' position, which hours are not otherwise subject to the limitations of the statute. However, FRA will enforce the 276-hour limitation with regard to such employees if there is a perception that a railroad is abusing it.

3. Does the 276–Hour Count Reset at Midnight on the First Day of a New Month?

Yes. The statute refers to a calendar month, so when the month changes, the count resets immediately, as in the following example:

Employee goes on duty at 6 PM on the last day of the month, having previously accumulated 270 hours for that calendar month. By midnight, when the month changes, he has worked an additional 6 hours, for a total of 276 hours. The remaining hours of this duty tour occur in the new month and begin the count toward the 276-hour maximum for that month, so the railroad is not in violation for allowing the employee to continue to work.

4. May an Employee Accept a Call To Report for Duty When He or She Knows There Are Not Enough Hours Remaining in the Employee's 276-Hour Monthly Limitation To Complete the Assignment or the Duty Tour, and It Is Not the Last Day of the Month, so the Entire Duty Tour Will Be Counted Toward the Total for the Current Month?

It is the responsibility of the railroad to track the hours, so the employee would generally not be in trouble with FRA for accepting the call, absent evidence that the employee deliberately misrepresented his or her availability. The railroad will be in violation of the new hours of service laws if an employee's cumulative monthly total exceeds 276 hours. However, it could be a mitigating factor in some situations if the railroad reasonably believed the employee might be able to complete the assignment before reaching the 276-hour limitation.

• *Scenario 1:* Employee is called for duty with 275 hours already accumulated. It is only the 27th day of the month, so the entire period will be in the current month. It was probably not reasonable to assume that any assignment could be completed in the remaining time.

• *Scenario 2:* Again the 27th day of the month. This time the employee has only accumulated 264 hours toward the 276-hour monthly limitation. In this instance, the railroad may have expected that the employee could complete the covered service and deadhead to the home terminal within the remaining time. If that does not happen, the railroad is in violation, but enforcement discretion or mitigation of any penalties assessed will be considered if the railroad made a reasonable decision.

5. What Activities Constitute ''Other Mandatory Service for the Carrier,'' Which Counts Towards the 276-Hour Monthly Limitation?

FRA recognizes that if every activity in which an employee participates as part of his or her position with the railroad is counted toward the 276-hour monthly maximum, it could significantly limit the ability of both the railroad to use the employee, and the employee to be available for assignments that he or she would wish to take, especially in the final days of a month. This has been raised as a matter of concern since enactment of the RSIA of 2008.

In particular, there are activities that may indirectly benefit a railroad but that are in the first instance necessary for an employee to maintain the status of prepared and qualified to do the work in question. In some cases these activities are compensated in some way, and in some cases not. These activities tend not to be weekly or monthly requirements, but rather activities that occur periodically such as audiograms, vision tests, optional rules refresher classes, and acquisition of security access cards for hazardous materials facilities. Most of these activities can be planned by employees within broad windows to avoid conflicts with work assignments and maintain alertness. Railroads are most often not aware of when the employee will accomplish the activity.

Therefore, for the purposes of this provision, FRA will require that railroads and employees count toward the monthly maximum those activities that the railroad not only requires the employee to perform but also requires the employee to complete immediately or to report at an assigned time and place to complete, without any discretion in scheduling on the part of the employee.

Those activities over which the employee has some discretion and flexibility of scheduling would not be counted for the purposes of the 276-hour provision, because the employee would be able to schedule them when he or she is appropriately rested. FRA expects that railroads will work with their employees as necessary so that they can schedule such activities and still obtain adequate rest before their next assignment.

6. Does Time Spent Documenting Transfer of Hazardous Materials (Transportation Security Administration Requirement) Count Against the 276-Hour Monthly Maximum?

Yes. This example is a specific application of the previous question and response concerning ''other mandatory service for the carrier.'' The activity of documenting the transfer of a hazardous material pursuant to a Transportation Security Administration requirement is mandatory service for the carrier, and a mandatory requirement of the position for employees whose jobs involve this function. Although the requirement is Federal, compliance with it is a normal part of an employee's duty tour, which must be completed as part of the duty tour, and the employee does not have discretion in when and where to complete this requirement. Time spent in fulfilling this requirement is part of the maximum allowed toward the 276-hour monthly maximum.

D. Other Interpretive Questions Related to Section 108 of the RSIA of 2008

1. Do the 40-Hour and 30-Hour Monthly Maximum Limitations on Time Awaiting and in Deadhead Transportation to Final Release Only Apply to Time Awaiting and in Deadhead Transportation After 12 Consecutive Hours on Duty?

Section 108(b) provides that a railroad may not require or allow an employee to exceed 40 hours per month from July 16, 2009, to October 15, 2009, and 30 hours per month on or after October 16, 2009,—

(1) Awaiting deadhead transportation; or

(2) In deadhead transportation from a duty assignment to a place of final release

''following a period of 12 consecutive hours on duty. * * * '' To be codified at 49 U.S.C. 21103(c)(1).

The intent of this provision is to prevent situations in which employees are left waiting on trains for extended periods of time awaiting deadhead transportation, and then in the deadhead transportation. This purpose would be frustrated if none of the limbo time is counted toward the limitation unless the on-duty time for the duty tour is already at or exceeding 12 hours, as an employee who has accumulated 11 hours and 59 minutes in his or her duty tour could be subjected to limitless time awaiting and in deadhead transportation.

FRA will interpret this provision to include all time spent awaiting or in deadhead transportation to a place of final release that occurs more than 12 hours after the beginning of the duty tour, excluding statutory interim periods of release. For example, if an employee is on duty for 11 hours 30 minutes, and then spends an additional 3 hours awaiting and in deadhead transportation to the point of final release, for a total duty tour of 14 hours and 30 minutes, 2 hours and 30 minutes of the time spent awaiting or in deadhead transportation will be counted toward the 30- or 40-hour monthly limit.

2. Did the RSIA of 2008 Affect Whether a Railroad May Obtain a Waiver of the Provisions of the New Hours of Service Laws?

Yes, but FRA's authority, delegated from the Secretary, to waive provisions of the hours of service laws as amended by the RSIA remains extremely limited. 49 CFR 1.49.

The RSIA of 2008 left intact the longstanding, though limited, waiver authority at 49 U.S.C. 21102(b), which authorizes the exemption of railroads ''having not more than 15 employees covered by'' the hours of service laws:

> After a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

The RSIA of 2008 amended the one other, even narrower waiver provision in the old hours of service laws and added three more equally narrow new waiver provisions. In particular, the RSIA of 2008 revised 49 U.S.C. 21108, Pilot projects, originally enacted in 1994, involving joint petitions for waivers related to pilot projects under 49 U.S.C. 21108, primarily to provide for waivers of the hours of service laws both as in effect on the date of enactment of the RSIA of 2008 and as in effect nine months after the date of enactment. Waivers under this section are intended to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of the hours of service laws, including requirements concerning maximum on-duty and minimum off-duty periods. The Secretary may, after notice and opportunity for comment, approve such waivers for a period not to exceed two years, if the Secretary determines that such a waiver is in the public interest and is consistent with railroad safety. Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the **Federal Register**.

The first of the three new waiver provisions, 49 U.S.C. 21109(e)(2), effective October 16, 2008, authorizes temporary waivers of that section in order ''if necessary, to complete'' a pilot project mandated by that subsection. The second new waiver provision, to be codified at 49 U.S.C. 20103(a)(4), effective July 16, 2009, provides limited authority to grant a waiver of one provision that it adds to the old hours of service laws. That provision is the requirement that an employee receive 48 hours off duty after initiating an on-duty period on 6 consecutive days, 72 hours off duty after initiating an on-duty period on 7 consecutive days, etc. This provision was discussed in section IVB, above. FRA may waive this provision if a collective bargaining agreement provides for a different arrangement and that arrangement is in the public interest and consistent with railroad safety. A railroad or labor organization should submit information regarding schedules allowed under their collective bargaining agreements that would not be permitted under this provision, and supporting evidence for the conclusion that it is in the interest of safety. Of course, a waiver is not needed for a schedule that would not violate this provision. For example, if a schedule provides that an employee works 4 consecutive days and then has one day off, the schedule would not violate the new hours of service laws, because the employee would not have initiated an on-duty period on 6 consecutive days, so 48 hours off duty would not be required.

The third and last new waiver provision authorizes waivers, effective July 16, 2009, of the prohibition on communication during off-duty periods with respect to train employees of commuter or intercity passenger railroads if it is determined that a waiver will not reduce safety and is necessary to maintain such a railroad's efficient operation and on-time performance. This waiver provision is to be codified in the last sentence of 49 U.S.C. 20103(e). It should be noted that petitions for this type of waiver are unlikely because 49 U.S.C. 20102(c) places train employees or commuter or intercity passenger railroads under an ''alternate hours of service regime'' requiring compliance with 49 U.S.C. 20103 before its amendment by the RSIA of 2008 pending timely preparation of regulations, during which time these employees are not subject to

the prohibition on communication during off-duty periods.

Issued in Washington, DC, on June 18, 2009.

Karen J. Rae,

Deputy Administrator.

[FR Doc. E9–15026 Filed 6–23–09; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 27, 2009 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0087.

Type of Review: Revision.

Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.

Description: Bottlers and importers of alcohol beverages must adhere to numerous performance standards for statements made on labels and in advertisements of alcohol beverages. These performance standards include minimum mandatory labeling and advertising statements.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 7,071 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–15029 Filed 6–25–09; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 19, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 27, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1347.

Type of Review: Extension.

Title: FI–7–94 and FI–36–92 (Final) Arbitrage Restrictions on Tax-Exempt Bonds.

Description: The Code limits the ability of State and local government issuers of tax-exempt bonds to earn and/or keep arbitrage profits earned with bond proceeds. This regulation requires recordkeeping of certain interest rate hedges so that the hedges are taken into account in determining those profits.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 42,050 hours.

OMB Number: 1545–1815.

Type of Review: Extension.

Form: 5498–ESA.

Title: Coverdell ESA Contribution Information.

Description: Form 5498–ESA is used by trustees and issuers of Coverdell Education Savings accounts to report contributions made to these accounts to beneficiaries.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 18,000 hours.

OMB Number: 1545–0169.

Type of Review: Extension.

Form: 4461, 4461–A, 4461–B.

Title: Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B.

Description: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 109,125 hours.

OMB Number: 1545–0919.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells (PS–105–75) Final.

Description: The regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estate, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–0202.

Type of Review: Extension.

Form: 5310, 6088.

Title: Form 5310, Application for Determination for Terminating Plan; Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,813,650 hours.

OMB Number: 1545–1233.

Type of Review: Extension.

Title: Adjusted Current Earnings (IA–14–91)(Final).

Description: This regulation affects business and other for profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1545–1120.

Type of Review: Extension.

Title: CO–69–87 and CO–68–87 (Final) Final Regulations Under