



U.S. Department
of Transportation

**Federal Railroad
Administration**

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VIA E-MAIL ONLY

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Mr. Hynes,

I have attached FRA's answers to SMART Transportation Division's HOS Questions and Answers dated April 30, 2021. These answers address the rise in Class I railroads requiring TE&Y employees to transport themselves to/from their train, to/from lodging, and/or any combination thereof. FRA shares SMART Transportation Division's concern regarding this current practice.

I have found several instances where Class I railroads are not interpreting this portion of the Hours Service Law (HSL), correctly. The proper scope and application of this exception allowed under the HSL is very limited. FRA is working diligently with all fellow rail industry shareholders to ensure the safe and compliant application of the HSL.

As always, I greatly appreciated your concern with rail safety,

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Encl
SMART Transportation Division HOS Q&A

Operating a Company Vehicle – as it relates to Hours of Service

Note: All references to a vehicle in the below Q&A are intended to read as a **“company provided vehicle or mandated to drive personal vehicle.”**

1. If a T&E employee is instructed to operate a company vehicle, according to FRA interpretation and application of the statutes and regulations, is that action considered *at the behest of the railroad*? **Yes, and time spent operating the vehicle will be considered time on duty.**

2. At the beginning of a tour-of-duty, can a crewmember be required to drive the crew to a certain location to crew/recrew a train? **In general, whether a railroad can require a crewmember to drive the crew or themselves to a location depends on time on duty. If a railroad does require this, then the time spent driving is considered time on duty and will affect the employee’s time on duty, as described in the specific scenarios below.**
 - a. If so, is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **No mileage consideration or limitation, but the time spent driving will be on duty, and will affect the amount of time the employee has remaining in their duty tour.**

 - b. If so, can the crew be instructed to transport themselves to a certain location to crew/recrew a train prior to initiating the on-duty period (*call time*)? **Not prior to an on-duty period. The on-duty period will begin, and the time on duty will begin to accrue with the time spent driving. The only exception is that a crew at an Away from Home Terminal, can commute up to 30 minutes between lodging and the terminal, not a train, with that time not considered time on duty.**

3. If a T&E employee has ample time remaining for his/her tour-of-duty (meaning not working to the limits of or more than the Hours-of-Service limitations), can a crewmember be required to drive the crew from a train to a terminal? **See response to Question 2 above.**
 - a. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **See response to Question 2 above.**

4. If a T&E employee has ample time remaining for his/her tour-of-duty (meaning not working to the limits of or more than the Hours-of-Service limitations), can a crewmember be

required to drive the crew from a train to a lodging facility? **See response to Question 2 above.**

- a. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **See response to Question 2 above.**
5. If a T&E employee has ample time remaining for his/her tour-of-duty (meaning not working to the limits of or more than the Hours-of-Service limitations), can a crewmember be required to drive the crew from the terminal to the lodging facility? **See response to Question 2 above.**
- a. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **If the crew is still on duty this is a deadhead and there is no mileage consideration, and time is related to the amount of time the employee has remaining in their on-duty tour (commingles). If the crew is off duty this is commuting and limited to a 30-minute window at AFHT.**
 - b. If the train crew expresses their desire to not transport themselves and they are subsequently instructed to do so by the carrier, does this place them under the Hours-of-Service? **Again, if they are on duty this is covered service. If they are off duty this is a commute at AFHT.**
6. If a T&E employee(s) is at or beyond the Hours-of-Service limitations (1159 total time on-duty or greater), can a crewmember be required to drive the crew from a train to a terminal? **No, this is a deadhead and they are performing service at the behest of the railroad. This would be covered service and the time on duty would result in excess service.**
- a. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **No mileage, all time is a deadhead and performing service at the behest (commingles).**
 - b. If the crew was required to transport themselves to the terminal for the purpose of tying-up, as stated directly above, can a crewmember also be required to drive the crew from the terminal to the lodging facility? **Again, after 12 hours, deadhead from train to terminal (commingles), a commute from terminal to lodging (does not commingle) and is acceptable, provided it is less than 30 minutes.**
 - i. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **No mileage factors. Time is as stated above.**

7. If a T&E employee is at or beyond the Hours-of-Service limitations (1159 total time on-duty or greater), can a crewmember be required to drive the crew from a train to a lodging facility? **No; this is a deadhead that would be time on duty, and it commingles with the duty tour, which would result in excess service.**
 - a. Is there a mileage or time component applicable in this instance, and, if so, what is the mileage limitation? **No mileage factors. Time as stated above.**

8. In reference to questions 2 - 7, would all these instances be considered commingled service? **Refer to each individual scenario (question) above.**

9. Can a Train and Engine (T&E) employee(s) be instructed to drive a vehicle that has been deemed to be unsafe for operation and/or is not road worthy (e.g., not compliant with laws or regulations, check engine light is illuminated, crack in the windshield, etc.)? **This is not an FRA HOS issue, other than that the time spent performing a vehicle inspection is at the behest of the carrier and commingles with the duty tour.**
 - a. Will the T&E employee(s) assigned to the vehicle be the authority to determine the vehicle is safe and/or compliant? **Not an FRA HOS issue.**
 - b. If that authority rests with the carrier, does the ordering manager have to be present to make that determination or can they do so from a remote location (whereby they are unable to actually see the vehicle to make a determination)? **Not an FRA HOS issue.**

10. In reference to similar DOT laws, is an employee required to inspect a vehicle for road worthiness prior to operating it? **Not an FRA HOS issue.**
 - a. If a T&E employee has expired under the Hours-of-Service, are they permitted to perform an inspection of the vehicle prior to its operation? **If a vehicle inspection is at the behest of carrier, it commingles, and would result in excess service.**

11. Do commercial vehicle provisions apply when a T&E employee, whom is being compensated for the operation of a vehicle, is transporting other rail employees (also under compensation) for business purposes? **FRA does not administer commercial motor vehicle requirements, and compensation or lack of compensation are not relevant to determining whether a scenario includes covered service.**
 - a. Given all of the above questions, is it permissible for a carrier to instruct a T&E employee, who is being compensated, to drive another employee (whom is also under

compensation) in any of the previous examples? **The determination of whether various scenarios include covered service under the hours of service laws does not depend on whether an employee is driving another employee or just themselves, and do not depend on whether an employee is compensated.**

- i. Is there a limitation to how many employees a T&E employee can be instructed to transport in a vehicle? **Not an FRA HOS issue.**

12. T&E employees will be subject to carrier discipline at all times while in charge of a vehicle. Given that consideration, does that not place them under the provisions of the Hours-of-Service Act? **The application of the hours of service laws does not depend on whether an employee is subject to carrier discipline. In the above questions, some scenarios include employees that are performing covered service or service that commingles, and some do not.**

- a. If not, why? **Employees at Home Terminals or Away from Home Terminals fall under carrier discipline whether they are on duty or off duty; there is no correlation between disciplining and HOS.**
- b. And does that apply equally to a driver and a passenger, or is the driver given different consideration? **FRA is not involved with railroad discipline policies.**

13. Should a T&E employee refuse to operate a vehicle and they are subsequently threatened with discipline or actually assessed discipline, are they then not performing service at the behest of the railroad if forced to operate the vehicle anyway? **There is no correlation between discipline and HOS.**

- a. The FRA's Hours-of-Service mobile app defines *at the behest of the railroad* as:

"At the behest of the railroad refers to time spent by an employee in a railroad-required activity that compels an employee to perform service for the railroad as a condition of employment."

Given that discipline is a component to the instructions regarding the employee's mandatory operation of a vehicle, how, then, is the railroad not compelling the employee to perform service for the railroad as a condition of employment? **Being subject to discipline does not make all periods of time subject to the hours of service laws.**