

**Rail Safety Improvement Act of 2008
Questions & Answers
March 15, 2009**

Section A: General Questions

- Q (1): When do the new Hours of Service rules go into effect?
- A. July 16, 2009, nine months after enactment of the Rail Safety Improvement Act of 2008 (the "Act").
- Q (2): How does the Act cap hours of service per month?
- A. The Act prohibits a carrier from requiring or allowing a train employee to remain on duty, go on duty, wait for deadhead transportation, or be in deadhead transportation from a duty assignment to a place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours either (1) on duty; (2) waiting for deadhead transportation or in deadhead transportation from a duty assignment to a place of final release; or (3) in any other mandatory service for the carrier. A separate cap applies to time spent waiting for or in dead transportation following a period of 12 consecutive hours on duty.
- Q (3): If these provisions go into effect on July 16, 2009, when do the hours begin counting toward the hourly caps? For example, if an employee works 100 hours between July 1 and July 15, do those 100 hours count toward the 276-hour cap for July 2009?
- A. Yes. All time for July 2009 will count toward the provisions going into effect on July 16.
- Q (4): When do the hours counted toward the 276-hour cap and the 40/30-hour limbo cap reset to zero?
- A. The caps reset at midnight on the last day of the month. For example, an employee who has 6 hours left to work under the 276-hour cap can return to work at any time after 6:00 p.m. on the last day of the month. The cap resets to zero at midnight. An employee who reaches the 40/30-hour limbo cap can incur limbo time after 12 consecutive hours on duty if the limbo time occurs after midnight on the last day of the month.

Section B: 276 Hourly Cap

"A railroad carrier and its officers and agents may not require or allow a train employee to remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours [on duty, waiting for or deadheading, any mandatory service for the carrier]."

Q (1): How many employees exceed the 276 hours in a calendar month?

- A. Fewer than 1 percent of BNSF employees typically exceed the 276-hour cap in any given month. For example, in August 2008, 195 employees had 276 or more on-duty hours, out of BNSF's nearly 18,000 Transportation employees. Of those 195 employees, only 24 had consistently exceeded the 276-hour cap during each month in 2008.

Section C: 10 Hours of Consecutive Rest

"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 10 consecutive hours off duty during the prior 24 hours. . ."

Q (1): Does the 10 hours of consecutive rest apply at the home terminal, the away from home terminal (AFHT) and in yard service?

- A. Yes. The Act provides for 10 consecutive hours off duty during the prior 24 hours before an employee is subject to duty.

Q (2): Can crews be turned out of the AFHT with more than 4 hours off, but less than 10 consecutive hours of rest?

- A. Yes. The railroad can notify a crew they will turn out of the terminal after an interim period of at least 4 consecutive hours of rest. All time consumed during the trip to the AFHT and the trip to the home terminal will count as one continuous trip. The interim time spent at the AFHT will not count toward the hours of service. For example, if a crew goes on duty at the home terminal at 8:00 a.m. and ties up back at the home terminal at 9:00 p.m., the crew will have 9 hours toward the hours of service.

Q (3): Can crews be turned out of the AFHT with less than 4 consecutive hours off duty?

- A. Yes. All time consumed between the on-duty time at the home terminal until tie up at the home terminal will count toward the hours of service. For example, if a crew goes on duty at the home terminal at 8:00 a.m., ties up at the AFHT at noon, goes back on duty at 2:00 p.m., and ties up at the home terminal at 8:00 p.m., they will have 12 hours (8:00 a.m. to 8:00 p.m.) toward the hours of service.

Q (4): If an employee's time on-duty plus time spent waiting for or in deadhead transportation exceeds 12 hours, how much additional time off duty will the employee receive?

- A. The employee will receive additional time off duty on a minute-by-minute basis for all time over 12 consecutive hours. For example, an employee who is on duty for 12 hours and then spends 2 hours and 30 minutes in deadhead transportation will receive 12 hours and 30 minutes of undisturbed rest (10 hours + 2 hours and 30 minutes).

Q (5): Can an employee decline the additional rest when on duty plus limbo time exceeds 12 consecutive hours?

A. No.

Section D: Undisturbed Rest

"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."

Q (1): Can a supervisor contact an employee during the 10-hour rest period?

A. Generally, a supervisor shall not communicate with a train employee by telephone, by pager or in any other manner that could reasonably be expected to disrupt the employee during his or her minimum off-duty period of 10 consecutive hours, interim rest at the AFHT or the extended rest period after 12 consecutive hours on duty.

Q (2): Can an employee initiate a call to himself or herself during undisturbed rest? For example, with push technology, can an employee tell the Crew System to automatically send a text message when he or she reaches a selected number of times out on the board?

A. Yes. If the communication is made at the behest of the employee and it does not require action for the carrier, this rest is not considered disturbed.

Q (3): If an employee initiates a call to a supervisor during an undisturbed rest period, can the conversation take place? Or should the supervisor instruct the employee to call back after the rest period expires?

A. The conversation can take place at the time of the call because the employee initiated the call. The conversation should be kept brief and to the point.

Q (4): What if an employee calls an officer or agent and requests a return telephone call? Must the officer wait until the employee's rest period expires before returning the call?

A. No. The prohibition on communication does not apply if the employee requests a return call. If the employee is seeking information and asks a railroad to call, the railroad will not be interfering with the employee's rest as long as the call is brief and does not include other business.

Section E: 48/72 Consecutive Hours Off

"A railroad carrier and its officers and agents may not require a train employee to remain or go on duty after that employee has initiated an on-duty period each day for six consecutive days, unless that employee has had at least 48 consecutive hours off at the employee's home terminal"

and an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal.”

Q (1): The Act refers to starts in consecutive days. What is considered a “day”?

A. A “day” is a calendar day, which runs from 12:01 a.m. to midnight.

Q (2): Does undisturbed rest apply to the entire 48 and 72 consecutive hours off duty?

A. No. The Act only requires that the employee have 10 hours of consecutive rest prior to the next on-duty time.

Q (3): If an employee has five consecutive starts on five consecutive days before July 16 and the sixth consecutive start occurs on July 16, will the employee start the 48 consecutive hours off duty?

A. Yes. If the employee is at the home terminal, the 48 hours off duty will start upon tie up at the home terminal. If the employee is at the AFHT after the sixth consecutive start, the 72 consecutive hours off duty will begin upon tie up at the home terminal.

Q (4): If an employee has a start on four consecutive days, no starts on the fifth day and then has a start on the sixth day, will this employee be considered unavailable for 48 hours?

A. No. The employee did not have six starts on six consecutive days.

Q (5): Can an employee choose to work seven consecutive starts on seven consecutive days?

A. No. An employee can only have a seventh consecutive start if he or she is at the AFHT. If an employee is at the home terminal at the end of the sixth consecutive start, he or she will begin the 48 hours of off-duty time immediately upon tie up.

Q (6): How do multiple on-duty periods on the same day count toward the six starts on six consecutive days?

A. If the on-duty periods are initiated on the same calendar day, they are counted as one start.

Q (7): If an employee is called for service and subsequently released before the on-duty time, does this count as a start toward the six consecutive starts?

A. No. An on-duty period was not initiated.

Q (8): If an employee is called for service and subsequently released after the on-duty time, does this count as a start toward the six consecutive starts?

A. Yes.

Q (9): If an employee has initiated a start on his or her sixth consecutive day, can the employee initiate a second start on the sixth day?

A. No. An employee cannot remain or go on duty out of the home terminal after initiating an on-duty period each day for six consecutive days without first having at least 48 consecutive hours off duty at the home terminal.

Q (10): If an employee who is at the AFHT after making one or more starts on six consecutive calendar days does not receive an on-duty call until the eighth day, does the employee have a break in consecutive days on duty?

A. No. A break in consecutive starts in consecutive days cannot occur if the employee has initiated six starts and is at the AFHT. A break in consecutive starts at the AFHT before obtaining six consecutive starts will reset the counter.

Q (11): Can an employee remain on duty after the expiration of the sixth day following the sixth consecutive start in six days?

A. Yes. The consecutive starts are based on the initiation of an on-duty period. There are no limitations on the length of on-duty time except under the 12, 40/30 and 276-hourly caps.

Q (12): Will a switchman be allowed to double back on the same day?

A. A switchman could double back if the total time on duty is less than 8 hours or the start is early enough in the day to allow for a full 8-hour shift plus 10 hours of undisturbed rest. For example, a switchman who reports at 6:00 a.m. and for some reason has an early tie up at 10:00 a.m. could stand for a second call on that day after the 10-hour undisturbed rest expires at 8:00 p.m. Hours of service are based on actual time worked. Even if an early tie up results in 8 hours of pay, the rest time begins when the employee actually ties up.

Q (13): Is a switchmen allowed to work overtime on his or her days off?

A. Yes, but switchmen who may work six consecutive days (five regularly assigned days plus one overtime day) will not be available to work again for 48 hours. This will result in being unavailable to work the second rest day plus the first day of the regular work week.

Q (14): How is the daily mark system in yard service going to change?

A. Switchmen participating in the daily mark system must have 10 consecutive hours of undisturbed rest between shifts and cannot mark to a job on the following day that has a start time less than 10 hours later.

Section F: 40/30 "Limbo" Time

"A railroad carrier may not require or allow an employee to exceed a total of 40 hours per calendar month spent waiting for deadhead transportation or in deadhead transportation and the

limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by (A) a casualty; (B) an accident; (C) an act of God; (D) a derailment; (E) a major equipment failure that prevents the train from advancing; or (F) a delay resulting from a cause unknown and unforeseeable."

Q (1): Does the Act set a maximum amount of "limbo" time an employee can have each month?

A. Yes. Until October 16, 2009, a carrier may not require or allow an employee to have limbo time in excess of 40 hours per calendar month. After October 16, 2009, the cap is 30 hours per calendar month.

Q (2): If an employee has reached the 40/30 hour cap in the month, can he or she be called for jobs that will work 12 hours or less?

A. The railroad cannot require or allow an employee to exceed the limbo cap, but the employee can be called for service if the job will not work more than 12 hours.

Q (3): Limbo time is technically described as starting when a train crew is relieved from the responsibility of protecting their train, ends when the crew ties up at either their home terminal or AFHT and typically includes the time spent waiting for transportation and being driven to the terminal. Is this the "limbo" time covered by the Act?

A. The only time the Act counts toward the 40/30 maximum is the time in excess of 12 consecutive hours on duty spent waiting for or in deadhead transportation. So the type of limbo time addressed in the Act is more limited than the common definition of limbo time.

Q (4): Are there circumstances where the consecutive on-duty time over 12 hours does not count toward the 40/30-hour cap?

A. Yes. The 40/30 hour cap does not apply if the train carrying the employee is directly delayed by a casualty, an accident, an Act of God, a derailment, a major equipment failure that prevents the train from advancing, or a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.