



RAIL

MOVING AMERICA FORWARD

HSL/228 Review

OPERATING PRACTICES HSL/228 SMEs
W.T. “Bill” Smith and Tim Aardema

HSL (Hours of Service Law) Fine increases as of 04/01/24

<u>Violation Type</u>	<u>Normal</u>	<u>Willful</u>
HOS recordkeeping (paper)	\$2100	\$4100
HOS recordkeeping (EHOS)	\$4100	\$8300
49 USC (HSL)	\$5200	\$10,300
Passenger (228.405/HSL)	\$5200	\$10,300

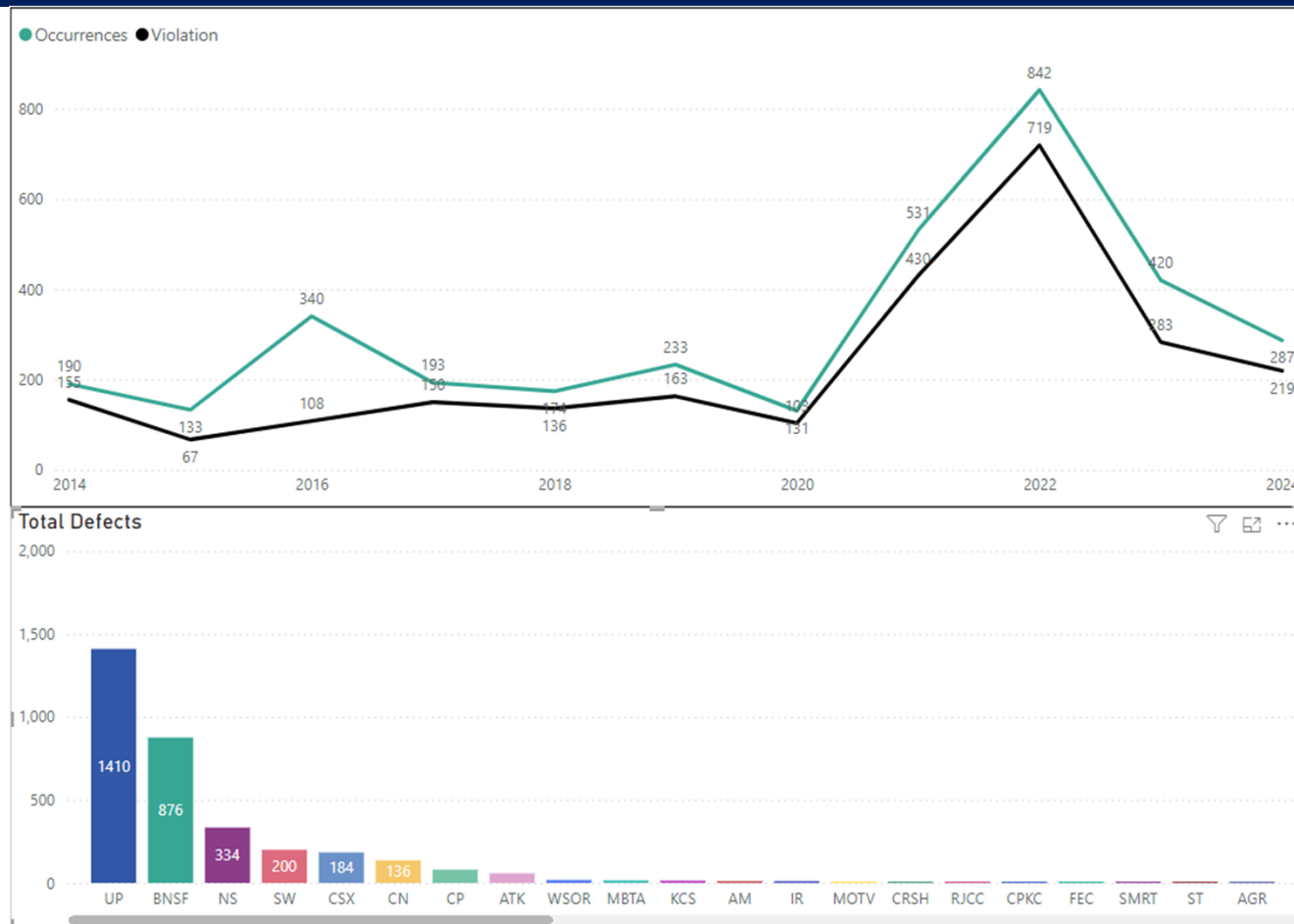
Items Tim, Pat, and I are working on:

- **Change FRA Form 6180.33 (HSL violation form)**
- **Change FRA Form 6180.3 (Excess service form)**
- **Clean up RISPC violation codes**
- **Revise HOS Compliance Manual and APP after all changes made**

HOS Federal Defects/Violations per Year and Railroad

Totals-HSL 2014-2024

- 3,474 Occurrences
- 2,533 Violations
- 941 Defects



HOS Federal Defects/Violations per Year and Source Code B

Totals-Source Code B

- 1,491 Occurrences
- 1,206 Violations
- 285 Defects



Proper RISPC Codes

228 – Is for all HOS recordkeeping, passenger or freight, no matter electronic or paper records.

HSL – Is for all HOS violations involving freight railroads.

228P – Is for all HOS violations involving passenger railroads.

Properly using RISPC Codes and inspection code B

From: City NM/TX STATE LINE		Codes 9948		Destination City & County				Codes		From Latitude			
State NM		35		City BELEN				0100		From Longitude			
County CURRY		C009		County VALENCIA				C061		To Latitude			
Mile Post: From To				Inspection Point BELEN TERMINAL ON CLOVIS SUB						To Longitude			
Activity Code:	HSL	228											
Units:	1	1											
Sub Units:	0	4											

Item	Initials/Milepost	Equipment/Track #	Type/Kind	49 CFR/ USC	Defect	Subrule	Speed	Class	Train #/Site	SNFR*	RCL**	# of Occ.***	Activity Code
1				HSL		21103A2			Q-CHISTO6-29L	N	N	2	HSL

Description

VIOLATION TAKEN: RAILROAD REQUIRED OR ALLOWED A TRAIN EMPLOYEE TO REMAIN ON DUTY OR TO GO ON DUTY FOR A PERIOD IN EXCESS OF 12 CONSECUTIVE HOURS. The crew of the Q-CHISTO6-29L went on duty for 1155 (CST) in Amarillo, TX. The crew of the Q-CHISTO6-29L were instructed to stop their train at Belen, NM at 2240 (MST), approximately 15 minutes prior to their Hours of Service at 2255 (MST). The crew was made to wait for a relief crew that went on duty 2345 (MST), fifty minutes after their Hours of Service. Belen, NM is a final terminal, with multiple yard vans and shuttle crew vans. In these instances, where the railroad requires the train crew to remain on the train when transportation was available, and the crew is at or beyond 12 hours of continuous service in a duty tour. The train employees are not waiting for deadhead transportation, resulting in this time becoming time on duty and the employees exceeding their statutory on duty maximum 12 hours (FRA Technical Bulletin OP-04-30).



Reoccurring HSL noncompliance with ALL railroads(Train Mgmt & Field)

Failure to consult HOS SME's (Railroad's or FRA's)

Reprioritizing limos and crews

Yardmasters/Control Operators

Misinterpreting relief under the "Act of God" provision-NO WAIVERS

Not recording their HOS correctly

Interviewing employees after covered service limit reached

**Not accounting for all service performed by transportation employees
(investigations)**

HSL violations – What we need to process them

On all complaints

- **Train Symbol**
- **On duty date**
- **On duty time**
- **Crew**
- **Relief crew**
- **Relief crew on duty date and time**
- **Limo ordered time and Limo arrival time**

If worked over 12 hours –

- **Who authorized**
- **Radio channel**
- **Lead locomotive number**

Union Pacific willful HSL violation verbiage

(96 only)

FRA personnel have extensively worked with and communicated to Union Pacific Railroad (UP) the Hours of Service Law (HSL) requirements to properly relieve transportation crews upon reaching 12 hours in a covered service assignment. However, despite these repeated efforts, FRA continues to find UP management failing to relieve transportation crews as required.

(Violation 33 and TFR)

FRA personnel have extensively worked with and communicated to Union Pacific Railroad (UP) the Hours of Service Law (HSL) requirements to properly relieve transportation crews upon reaching 12 hours in a covered service assignment. However, despite these repeated efforts, FRA continues to find UP management failing to relieve transportation crews as required. Given this pattern of noncompliance, FRA's Office of Railroad Safety is recommending FRA's Office of the Chief Counsel assess elevated civil penalties (\$10,300) for each alleged violation of the HSL.

Not Properly relieved (Line of road)

Unsecured - Waiting on relief crew

If the relief crew was on duty prior to the crew reaching their HOS and had a limo/van prior to the crew reaching their HOS limit-No Violation

If the relief crew was on duty prior to the crew reaching their HOS and did not have a limo/van prior to the crew reaching their HOS limit-Violation

If a limo/van arrives without a relief crew-Violation

If a relief crew was call to dog catch multiple trains and is working another train, they are not relieving the HOS limited crew-Violation

Secured – Waiting on limo driver

If he was enroute prior to the crew reaching their HOS-No Violation

If he was still performing another call after the crew reached their HOS-Violation

If he was enroute after the crew reached their HOS-Violation

Not Properly relieved (Line of road) (Example)

The crew of the H-ALTBEL1-29A on duty at 1930 were instructed to stop their train at Strawn, TX at 0441, approximately 2 hours and 49 minutes prior to their Hours of Service limit at 0730. The crew was made to wait for a relief crew that went on duty 0830, one hour after their Hours of Service. In these instances, where the railroad requires the train crew to remain on the train when transportation was available, and the crew is at or beyond 12 hours of continuous service in a duty tour. The train employees are not waiting for deadhead transportation, resulting in this time becoming time on duty and the employees exceeding their statutory on duty maximum under 49 USC 21103. FRA is requesting civil penalties be assessed under 49 USC 21103.

Exceeding 276 (Willful Example)

Engineer Griffin was performing service as a pilot on the Longview, TX (TP090) Peer Trainer Board (OE01). He was performing service piloting trains in Shreveport, LA (TS316), 1 hour and 30 minute deadhead from Longview, TX. Engineer Griffin was not afforded away from home lodging or placed on an away from home duty location. Engineer Griffin performed on duty hours of service between 7 am to 7 pm. Including the deadhead from, TP090 or his residence in Texarkana, TX, the to and from service the engineer was accounting for 15 hours toward the 276 monthly maximum each day he performed service. Engineer Griffin performed 15 hour on duty periods for the following month: October - 27 days - 405 hours. Mr. Griffin was allowed to work multiple consecutive on duty periods in excess of 12 hours, accumulating in monthly totals exceeding the 276 hour maximum outlined in 49 USC 21103A1. FRA is civil penalties be assessed for Union Pacific's circumvention and willful failure to comply with the 49 USC 21103A1.

Circuitous Travel

This issue pertains to deadhead transportation from duty to the point of final release via a circuitous route, or with a lengthy delay during the deadhead. Train crews have been required to enter deadhead transportation by riding with maintenance department employees that may stop to perform work while the crew waits. Occasionally, crews have been required to deadhead on trains going the opposite direction from the point of final release to a meeting point with a train going in the desired direction. The crew then changes trains and continues deadheading to the point of final release. These delays in deadhead transportation frequently consume several hours. FRA determined that compliance with the laws requires that railroads must exercise “due diligence” when providing employees the most suitable means of passenger transportation available to the point of final release.

Circuitous Travel (Example)

Crew on the IG1LA-21 on duty 5/24/21 @ 22:07 21 (Eng. JP Shamlin Con. RK Reliford) Crew reached HOS limit at CX801 @ 10:07, waited for relief transportation until 13:00. Crew was transported to yard CX809. Crew then waited for shuttle van at CX809 13:30 to 14:00 for transportation to SP760. Arrived at final terminal destination SP760 at 1600. These extensive delays and circuitous transportation are violation under 49 USC 21103. FRA is seeking a civil penalty for Union Pacific requiring or allowing a train employee to remain on duty for a period in excess of 12 consecutive hours.

Failure to relieve at final terminal

Final terminal locations afford the railroad multiple assets to assist in relieving a crew that has reached their HOS limit. The FRA realizes there are certain challenges reaching a crew located at terminal; roads blocked by trains arriving or departing terminal, obtaining a yard/local limo, and crew swapping. However, with all these factors, FRA would consider it a violation if the crew is not relieved within 20 - 40 minutes after them reaching their HOS limit (This being based on a case by case scenario).

Failure to relieve at final terminal (Example)

The crew of the MMUFW-11 arrived at MP 247 at 0345. The crews Hours of Service concluded at 0445, the crew was not relieved until 0925 by another crew. The MMUFW-11 was located within 5 miles of Davidson Yard and Ney Yard which have numerous crew vans, shuttle crew vans and managers with vehicles. In these instances, where the railroad requires the train crew to remain on the train when transportation was available, and the crew is at or beyond 12 hours of continuous service in a duty tour. The train employees are not waiting for deadhead transportation, resulting in this time becoming time on duty and the employees exceeding their statutory on duty maximum 12 hours. FRA is seeking a civil penalty for Union Pacific requiring or allowing a train employee to remain on duty for a period in excess of 12 consecutive hours.

Consecutive on duty periods without federal rest

After initiating an on-duty period, each day, for 6 or 7 consecutive days, an employee is prohibited from performing covered service as a train employee (freight operations) until receiving 48 or 72 consecutive hours off duty at his or her home terminal, unavailable for any service for any railroad.

It is after a sixth start to the AFHT, the railroad has 24 hours to work the employee back on a 7th start. If not utilized in the 24 hour window after the tie up from the sixth consecutive on duty period, they need to be deadheaded home for 48 hours rest. Working a 7th consecutive on duty period gets them 72 hours off.

An employee who has initiated an on-duty period on 6 or 7 consecutive days may return to perform non-covered service for the railroad before the completion of the 48 or 72 consecutive hours off duty, but the 48 or 72-hour off-duty period must be restarted after the non-covered service.



Consecutive on duty periods without federal rest (Example)

Mr. M.N. Snyder departed his home terminal on his sixth consecutive on duty period on 276-12 RC, he tied up at his Away From Home Terminal (AFHT) prepared to work home on his seventh consecutive start in accordance with the 49 USC 21103A4. The carrier did not work Mr. M.N. Snyder home on a train or deadhead him home during the 24 hours after completing his sixth start. After 24 hours, the carrier utilized Mr. M.N. Snyder to dogcatch at the AFHT on the 2WTR-13 and then instructed him to tie up and remain at the AFHT. On the ninth consecutive day Mr. M.N. Snyder worked the 277-11. During this period Mr. M.N. Snyder repeatedly tried to contact Canadian Pacific Kansas City managers to correct this violation of the HSL. Attached are Mr. M.N. Snyder's work history and an email in which the carrier admits violation of the HSL. FRA is seeking a civil penalty for CPKC requiring or allowing a train employee to perform covered service after completing six consecutive on duty periods and not being utilized within a 24 hour period at AFHT, employee is no longer eligible to perform covered service.

Act of God/Emergency Scenario

- **Judicial construction of this provision has limited the relief that it grants to situations that are truly unusual and exceptional.**
- **Even where an extraordinary event or combination of events occurs that, by itself, would be sufficient to permit excess service, the railroad must still employ due diligence to avoid or limit such excess service.**
- **The burden of proof rests with the railroad to establish both that an emergency existed and that excess service could not have been avoided.**

CIRCUMSTANCES THAT DO NOT WARRANT THE USE OF THE EMERGENCY PROVISION

The courts have recognized that delays and operational difficulties are common in the industry and must be regarded as entirely foreseeable; otherwise, the HSL will provide no protection whatsoever.

Common operational difficulties that the emergency provision does not provide relief from include, but are not limited to:

- Broken drawbars.
- Locomotive malfunctions.
- Equipment failures.
- Brake system failures.
- Hot boxes.
- Unexpected switching.
- Doubling hills.
- Meeting trains.

The need to clear a main track or cut a crossing also does not justify disregard of the limitations of the HSL. Such contingencies must normally be anticipated and met within the 12 hours.

Act of God/Emergency Scenario (Example)

BNSF Railway failed to exercise due diligence when complying with the 49 USC 21103A2, in regard to the cases involving crews performing emergency service past their (HOS). The crew of the ZSTOWSP7-23L could have been relieved from duty and provided lodging. However, BNSF management chose to leave the crew on the train and have them perform service, for 7 hours and 20 minutes past there (HOS). Resulting in a total time on duty of 19 hours and 20 minutes. The FRA recognizes that emergencies and Acts of God occur, however, BNSF is responsible for complying with all parts of the statute and providing justification when a crew is utilized in an emergency situation past the (HOS). FRA is requesting that civil penalties be assessed for BNSF Railway's failure to comply with 49 USC 21103.

HOS APP and Complaint Hotline

FOR COMPLAINANTS TO INPUT COMPLAINTS

<https://railroads.dot.gov/railroad-safety/federal-railroad-administration-alleged-violation-reporting-form>

tell them to use Hours of Service for the type

FOR THE APP

Download the new Hours of Service Mobile application onto your IOS device by clicking the icon or hyperlink below



<https://itunes.apple.com/us/app/hos-manual/id1103913070?mt=8>

For Android devices click on the icon or hyperlink below



<https://play.google.com/store/apps/details?id=gov.dot.fra.hos>

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