

Distribution & LTL Carriers Association

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DEPT. OF TRANSPORTATION
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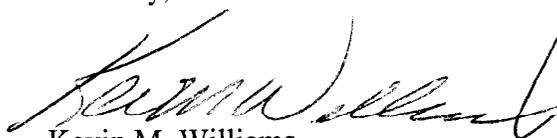
Subject: Docket No. FHWA-98-3706 *-12*
Hours-Of-Service of Drivers; Supporting Documents

Docket Clerk:

Enclosed please find the comments of the Distribution & LTL Carriers Association in this proceeding.

Please date stamp this original, and an extra copy, to acknowledge their receipt.

Sincerely,



Kevin M. Williams

KMW:z

ORIGINAL

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

DOCKET NO. FHWA - 98-3706
HOURS-OF-SERVICE OF DRIVERS;
SUPPORTING DOCUMENTS

COMMENTS OF THE
DISTRIBUTION AND LTL CARRIERS ASSOCIATION

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DATED: June 15, 1998

DUE June 19, 1998

INTRODUCTION

The *Distribution and LTL Carriers Association* submits these comments on the proposed rules for trucking company employers to retain and use business records to monitor driver compliance with the hours-of-service (HOS) requirements. This Association is affiliated with the *American Trucking Associations* and represents the particular interests of for-hire motor carriers that specialize in the transportation and warehousing of less-than-truckload freight. In response to this proposed rule, we surveyed our membership on this proposal. That survey confirms that there is a wide variety of means by which these LTL carriers monitor driver compliance. Some use electronic software systems, others have written formal procedures and some perform checks upon cause, such as after an accident or citation. Other carriers monitor randomly upon a weekly, monthly or some other basis. The respondent motor carriers do not monitor every driver, unless the driver pool is relatively small. Most frequently, there is a random selection of drivers and also a “for cause” review when a driver violation occurs.

We concur with many of the basic principles that underlie FHWA’s proposed rules. There is a need for flexible rules that allow management to devise effective monitoring systems for their particular operations. FHWA appropriately recognizes that costs imposed by any final rules must bear a reasonable relationship to the benefits. We recommend that the final rules do not require motor carriers to either generate new documents or modify existing ones if the carrier would not do so in the ordinary course of its business. The final rules in this proceeding should not be promulgated before FHWA completes its reassessment of the general hours-of-service requirements in FHWA Docket No. MC-96-28. Obviously, the two proceedings are inter-related and any revised HOS rules may well necessitate changes to the supporting documents requirements.

We further agree with FHWA that the objective of these rules should be to detect concealment of excessive hours violations rather than to impose sanctions for mere record keeping violations that do not compromise compliance with the hours-of-service rules. 63 Fed Reg. 19462. This raises the core issue in this proceeding: What constitutes an “effective verification system”? These proposed rules heavily weight the verification process by emphasizing written procedures and favoring electronic monitoring, rather than the results -- which is the level of compliance with the HOS rules. Yet the former does not ensure the latter. An elaborate record keeping system may fail if not implemented properly or emphasized by management. That is why FHWA reserves the right to require changes to a deficient self-monitoring system. We recommend, however, that FHWA adopt a less rigid “results-oriented” approach that focuses on the HOS compliance level within a company, which is the ultimate objective. FHWA should provide incentives for motor carriers that develop more sophisticated systems. Such an approach is consistent with the legislative objective of having a supporting document retention system that can verify driver compliance at a reasonable cost to motor carriers. It is also consistent with the Government Performance and Results Act which mandates that federal agencies implement, where practical, performance-based approaches that focus on results rather than impose prescriptive, rigid rules upon business.

These comments address some of the key aspects of these proposed rules, starting with the definition of the term supporting document.

SUPPORTING DOCUMENT DEFINITION

As FHWA indicates in its notice, it has historically defined this term to “refer to those specific documents, and only those specific documents, that a motor carrier used in its internally-

developed system or program to verify the accuracy of the drivers' activities. It was not meant to encompass all records, but only those that were, indeed, used by the motor carriers, to verify the dates, times, and locations that the driver recorded." 63 Fed. Reg. 19459. We believe this definition should be reaffirmed and adopted in these final rules. It is appropriate since it focuses on documents that are generated in the normal course of business, and have been selected by the carrier for verification with the discretion of the carrier to use, as is, or incorporate additional information. It properly balances the need for verification with the business necessities and costs.

FHWA notes that the Hazardous Materials Transportation Authorization Act of 1994 contains a definition of supporting document. This statutory definition, which FHWA proposes to adopt, goes beyond this prior regulatory definition. It embraces not only documents used by carriers, but those that "could be used, as produced or with additional identifying information.. ." 63 Fed. Reg. 19459. Therefore, this new definition would require the retention and modification of documents that carriers have not historically deemed necessary or appropriate for verification. The resulting cost burden to carriers would be, we believe, at least double the FHWA estimate and is unwarranted. Our carrier members do not currently collect, nor could they with relative ease produce, for each and every trip, specific documents that contain the details relating to the beginning, intermediate and ending times. This fundamental assumption, which underpins this proposal, is incorrect. The final rules must be changed to provide carriers with the flexibility to effectively monitor compliance, as FHWA recognizes they do.

FHWA has the discretion to retain this historical definition of a supporting document. And, if FHWA determines that a motor carrier's system is deficient, by not detecting a pattern or number

of violations, it can require a modification to include additional documents or more time, date and location information. However, this should be remedial action by FHWA, rather than a universal requirement under the rules. We believe this approach best preserves the carriers' flexibility while reducing cost burdens, and also serves FHWA's enforcement or audit needs.

FHWA's proposed definition of a support document, in Section 395.2, also introduces more subjectivity into the process, by talking about a document's "potential to provide reasonably accurate reference to dates, times and locations." The definition should be confined to documents that *do, in fact, provide accurate reference to this information.*

SELF-MONITORING SYSTEMS

FHWA has proposed essentially two self-monitoring systems and a "default" system that requires motor carriers to retain all documents, including driver trip documents, that fall within the list of 45 sample documents. One self-monitoring option involves a written procedure that, at a minimum, describes the documents used by management in verifying compliance, provides for notification of drivers not in compliance, and describes corrective action to be taken when a driver violation occurs. The second option, preferred by FHWA, involves electronic monitoring.

We recommend that the final rule should generally provide that all motor carriers shall monitor driver compliance and shall have an effective monitoring program. The rule should not mandate that motor carriers, which do not have a formal written procedure or electronic capability, must retain all documents and driver trip reports. Instead, the rules should provide incentives to do

so, through the actions FHWA takes after an audit. All carriers should be free to select their own documents for verification. And, if the system is effective, it does not matter whether the process is electronic monitoring or a formalized, written procedure. The final result or outcome – compliance with the HOS rules – is the critical determinant of effective monitoring.

For these reasons, while the final rules might describe effective program approaches -written and electronic – these should be treated as guidelines, not rules, by FHWA. They should be further accepted by FHWA as “presumptively effective.” Alternative approaches, while they would not receive the same presumption, should not be required to comply with the elaborate, and costly, retention of these 45 documents and trip reports.

AN EFFECTIVE SYSTEM

An effective system is one which has a high degree of detecting critical violations of HOS violations by drivers. It need not be perfect. A ten percent tolerance approach should be applied. Therefore, if FHWA determines, upon audit, that 90 percent of the drivers records reviewed either contained no critical violations or the carrier detected the violations, then the system should be deemed effective.

We believe that FHWA auditors should engage in a true random selection. To ensure this, the motor carrier should not be required, at the outset, to turn over its list or information on uncovered violations. Those should be provided at the end of the audit. This approach provides an incentive rather than being punitive.

Again, we would recommend that those carriers’ systems, which are in compliance with the

preferred written or electronic monitoring guidelines of FHWA, be treated as presumptively effective and given favorable treatment when violations are found. FHWA has proposed a first warning approach, which we support.

ADDITIONAL ISSUES

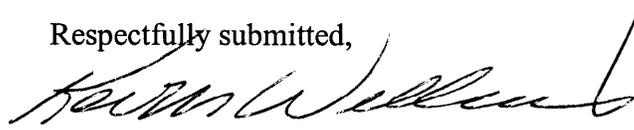
In the “new information collection proposal” section of this Notice, 63 Fed. Reg. 19464, FHWA states its MCMIS system indicates that about 443,200 drivers, comprising 20 percent of the total drivers, operate within the 100 air mile radius. These drivers are exempt from the logbook requirement. A significant number of those drivers work for LTL and distribution motor carriers, which are our members. In both the HOS proceeding, as well as the DOT zero-based review proceedings relating to obsolete and burdensome regulations, we have advocated an expansion of this exemption. A driver, who operates to and from an employer’s facility within its daily on-duty time, should not be required to create logs since the motor carrier has a written on-duty record from the time clock. This approach would further reduce this supporting document burden, without any decrease in compliance. It should be adopted by FHWA as soon as possible.

We also support the reduction in the retention period from six to four months for logs and supporting documents, for the reasons stated by FHWA.

Furthermore, FHWA should ultimately consider a performance-based approach to all safety compliance rules for motor carriers which have demonstrated effective safety management. This would be determined by the accident and out-of-service data captured by the federal government. Ultimately, the goal of the federal government should be to focus its limited resources on those

carriers which present the greater safety risk, and provide the safer carriers with greater regulatory flexibility since they have demonstrated their safety capabilities.

Respectfully submitted,



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