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DEPT. OF TRANSPORTATION  
DOCKET SECTION  
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By Hand

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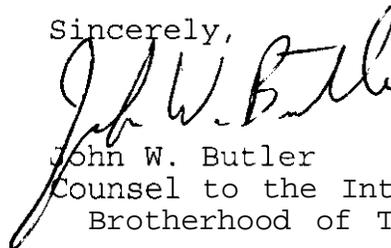
Re: Hours of Service of Driver  
Supporting Documents  
Docket No. FHWA 98-3706 - 34

Dear Madam or Sir:

Enclosed herewith please find an original and five (5) copies of the International Brotherhood of Teamsters' comments in the above-referenced proceeding.

Kindly acknowledge receipt of this filing by date stamping the additional copy of this letter and returning it to our messenger.

Sincerely,



John W. Butler  
Counsel to the International  
Brotherhood of Teamsters

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**UNITED STATES DEPARTMENT OF TRANSPORTATION**  
**Federal Highway Administration**

DEPARTMENT OF TRANSPORTATION  
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DOCKET SECTION

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**Docket No. 98-3706**

**Hours of Service of Drivers; Supporting Documentation**

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**COMMENTS OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

On April 20, 1998, the Federal Highway Administration published a notice of proposed rulemaking (the "Notice") seeking comments regarding proposed regulations regarding the supporting documentation required to be collected and retained by motor carriers for the purpose of verifying hours of service records of duty status maintained by drivers. The International Brotherhood of Teamsters ("IBT"), by its undersigned counsel, files these comments in response to the Notice.

The International Brotherhood of Teamsters is a labor organization whose members include hundreds of thousands of persons, mostly drivers, employed by motor carriers. Because the risks to the travelling public and commercial drivers associated with fatigued drivers are both serious and well-documented, the IBT has a strong interest in ensuring that enforcement of the hours of service regulations is vigorous and efficient. Although the IBT generally supports the establishment of properly supervised internal compliance programs, such programs must be capable of consistently providing adequate detail to allow for full compliance auditing by enforcement officials.

**I. ENFORCEMENT POLICY ISSUES**

In keeping with its position that any change to the hours of service enforcement mechanism must enhance rather than detract from enforcement capabilities, the IBT is disturbed by the discussion in the preamble to the Notice regarding FHWA's proposed enforcement policy. At 63 *Fed. Reg.* 19461, the Notice describes a process under which a safety reviewer might not take enforcement action until a problem remains uncorrected after a series of inspections. The Notice goes so far as to state categorically that “[a] motor carrier would not be cited for failing to maintain specific types or numbers of supporting documents on the first review of the system.” This approach is unacceptable for two related reasons.

First, it encourages motor carriers to adopt minimalist internal auditing procedures. If carriers know that there is no penalty on **first** inspection for setting up an inadequate system, there is every incentive for unscrupulous operators (those most in need of close scrutiny) to adopt procedures that hide rather than disclose information that would be useful to enforcement personnel. Given that safety reviews are relatively infrequent in any case, issuing “free passes” for first inspections after adoption of the new program virtually insures that dangerous and systemic violations will be uncorrected and unpunished for significant periods of time. Such an approach is not in keeping with the purpose of section 113 of the Hazardous Materials Transportation Act -- “to improve compliance with hours of service requirements. .”

The second problem with the agency's stated intent to waive its

enforcement authority is that it suggests that the proposed standards for the **self-**compliance program are too vague to support enforcement actions. If in fact a lack of necessary specificity is behind the relaxed enforcement posture, then the remedy is to make the requirements for self-compliance programs more clear, not to abdicate enforcement responsibilities.

In this regard the statute is again instructive. Subsections 113(4) and (5) of the Act provide that self-compliance systems and waivers must be made on “a case-by-case basis” according to “specific conditions” “established by regulation.” If FHWA adopts a program that fails to meet this statutory standard, two problems will result. First, the fundamental validity of self-compliance programs will be placed into question, thus undermining the purpose of the exercise. Second, creating **self-**compliance program standards that do not provide motor carriers with sufficient notice of what is required of them may have the unintended result of providing legal defenses to motor carriers faced with enforcement actions. See, e.g., *MST Express and Truckers United for Safety v. Department of Transportation and Federal Highway Administration*, 1997 U.S. App. Lexis 4976 (D.C. Cir. 1997) (failure to properly promulgate regulation renders enforcement arbitrary and capricious). In either case, enforcement of the hours of service regulations would suffer, to the detriment of the safety of commercial drivers and the general public.

Related to the issue of the proposed policy of waiving enforcement for “**first** offenses,” the IBT is troubled by the statement at 63 *Fed. Reg.* 19462 that “[t]he FHWA does not wish to expend scarce resources on mere recordkeeping violations that may result from sloppy bookkeeping.” The requirement that motor carriers retain

supporting documentation related to hours of service regulations properly assumes that independent verification of motor carrier and driver reported information is essential to effective enforcement. Unless a record of duty status is fraudulent on its face, supporting documentation is the only reliable means of detecting violations. Thus, to announce essentially that the FHWA will not pursue enforcement actions where “sloppy bookkeeping” results in inadequate supporting documentation undermines the entire enforcement effort. Indeed, such an announcement strongly encourages poor recordkeeping practices, because if a motor carrier will not be fined for keeping sloppy records, and most hours of service violations cannot be proven without clear supporting documents, there is a powerful incentive for unscrupulous motor carriers to keep poor records. As noted above, it is precisely the members of this class of motor carriers that are most likely to require their drivers to violate hours of service regulations in the **first** place, and they should not be invited to do so by the federal government.

## **II. DIRECT LIABILITY OF DRIVERS**

In sharp contrast to current practice, the Notice proposes to make drivers directly liable for violations relating to supporting documents. Specifically, proposed subsections 395.10(d)-(f) would place joint responsibility on motor carriers and drivers for adding information to and preserving supporting documentation. With respect to drivers, two separate duties are proposed. First, under section 395.10(e), the driver would be required to add his or her name, and the time, date, and vehicle number to every record received. Failure to do so could result in a penalty against

the driver. Although this requirement may appear to those unfamiliar with the routine of a commercial driver's job to be relatively minimal, it would in fact place a substantial burden on drivers that are already under very tight schedules. Every five minutes (repeated throughout the day) spent doing unnecessary paperwork translates into time that must be made up on the road -- at the expense of sleep and time spent at home. Given the fact that this requirement would only apply to those drivers that work for carriers that do not adopt self-compliance systems, and such carriers must retain all supporting documents, the amount of paper that would have to be reviewed and supplemented by drivers is significant. The proposed definition of "supporting document" at section 395.2 demonstrates the scope and volume of documents that drivers would have to examine and add supplementary information to throughout their work day. Quite simply, it is counter-productive to place this burden on drivers that already have too little time to perform their duties and retain some semblance of a normal life.

The second category of responsibilities for which the proposed rule would make drivers directly liable is retention of supplementary documents. The difficulty here is one of enforcement logistics and fairness. Although the proposed rule provides that the driver's obligation to retain and produce documents ends after the driver has turned the documents over to the motor carrier, the Notice does not address how a driver is supposed to prove that such a transfer has taken place. It requires no stretch of the imagination to picture a situation in which a driver has turned documents over to a carrier, but the carrier claims not to have received them. The driver would thus be faced with having to prove delivery to the carrier in order to

avoid a penalty. This would put drivers in direct confrontation with their employers, upon whom they rely for their livelihood, an untenable situation by any measure. In addition to being burdensome and unfair to drivers, who are not in a position to aggressively challenge their employers, having drivers directly involved would greatly complicate government enforcement efforts. Instead of dealing only with carriers, as is the case today, enforcement personnel under the proposed system would inevitably be drawn into disagreements among drivers and motor carriers. That situation would both complicate and slow enforcement activities. Accordingly, the IBT opposes any change in the regulations that would impose liability on drivers. <sup>1</sup>

### **III. RECORD RETENTION PERIOD**

The FHWA has requested comment on whether the record retention period should be shortened from six to four months. In addition to the fact that the statute requires a minimum six month retention period, the IBT believes that there are strong reasons not to shorten that period. First, because safety review inspections are somewhat infrequent in any case, six months represents the absolute minimum necessary to insure that there is meaningful information available to inspectors. In addition, it is necessary in order to detect trends or patterns of non-

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<sup>1</sup> The IBT does not take the position that drivers have no responsibility for collecting and preserving documents -- clearly they do. The point here is that that responsibility should be determined between drivers and their employers. Making drivers directly liable to the government, as discussed above, greatly complicates enforcement and fails to recognize the practical problems faced by drivers that must challenge their employers in order to defend against an enforcement action. Because these burdens on the driver would apply only when carriers did not adopt self-compliance programs, the entire issue could be addressed by simply making such programs mandatory and enforcing them strictly as discussed above.

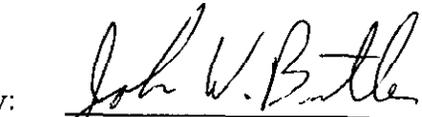
compliance to have more than a “snapshot” of a carrier’s practices. Here again six months appears to be the minimum workable period.

**N . CONCLUSION**

Because the proposed self-compliance program has the potential to encourage motor carriers to take a more pro-active role in detecting and correcting hours of service problems, the IBT supports the core approach proposed by the Notice. As discussed above, however, the Notice suggests an approach to enforcement that is inconsistent both with the statute upon which the FHWA relies and with the seriousness of the matter at hand. As the Notice acknowledges, “The FHWA believes motor carriers should provide drivers adequate opportunities for sleep, personal hygiene, and family matters, and limit the driver’s hours on duty to prevent CMV crashes caused by loss of alertness from working too long or not getting enough rest.” The IBT applauds this recognition both of the fundamental relationship between hours of service and safety and of the fact that drivers’ lives should consist of activities beyond driving and sleep. In keeping with these goals, the IBT encourages the FHWA to revise its proposal to ensure that, if adopted, it will enhance rather than detract from compliance with hours of service regulations, and that it will provide a system in which enforcement is more efficient and more certain, rather than the reverse. Furthermore, for the reasons set forth above, no change should be made in the FHWA’s regulations that would expand the penalties that the government could impose on drivers.

Respectfully submitted,

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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