

Memorandum

U.S. Department of Transportation

Federal Motor Carrier Safety Administration

Subject: Hours of Service Enforcement Policy

Date: November 24, 2003

From: John H. Hill //s//

Reply To: MC-EC

Assistant Administrator and Chief Safety Officer

To: Field Administrators
Division Administrators

The purpose of this memorandum is to outline interim enforcement policies for certain sections of the new hours-of-service (HOS) regulations to be implemented on January 4, 2004. The American Trucking Associations (ATA) has petitioned FMCSA for rulemaking to amend the sleeper berth portion of the new rules. ATA's request has raised genuine issues in need of resolution. Until FMCSA has the opportunity to address these remaining ambiguities in the regulations, the policies outlined below will remain in effect. Please communicate these positions to all safety investigators, safety auditors, inspectors, and State partners involved in HOS enforcement. This information should also be incorporated into outreach to the industry and any training on the new HOS regulations.

Issue 1: Calculating the 14-hour rule following two qualifying sleeper berth periods totaling 10-hours.

Agency Policy: The 14-hour rule is calculated by counting the time from the end of the prior qualifying sleeper berth period to the beginning of a subsequent qualifying sleeper berth period. Said another way the 14-hour rule is calculated by counting the time on each side of the first qualifying sleeper berth period.

Discussion: Questions have arisen over whether the new rule and accompanying technical amendment permit a full restart of the 14-hour on-duty period following two qualifying sleeper berth periods. Although that is a possible reading of the new rule, it conflicts with the traditional interpretation of the current 15-hour rule and is likely to cause confusion among motor carriers and the enforcement community. The 14-hour period will be calculated by counting the time from the end of the prior qualifying sleeper berth period to the beginning of a subsequent qualifying sleeper berth period. This is how the new 11-hour rule is calculated, and is similar to the manner in which the agency has always treated the calculation of the 10- and 15-hour rules.

Issue 2: Combining sleeper berth and off-duty time.

Agency Policy: If a driver, or a member of a driving team, has at least two qualifying sleeper berth periods totaling at least 10 hours immediately prior to taking 10 or more consecutive hours off-duty, the driver may combine the last sleeper berth period with the 10 consecutive hour off-duty period.

Discussion: The current rule states that two qualifying sleeper berth periods will extend the 14-hour period. Questions have arisen as to how to treat a situation in which a driver, or a member of a driving team, appropriately accumulates the 10 hours off-duty using sleeper berth in over-the-road trips, and then goes off-duty for 10 or more consecutive hours. The agency believes if sleeper berths are being used appropriately, drivers

should not have to spend time in the sleeper berth upon going off-duty for 10 or more consecutive hours in order to remain in compliance. Therefore the agency will allow the last sleeper berth period to be combined with the off-duty period; however, it is important to prevent drivers who do not regularly use sleeper berths from extending their day by taking a single sleeper berth period. Therefore, if a driver has only used one sleeper berth period, it may not be combined with the 10 or more consecutive hour off-duty period, and the sleeper berth time would count toward calculation of the 14-hour rule.

Issue 3: Use of the 34-hour restart provision.

Agency Policy: A driver may restart the 60/70-hour period by taking 34 or more consecutive hours off-duty provided at the beginning of the 34-hour period, the driver has not accumulated more than 60 or 70 on-duty hours in the prior 6 or 7 days.

Discussion: The 34-hour restart provision was designed to give carriers and drivers operational flexibility while still providing the driver opportunity for adequate rest. There is no discussion in the regulatory history of the HOS rule indicating a driver may exceed the 60/70-hour rule and then use a 34-hour restart to begin a new 60/70-hour period without regard to the number of on-duty hours in the prior 6 or 7 days. If a driver has exceeded the 60/70-hour rule, the driver may not utilize the 34-hour restart and must continue to operate under the provisions of section 395.3(b) to calculate the hours available under the 60/70-hour rule.

Issue 4: Length of out-of-service time required when a driver has violated the 11- or 14-hour rules in a sleeper berth operation.

Agency Policy: In order to regain compliance with Part 395, sleeper berth drivers who have violated the 11- or 14-hour rules must be placed out-of-service (OOS) for the minimum amount of time necessary to bring the driver into compliance with section 395.3. This OOS period will be determined using the number of hours in the driver's prior qualifying sleeper berth period.

Discussion: Questions have arisen concerning whether a sleeper berth driver who has violated the 11- or 14-hour rule must be placed OOS for a period of 10 consecutive hours or only the minimum amount of time necessary to achieve 10 hours off-duty in combination with the prior qualifying sleeper berth period. The length of an OOS period required to bring a driver back into compliance is currently determined by taking the driver's prior qualifying sleeper berth period into consideration. The agency did not intend to change this practice under the new HOS rule, and the agency does not read 395.1(g)(1)(ii) and (iii) as invalidating a prior sleeper berth period. Therefore, a driver should be placed OOS only for the minimum amount of time necessary to bring the driver into compliance under section 395.3. If a driver is using the sleeper berth exception, this time is calculated by reference to the number of hours in the prior qualifying sleeper berth period. Furthermore, the time the driver has spent in the prior qualifying sleeper berth is not counted toward determining whether or not the driver is in violation of the 14-hour rule (in this case a qualifying sleeper berth period is a sleeper berth period of at least 2 hours that when combined with an additional sleeper berth period will result in the driver having legal hours to drive).

Issue 5: Length of OOS time required when a driver has exceeded 60/70 hours in 7/8 days.

Agency Policy: In order to regain compliance with Part 395, a driver who has exceeded 60/70 hours in 7/8 days must be placed OOS for the minimum amount of time necessary to bring the driver into compliance. Said another way, the driver must be placed OOS until the beginning of the next 24-hour period when the driver would begin the day under the 60/70-hour limit.

Discussion: Questions have arisen concerning the appropriate amount of time a driver must be placed OOS for exceeding 60/70 hours in 7/8 days prior to driving again. The length of an OOS period required to bring a driver back into compliance is currently determined based on the number of hours the driver is in excess of the rule. The agency did not intend to change this practice under the new HOS regulations. The driver should be placed OOS for the minimum amount of time necessary to bring the driver into compliance. If a driver has exceeded the 60/70-

hour rule, the driver may not utilize the 34-hour restart and must continue to operate under the provisions of section 395.3(b) to calculate the hours available under the 60/70-hour rule.

Some of the policies outlined above will be subjected to public review and discussion in the course of the petition for rulemaking already mentioned. The agency cannot predict the outcome of this petition. For the moment however, this memorandum represents the agency's best judgment on fair and reasonable enforcement policies. Thank you for your professionalism as the agency moves to implement these groundbreaking safety measures.

cc:

Chief Counsel

Associate Administrator for Enforcement and Program Delivery

Associate Administrator for Policy and Program Development

Director, Office of Public and Consumer Affairs

Director, Office of Safety Programs

Director, Office of Enforcement and Compliance

Director, Office of Bus and Truck Standards and Operations

Director, Office of Information Management

Chief, Enforcement and Compliance Division

Chief, State Programs Division

Chief, Vehicle and Roadside Operations Division

Chief, Driver and Carrier Operations Division

Chief, International Motor Carrier Learning and Development Division

Chief, Information Systems Division