

U.S. Department of Labor

Office of the Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210

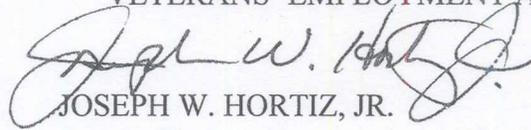


September 21, 1999

DIRECTOR'S MEMORANDUM NO. 44-99

MEMORANDUM FOR: REGIONAL ADMINISTRATORS AND DIRECTORS FOR
VETERANS' EMPLOYMENT AND TRAINING

FROM:


JOSEPH W. HORTIZ, JR.
Acting Director, Operations and Programs

SUBJECT: Revised Department of Transportation (DOT) Regulations
Concerning Hours-of-Service and Duty Status of Commercial
Motor Vehicle Drivers While Performing Service in the Reserve
Components

1. **PURPOSE:** To provide VETS staff guidance concerning the revision of DOT, Federal Highway Administration (FHWA), regulations at 49 Code of Federal Regulations, part 395.
2. **BACKGROUND:** Part 395 regulations provide guidance on the hours of service of drivers of commercial motor vehicles. Hours of service (on-duty time) are limited by part 395 regulations (e.g., 60 hours maximum in a 7-day period).

Until August 1999, active or inactive duty performed by members of the National Guard and Reserve was considered on-duty time by the FHWA and therefore lessened the number of hours a reservist-driver could work for the civilian employer in weeks where he or she performed military service. Over the years, we have had several VRR and USERRA cases in which this restriction was an issue. On the other hand, uncompensated work, such as that performed as a volunteer firefighter, could be considered off-duty time and did not affect the number of hours the driver could work. The yardstick used to distinguish outside work that was on-duty from that which was off-duty was whether the outside work was compensated.

In December 1998, VETS National Office compliance staff met with FHWA to discuss our concerns that part 395 regulations with respect to Reserve component members were at odds with USERRA. Our position is that if exceptions to the on-duty status of outside work are granted to persons such as volunteer firefighters, exceptions should also be granted to persons who perform service in the uniformed services.

The FHWA has agreed with VETS' position and has begun the process of amending their regulations. The USERRA issue will be addressed in the amended regulations, but the process will not be completed for approximately one year. In the meantime, to assist VETS in case handling, the FHWA has issued a new interpretation defining Reserve and National Guard service as off duty time (attached). We have been advised that at some point in the near future the guidance will appear on the FHWA website at <http://www.fhwa.dot.gov>.

3. GUIDANCE: The attached guidance from FHWA is effective as of August 19, 1999. It replaces and supersedes the previous guidance in section 395.2. Time spent performing active or inactive duty as a Reserve component member is now considered off-duty and does not count against the number of hours a commercial driver may work for the civilian employer.

4. ACTION: Use the attached guidance in providing technical assistance or in working USERRA cases in which on-duty time is an issue. If an employer is skeptical as to the authenticity of the attached guidance, contact the VETS National Office for assistance.

This Director's Memorandum is an internal document and should not be shared with anyone outside VETS. However, the attached reinterpretation of the regulation should be shared with employers, Reserve component members and Employer Support of the Guard and Reserve (ESGR) volunteers, particularly ESGR State ombudsmen.

5. INQUIRIES: Inquiries should be directed to Nick Dawson at (202) 693-4711.

Expiration Date: Until superseded

Attachment



U.S. Department
of Transportation
**Federal Highway
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

AUG 19 1999

**REGULATORY GUIDANCE
PART 395 - HOURS OF SERVICE OF DRIVERS
Section 395.2 Definitions**

Question 28: How should time spent at National Guard meetings and training sessions be recorded for the hours-of-service requirements?

Guidance: A member of a military reserve component, serving in either an inactive duty status, such as weekend drills, or in an active duty status, such as annual training, may log that time as "off-duty time" regardless of whether such duty time is paid or unpaid. This is consistent with the rights and benefit entitlements provided in the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 *et seq.*)

Paul L. Brennan
Director, Office of Motor Carrier
Research and Standards