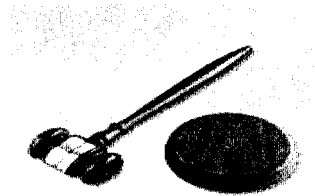


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**NOT TO BE POSTED ON THE INTERNET UNTIL 60 DAYS AFTER
COMPLETION OF THIS PROCEEDING, INCLUDING ANY APPEAL**

SERVED JANUARY 12, 2007



US DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

IN THE MATTER OF

SWIFT TRANSPORTATION CO., INC.

DOCKET No. FMCSA- 2004 - 17248-**63**
(Federal Motor Carrier Safety Administration)

ORDER RESPECTING
THE FIELD OPERATIONS TRAINING MANUAL

At a telephone prehearing conference conducted earlier today, I informed the parties that I would rule on the question of whether, and to what extent, the Field Operations Training Manual (hereinafter "FOTM") of Claimant Federal Motor Carrier Safety Administration (hereinafter "FMCSA") is relevant and material to this proceeding and the companion proceedings

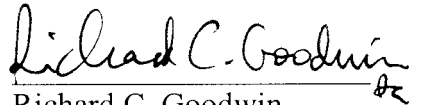
I conclude that the FOTM is neither relevant nor material to the issues raised by these proceedings. Judge Benkin explained why in his order of September 1, 2006, in *B & J Transportation, Inc.* (Docket No. FMCSA-2001-10358), and I adopt his reasoning:

The critical question in this case is whether the Respondent violated the Motor Carrier Safety Regulations . . . this case is concerned with the Respondent's conduct, and there seems to be little reason to believe that the contents of the FOTM . . . will provide admissible evidence to delineate what the Respondent did or did not do. [emphasis in original].

To the same effect, moreover, are rulings made in cases heard by sister agencies, namely, the Federal Aviation Administration and the National Transportation Safety Board. In *American Airlines, Inc.*, FAA Order No. 89-0006 (December 21, 1989), the FAA Administrator agreed with an administrative law judge ruling that denied Respondent's attempt to put in issue the question of agency compliance with its internal procedures, stating that "the question before me in each proceeding is whether the violation or violations alleged occurred, and if so, the appropriate penalty to be assessed." (emphasis in original). The NTSB also rejected the relevancy of the contention that the FAA had failed to follow its own internal enforcement guidance, stating that "we have consistently refused to address such arguments, making clear that we do not view it as our role to evaluate the FAA's enforcement program . . . [citations omitted]" (*Maurice Bailey and Gilbert E. Avila*, EA-4294 (NTSB November 18, 1994, 1994 WL 702156)).¹

In conclusion, matters involving the FOTM will not be considered in any of these proceedings.

SO ORDERED.


Richard C. Goodwin
U.S. Administrative Law Judge

Attachments – Service List

¹ See also *Go Leasing, Inc. v. National Transportation Safety Board*, 800 F.2d 1514 (9 Cir. 1986), citing the Supreme Court in *Schweiker v. Hansen*, 450 U.S. 785, 789 (1981) (per curiam) (contents of agency manual are not regulations, have no legal force, and do not bind the agency).

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