



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

Hours of Service for Commercial Motor Vehicle Drivers; Regulatory Guidance Concerning Off-Duty Time

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Regulatory guidance.

SUMMARY: FMCSA revises its April 4, 1997, regulatory guidance concerning the conditions that must be met in order for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time. The Agency has reviewed the guidance and determined that it includes language that is overly restrictive and inconsistent with the hours-of-service regulations. The 1997 guidance has the effect of discouraging drivers from taking breaks during the work day, or documenting such breaks in their logbooks.

DATES: This guidance is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1)

CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1) – (5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

Background

On April 4, 1997 (62 FR 16370), the Federal Highway Administration (FHWA) published "Regulatory Guidance for the Federal Motor Carrier Safety Regulations." The notice presented interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) based on the FHWA's consolidation or previously issued interpretations and regulatory guidance materials. The FHWA developed concise interpretive guidance in question-and-answer form for each part of the FMCSRs.

The 1997 notice included the following guidance to 49 CFR 395.2 on page 16422 (62 FR 16422):

Question 2: What conditions must be met for a Commercial Motor Vehicle (CMV) driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance: 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a Commercial Motor Vehicle (CMV) will be significantly reduced.

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

While FMCSA has not received any requests for clarification of the guidance, the Agency believes it is out-of-date and no longer provides practical assistance to motor

carriers attempting to achieve compliance with the HOS rules. As currently written, the guidance lays out requirements for written instructions from drivers' employers concerning the duration of breaks during the work shift which is inconsistent with the requirements of 49 CFR part 395. The guidance implicitly imposes a recordkeeping requirement, but relieves both the carrier and the driver of any responsibility for maintaining a copy of the instructions at the principal place of business or on the CMV.

In addition, the current guidance includes an unenforceable performance standard for assessing the validity of a break that will be recorded as off-duty. The guidance states the break must be long enough to ensure that the accumulated fatigue resulting from driving the CMV will be significantly reduced.

FMCSA's Decision to Revise the Regulatory Guidance

In consideration of the above, FMCSA has determined the 1997 regulatory guidance should be revised to eliminate language that has the effect of discouraging drivers from taking breaks during the work day, or documenting such breaks in their logbooks. The FMCSA revises Question 2 to 49 CFR 395.2, to read as follows:

Hours of Service for Commercial Motor Vehicle Drivers Regulatory Guidance for 49 CFR 395.2, Definitions

Question 2: What conditions must be met for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time?

Guidance: Drivers may record meal and other routine stops, including a rest break of at least 30 minutes intended to satisfy 49 CFR 395.3(a)(3)(ii), as off-duty time provided:

1. The driver is relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing.

Through the revision of the regulatory guidance, FMCSA makes clear that the motor carrier need not provide formal guidance, either verbal or written, to drivers with regard to the specific times and locations where rest break may be taken. The revised guidance also emphasizes that periods of time during which the driver is free to stop working, and engage in activities of his/her choosing, may be recorded as off-duty time, irrespective of whether the driver has the means or opportunity to leave a particular facility or location. All previously issued guidance on this matter should be disregarded if inconsistent with today's notice.

Issued on: July 5, 2013

Anne S. Ferro
Administrator

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