



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0108]

Hours of Service of Drivers of Commercial Motor Vehicles: Proposed Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Personal Conveyance

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance; request for comments

SUMMARY: FMCSA is proposing to revise the regulatory guidance concerning driving a commercial motor vehicle (CMV) for personal use while off-duty, referred to as “personal conveyance.” This provision is available to all CMV drivers required to record their hours of service (HOS) who are permitted by their employer to use the vehicle for personal use. The Agency requests public comments on the guidance and its economic impact.

DATES: Comments are due by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2017-0108 using any of the following methods:

- **Federal eRulemaking Portal:** Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: DOT solicits comments from the public to better inform its guidance process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice contact Ms. LaTonya Mimms, Transportation Specialist, Enforcement Division, FMCSA. Ms. Mimms may be reached at 202-366-0991 and by email at

LaTonya.Mimms@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0108), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and put the docket number, "FMCSA-2017-0108" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this notice based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert the docket number, “FMCSA-2017-0108” in the “Keyword” box and click “Search.” Next, click “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

II. Background

Currently, the Federal Motor Carrier Safety Regulations (FMCSRs) require drivers to document their HOS on records of duty status (RODS), identifying one of four duty status options: on-duty (non-driving), driving, sleeper berth, and off-duty (49 CFR 395.8). As a result, when personal conveyance in a CMV is authorized by the motor carrier, drivers are required to document such use as off-duty on their RODS, irrespective of the method used to record the driver’s HOS (e.g., paper logs, automatic on-board recording device, electronic logging devices (ELDs), etc.)

The minimum performance and design standards for ELDs in the Agency’s final rule on “Implementation of Electronic Logging Devices and Hours of Service Supporting Documents” (ELD rule) include the automatic recording of data related to the off-duty movement of the CMV. As part of the ELD rule, ELD manufacturers are required to

include a special driving category for personal conveyance. This may be used at the motor carrier's discretion, based on their operations. In addition, motor carriers may grant drivers authority to operate a CMV under personal conveyance without preconfiguring the ELD with the personal conveyance special driving category.

The existing guidance on personal conveyance (49 CFR 395.8, Question 26) was issued by the Federal Highway Administration (FHWA), FMCSA's predecessor agency, in a memorandum dated November 18, 1996, and later published in a compilation of guidance (62 FR 16370, 16426, April 4, 1997). The guidance reiterated the basic principle that a driver in off-duty status must be relieved from work and all responsibility for performing work. It highlighted the use of the CMV as a personal conveyance in traveling to and from the place of employment (e.g., the normal work reporting location). The 1997 guidance included discussion of CMVs used to travel "short distances" from a driver's en route lodgings to restaurants in the vicinity of such lodgings. In addition, the 1997 guidance explicitly excluded the use of laden vehicles as personal conveyance and the operation of the CMV as personal conveyance by drivers who have been placed out of service for HOS violations. The guidance has remained unchanged since 1997.

In issuing today's proposed revision to the guidance, the Agency focuses on the reason the driver is operating a CMV while off duty, without regard to whether the CMV is or is not laden. The previous guidance, which required the CMV to be unladen, was written for combination vehicles, where the driver could readily detach the trailer and use the unladen tractor for personal conveyance. This interpretation had the inadvertent effect of not allowing drivers of single-unit work trucks that carry loads, as well as tools of trade and related materials, on the power unit to document this off-duty time on the

RODS. In the absence of a trailer, these loads, tools, and other equipment cannot reasonably be offloaded, left unattended, and reloaded after the power unit has been used for personal conveyance. This proposed revision to the guidance eliminates the requirement that the CMV be unladen and thus the disparate impact created by the previous guidance.

FMCSA's regulatory guidance for the FMCSRs is currently available on the Agency's website at <https://www.fmcsa.dot.gov/regulations>. Question 26 under section 49 CFR 395.8 currently reads as follows:

Question 26: If a driver is permitted to use a Commercial Motor Vehicle (CMV) for personal reasons, how must the driving time be recorded?

Guidance: When a driver is relieved from work and all responsibility for performing work, time spent traveling from a driver's home to his/her terminal (normal work reporting location), or from a driver's terminal to his/her home, may be considered off-duty time. Similarly, time spent traveling short distances from a driver's en route lodgings (such as en route terminals or motels) to restaurants in the vicinity of such lodgings may be considered off-duty time. The type of conveyance used from the terminal to the driver's home, from the driver's home to the terminal, or to restaurants in the vicinity of en route lodgings would not alter the situation unless the vehicle is laden. A driver may not operate a laden CMV as a personal conveyance. The driver who uses a motor carrier's Commercial Motor Vehicle (CMV) for transportation home, and is subsequently called by the employing carrier and is then dispatched from home, would be on-duty from the time the driver leaves home. A driver placed out of service for exceeding the requirements of the hours of service regulations may not drive a Commercial Motor Vehicle (CMV) to any location to obtain rest.

III. Proposed Guidance Language

FMCSA proposes to replace the above interpretation with the following revised Question 26 and seeks comments on this guidance. FMCSA also seeks public comments and information on other appropriate uses of a CMV while off-duty for personal conveyance, as well as the economic impacts of the proposal. FMCSA proposes to update the guidance for § 395.8 Driver's Record of Duty Status to read as follows:

Question 26: Under what circumstances may a driver operate a commercial motor vehicle (CMV) as a personal conveyance?

Guidance: A driver may record time operating a CMV for personal conveyance (i.e., for personal use or reasons) as off-duty only when the driver is relieved from work and all responsibility for performing work.

(a) Examples of appropriate uses of a CMV while off-duty for personal conveyance include, but are not limited to:

1. Time spent traveling from a driver's en route lodging (such as a motel or truck stop) to restaurants and entertainment facilities and back to the lodging.
2. Commuting from the last location where on-duty activity occurred to the driver's permanent residence and back to that last on-duty location. This would include commuting between the driver's terminal and his or her residence, between trailer-drop lots and the driver's residence, and between work sites and his or her residence.

(b) Examples of uses of a CMV that would not qualify as personal conveyance include, but are not limited to, the following:

1. The movement of a CMV to enhance the operational readiness of a motor carrier. For example, moving the CMV closer to its next loading or unloading point or other motor carrier-scheduled destination, regardless of other factors.
2. After delivering a towed unit, and the towing unit no longer meets the definition of a CMV, the driver returns to the point of origin under the direction of the motor carrier in order to pick up another towed unit.

3. Continuation of a CMV trip in interstate commerce, even after the vehicle is unloaded. In this scenario, on-duty time does not end until the driver reaches a location designated or authorized by the carrier for parking or storage of the CMV, such as a permanent residence, authorized lodging, or home terminal.
4. Bobtailing or operating with an empty trailer to retrieve another load.
5. Repositioning a CMV and or trailer at the direction of the motor carrier.

The CMV may be used for personal conveyance even if it is laden, since the load is not being transported for the commercial benefit of the carrier at that time.

IV. Expiration date of the Proposed Regulatory Guidance

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312, 1535 (Dec. 4, 2015), the proposed regulatory guidance would be posted on FMCSA's Website, www.fmcsa.dot.gov, if finalized. It would be reviewed by the Agency no later than [INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Agency would consider at that time whether the guidance should be withdrawn, reissued for another period up to five years, or incorporated into the safety regulations.

V. Request for Comments

Refer to the ADDRESSES section above for instructions on submitting comments to the public docket concerning this regulatory guidance. The FMCSA will consider comments received by the closing date of the comment period to determine whether any further clarification of these regulatory provisions is necessary. In addition to general comments concerning the guidance, the Agency is seeking information on the following:

1. Which carriers or drivers would take advantage of the additional flexibilities proposed in this guidance?
2. Are there particular segments of the industry that would take advantage of this change more than others?
3. Are there some carriers or segments of the industry that would prohibit their drivers from driving laden vehicles for personal conveyance?
4. For what reasons would a carrier prohibit drivers from driving a laden vehicle for personal conveyance?
5. What benefits would the new flexibilities provide to carriers and drivers?

Issued on: December 13, 2017.

Cathy F. Gautreaux,
Deputy Administrator.