agricultural products. It would be inefficient to operate below capacity, and one stop may not have enough product to fill a truck.

CVSA applauded efforts to update Agency guidance. It believes greater clarity is needed regarding the loading of agricultural commodities at multiple sources. It states that the exception should begin with the first source, and that stopping after that initial source should not restart the exception. In its view, the exception and the 150 air-mile radius should be applied from the original source only.

FMCSA Response: Question 37 to § 395.1 has been added to clarify that multiple pick-ups are permissible but that the 150 air-mile radius continues to be measured from the first pick-up point regardless of the number of times commodities are loaded or offloaded. The Agency agrees with CVSA's position that the exception should begin with the first source only. FMCSA notes in the interest of safety that, under a contrary interpretation that restarts the 150-mile exception with each new source, a motor carrier could effectively extend the exception indefinitely. The Agency did not intend to imply that a carrier would be limited to one ''trip'' per day. A trip terminates when all of the commodity has been offloaded or non-exempt freight or products are added to the load. Thereafter, a new trip under the agricultural exception could be started the same day by loading a shipment of agricultural commodities at a different source. The 150 air-mile radius would then be measured from this new trip initiation point.

V. Regulatory Guidance

FMCSA issues Regulatory Guidance, Questions 34, 35, 36, and 37 to 49 CFR 395.1 as follows:

PART 395—Hours of Service of Drivers

§ 395.1 Scope of the rules in this part

Question 34: Does the agricultural commodity exception (§ 395.1(k)(1)) apply to drivers while driving unloaded within 150 air-miles of the place where an agricultural commodity will be loaded, and to that portion of an unloaded return trip which occurs within a 150 air-mile radius of the place where the agricultural commodity was loaded?

Guidance: Yes, provided that the trip does not involve transporting any non-agricultural cargo and the sole purpose of the trip is to make a pick-up or delivery of agricultural commodities, as defined in § 395.2. In that case, driving and on-duty time are not limited, nor do other requirements of 49 CFR part 395 apply.

Question 35: Does the agricultural commodity exception (§ 395.1(k)(1)) apply if the destination for the commodity is beyond the 150 air-mile radius from the source?

Guidance: Yes, the exception applies to transportation during the initial 150 air-miles from the source of the commodity, regardless of the distance to the final destination. Once a driver operates beyond the 150 air-mile radius of the source, 49 CFR part 395 applies. The driver is then subject to the limits under the hours-of-service rules and must record those hours. Once the hours-of-service rules begin to apply on a given trip, they continue to apply for the duration of that trip, until the driver crosses back into the area within 150 air-miles of the original source of the commodities.

Question 36: How is the ''source'' of the agricultural commodities in § 395.1(k)(1) determined?

Guidance: The ''source'' of an agricultural commodity, as the term is used in § 395.1(k)(1), is the point at which an agricultural commodity is loaded onto an unladen commercial motor vehicle. The location may be any intermediate storage or handling location away from the original source at the farm or field, provided the commodity retains its original form and is not significantly changed by any processing or packing. If a driver is making multiple trips, the first trip, and the 150 air-mile exception around that source, terminate once all agricultural products are offloaded at a delivery point. A new source for a new trip may then be identified, and the 150 air-mile radius for the exception will be around that source.

For example, a sales barn where cattle are loaded may be treated as a ''source,'' in addition to the location at which they were raised, since cattle remain livestock. As another example, a place where heads of lettuce are stored may become a ''source,'' provided they retain their original form. An elevator where grain is collected and dried may be a new ''source,'' again assuming that the grain is not milled or similarly processed at the elevator.

Question 37: How is the ''source of the agricultural commodities'' determined if the driver makes multiple pick-ups of the commodity en route to the final destination?

Guidance: When a driver loads some of an agricultural commodity at a ''source'' and then loads more of that commodity at additional stops, the first place where the commodity was loaded is the measuring point for the 150 air-mile radius.

VI. Review Date for the Regulatory Guidance

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, 129 Stat. 1312, 1535 (Dec. 4, 2015), this regulatory guidance will be posted on FMCSA's website, *www.fmcsa.dot.gov.* It expires June 7, 2023. The Agency will consider whether the guidance should be withdrawn, reissued for another period up to five years, or incorporated into the safety regulations.

Issued on: May 31, 2018.

Raymond P. Martinez,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2017–0108]

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

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

ACTION: Regulatory guidance.

SUMMARY: On December 19, 2017, FMCSA proposed revisions to the regulatory guidance concerning driving a commercial motor vehicle (CMV) for personal use while off-duty, referred to as ''personal conveyance.'' Over 380 comments were received in response to the draft guidance. This document provides revised guidance and addresses issues raised by commenters. This guidance applies to all CMV drivers required to record their hours of service (HOS) who are permitted by their carrier to use the vehicle for personal use.

DATES: This guidance is applicable on June 7, 2018 and expires June 7, 2023.

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:

Background

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: (1) On-duty not driving, (2) driving, (3) sleeper berth, and (4) off-duty (49 CFR 395.8). The use of personal conveyance is a tool used to account for the movement of a CMV while the driver is off-duty.

Motor carriers are responsible for ensuring that drivers are not operating while ill or fatigued. However, motor carriers, at their discretion, may authorize their drivers to use a CMV while off-duty for personal conveyance. When this occurs, 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) (80 FR 78292, December 15, 2015) include the automatic recording of data related to the off-duty movement and location 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 by drivers at the motor carriers' discretion.

The previous 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.

On December 19, 2017. FMCSA issued revised guidance and requested comments. (82 FR 60269) In changing the guidance, the Agency focused on the reason the driver is operating a CMV while off-duty, without regard to whether the CMV is laden.

This notice clarifies issues raised such as using personal conveyance to leave a shipper or receiver and travel to a safe location for rest, the fact that the use of personal conveyance does not impact on-duty time, and provides additional scenarios in the guidance as to when the use of personal conveyance is allowable, and, includes passenger carrier specific scenarios.

Comments on the Proposed Guidance

FMCSA received over 380 comments on the proposed guidance. Over 300 of the comments were from individuals, with approximately 240 representing drivers of property-carrying CMVs. The remaining comments came from companies, associations, safety organizations, and two States. Companies included Cowboy Up Transport, Boyle Transportation, Crete Carrier, C.H. Robinson, and Schneider National. The associations included the American Bus Association, the American Trucking Associations, the Owner Operator Independent Drivers Association, the Truckload Carriers Association, and Western States Trucking Association. The safety organizations included the Commercial Vehicle Safety Alliance, Advocates for Highway and Auto Safety (AHAS), the Truck Safety Coalition and Road Safe America.

The majority of commenters supported expanding the definition to include laden vehicles. However, the Truck Safety Coalition and Road Safe America opposed this change, expressing concern that FMCSA was proposing to replace an objective standard with a subjective standard and that it would be difficult for law enforcement to assess a driver's intent to determine if the CMV is being used for personal conveyance. In addition, the Truck Safety Coalition and Road Safe America noted studies conducted by the FMCSA, National Institute of Occupational Safety and Health, Federal Highway Administration and National Highway Traffic Safety Administration, relating to the incidence of fatigue reported by long haul truck drivers and impact of pressures from the shipping community on fatigue.

AHAS also opposed this change for similar reasons and questioned the disparate impact on drivers of single unit trucks that FMCSA noted in the December 2017 notice.

Also, several motor carriers reiterated that the decision to allow the use of personal conveyance should remain with the company.

FMCSA Response

The purpose of the guidance is to provide additional clarity on the use of personal conveyance as a type of off-duty status. The guidance provides additional details to determine if a movement of the CMV is an appropriate off-duty use. The new guidance will improve uniformity for the industry and the enforcement communities. The clarity provided in this notice will lead to greater uniformity in the enforcement of the HOS rules.

In response to concerns that this guidance will somehow increase fatigue, FMCSA notes that there are no changes to the HOS rules in this document. In fact, because the current requirement to record HOS using ELDs makes the time spent driving a CMV as personal conveyance transparent to the motor carrier and enforcement, the Agency believes that consistency and uniformity in the application of the guidance by both the industry and enforcement will be increased. FMCSA recognizes that much of the pressure on drivers referenced in the comments results from delays during the loading or unloading process causing a driver to run out of hours. This guidance will have a positive impact on the concerns expressed by the Truck Safety Coalition, Road Safe America, and AHAS by giving drivers the flexibility to locate and obtain adequate rest as this would be off-duty time in personal conveyance status. In addition, as described above, this guidance, used in conjunction with the ELD rule will lead to greater uniformity in enforcement.

According to the FMCSA's records in the Motor Carrier Management Information System, there are approximately 2.3 million straight trucks that operate in interstate commerce. Under the previous guidance, the drivers of many straight trucks were not permitted to operate in an off-duty status for personal conveyance because they were laden. The revised guidance allows these vehicles, under the circumstances described in the guidance to be driven as a personal conveyance.

Other recurring issues or questions raised are discussed individually below.

Some commenters provided suggestions or requests that are outside of the scope of guidance. Those included modifying the HOS regulations so that there is a definition of personal conveyance consistent with the Canadian HOS regulation and establishing mileage or time limits for the use of personal conveyance.

In addition, some motor carriers and drivers questioned who would be liable in a crash when the driver is operating in the personal conveyance mode. FMCSA notes that this issue is outside of its authority and would be determined based on the contract or agreement between the motor carrier or owner of the commercial motor vehicle and the liability insurance provider as well as principles of State tort law.

Clarification of Impact to On-Duty Hours

Numerous commenters asked for clarification on how the use of personal conveyance impacts on-duty hours.

FMCSA Response

Personal conveyance is an off-duty status. Therefore, there are no impacts to the 11- or 14-hour limitations for truck drivers, the 10- or 15-hour limitations for bus drivers, the 60/70-hour limitations, the 34-hour restart provisions, or any other on-duty status.

Leaving a Shipper or Receiver to go to a Safe Place for Required Rest

Crete Carrier, Vilma Kuprescenko, Desiree Wood, Paul Tyler and many others suggested that a driver should be allowed to identify movement from a receiver or shipper, after exhausting his or her HOS, as personal conveyance, if that movement is to allow the driver to arrive at a safe location to obtain the required rest. Crete Carrier believes that not allowing the driver to identify such a movement as personal conveyance would be contrary to the coercion rule (49 CFR 390.6), as the shipper is forcing a driver to leave the premises even after exhausting his or her hours of service limits. Schneider National also asked for clarification on this issue.

FMCSA Response

The movement from a shipper or receiver to the nearest safe resting area may be identified as personal conveyance, regardless of whether the driver exhausted his or her HOS, as long as the CMV is being moved solely to enable the driver to obtain the required rest at a safe location. The Agency recognizes that the driver may not be aware of the direction of the next dispatch and that in some instances the nearest safe resting location may be in the direction of that dispatch. If the driver proceeds to the nearest reasonable and safe location and takes the required rest, this would qualify as personal conveyance. FMCSA recommends that the driver annotate on the log if he/she cannot park at the nearest location and must proceed to another location.

FMCSA also notes that the Coercion Rule is intended to protect drivers from motor carriers, shippers, receivers, or transportation intermediaries who threaten to withhold work from, take employment action against, or punish a driver for refusing to operate in violation the FMCSRs, Hazardous Materials Regulations, and the Federal Motor Carrier Commercial Regulations. Crete Carrier's reference to the coercion rule in the context of having to leave a shipper's/receiver's property is not accurate, provided that the shipper or receiver does not threaten to retaliate or take adverse action against the driver in violation of the rule.

Movement Required by Safety Officials

Jeff Muzik asked about the impacts to the 10-hour break if a safety official requires the driver to move the CMV.

FMCSA Response

If a Federal, State or local law enforcement official requires a driver to relocate the CMV during the 10-hour break period for truck drivers or the 8-hour break period for bus drivers, personal conveyance may be used to document the movement. Again, as this is off-duty time, this does not require a restart of the rest period. However, the CMV must be moved no farther than the nearest reasonable and safe area to complete the rest period.

Returning to the Last On-Duty Location

Schneider National noted that the draft scenarios in section (a) of the guidance to Question 26 implied that the driver must return to the last on-duty location but that other scenarios in the same section indicate otherwise. Allen England and Billy Barnes Enterprises expressed disagreement with any requirement to return to the last on-duty location.

FMCSA Response

The driver is not required to return to the previous on-duty location. A driver may resume on-duty status immediately after an off-duty status regardless of the location of the CMV.

Enhancing Operational Readiness

Danny Schnautz, Brian Ausloos, and Doug Pope questioned FMCSA's description of ''enhancing operational readiness.'' Other carriers also provided examples of movements that they believed are personal conveyance but enhance operational readiness.

FMCSA Response

Enhancing operational readiness includes on-duty movement of a CMV that provides a commercial benefit to the motor carrier. For example, if the movement places the load closer to the destination, it may not be considered personal conveyance, except under circumstances outlined specifically in the examples provided in the guidance. Additionally, if a driver who is under dispatch stops at a location such as his/her home, because the driver's home is closer to the next destination or pick up location, then this would not be personal conveyance.

Application of Guidance to Passenger Carrying Vehicles

The American Bus Association (ABA) stated that the proposed guidance did not mention motorcoaches. ABA and others requested examples that specifically reference motorcoach operations. The United Motorcoach Association provided examples of personal conveyance, including use of a motorcoach to reach restaurants or pursue personal activities after dropping off passengers at a hotel or when a driver is using a motorcoach to transport drivers who are off-duty to pursue personal activities.

In addition, Michael Letlow requested confirmation that motorcoaches with luggage only are not considered laden.

FMCSA Response

Examples have been added to the final guidance that make clear that drivers of passenger-carrying operations may also use their vehicles for personal conveyance in appropriate circumstances. In addition, FMCSA reminds commenters that this guidance now applies regardless of whether the vehicle is laden. However, the requirement for the driver to be off-duty still exists. Therefore, if a driver is taking luggage to a hotel and is on-duty, personal conveyance would not apply. However, if the driver is off-duty and using a motorcoach with luggage on board to get lunch, personal conveyance would be appropriate.

New Guidance Language

FMCSA replaces Question 26 as noted below. In accordance with the requirement in Section 5203(a)(2)(A) of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015, the guidance above will be posted on FMCSA's website, *http://www.fmcsa.dot.gov* and expires no later than June 7, 2023. The Agency will then consider whether the guidance should be withdrawn, reissued for another period of up to five years, or incorporated into the safety regulations at that time.

FMCSA reminds motor carriers and drivers that additional information about ELDs is available at *www.fmcsa.dot.gov/eld.*

FMCSA updates 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 by 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. Personal conveyance does not reduce a driver's or motor carrier's responsibility to operate a CMV safely. Motor carriers can establish personal conveyance limitations either within the scope of, or more restrictive than, this guidance, such as banning use of a CMV for personal conveyance purposes, imposing a distance limitation on personal conveyance, or prohibiting personal conveyance while the CMV is laden.

(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.

2. 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. In these scenarios, the commuting distance combined with the release from work and start to work times must allow the driver enough time to obtain the required restorative rest as to ensure the driver is not fatigued.

3. Time spent traveling to a nearby, reasonable, safe location to obtain required rest after loading or unloading. The time driving under personal conveyance must allow the driver adequate time to obtain the required rest in accordance with minimum off-duty periods under 49 CFR 395.3(a)(1) (property-carrying vehicles) or 395.5(a) (passenger-carrying vehicles) before returning to on-duty driving, and the resting location must be the first such location reasonably available.

4. Moving a CMV at the request of a safety official during the driver's off-duty time

5. Time spent traveling in a motorcoach without passengers to en route lodging (such as motel or truck stop), or to restaurants and entertainment facilities and back to the lodging. In this scenario, the driver of the motorcoach can claim personal conveyance provided the driver is off-duty. Other off-duty drivers may be on board the vehicle, and are not considered passengers.

6. Time spent transporting personal property while off-duty.

7. Authorized use of a CMV to travel home after working at an offsite location.

(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 in order to enhance the operational readiness of a motor carrier. For example, bypassing available resting locations in order to get closer to the next loading or unloading point or other scheduled motor carrier destination.

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 to pick up another towed unit.

3. Continuation of a CMV trip in interstate commerce in order to fulfill a business purpose, including bobtailing or operating with an empty trailer in order to retrieve another load or repositioning a CMV (tractor or trailer) at the direction of the motor carrier.

4. Time spent driving a passenger-carrying CMV while passenger(s) are on board. Off-duty drivers are not considered passengers when traveling to a common destination of their own choice within the scope of this guidance.

5. Time spent transporting a CMV to a facility to have vehicle maintenance performed.

6. After being placed out of service for exceeding the maximum periods permitted under part 395, time spent driving to a location to obtain required rest, unless so directed by an enforcement officer at the scene.

7. Time spent traveling to a motor carrier's terminal after loading or unloading from a shipper or a receiver.

8. Time spent operating a motorcoach when luggage is stowed, the passengers have disembarked and the driver has been directed to deliver the luggage.

Issued on: May 31, 2018.

Raymond P. Martinez,

Administrator.

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