



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2020-0118]

Hours of Service of Drivers: Proposed Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Yard Moves

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

ACTION: Notice of proposed regulatory guidance; request for comments.

SUMMARY: FMCSA is proposing to revise the regulatory guidance concerning recording time operating a commercial motor vehicle as a “yard move.” This guidance applies to all commercial motor vehicle (CMV) drivers required to record their hours of service. The Agency requests public comments on the proposed guidance, which includes examples of properties that are and are not “yards.” Movements of CMVs in “yards” would be considered “yard moves” and could be recorded as on-duty not driving time rather than driving time.

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-2020-0118 using any of the following methods:

- Federal eRulemaking Portal: Go to www.regulations.gov. Follow the on-line instructions for submitting comments.
- Mail: Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: Deliver comments to Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington,

D.C., between 9:00 a.m. and 5:00 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, S.E., Washington, D.C., between 9:00 a.m. and 5:00 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations. Regulations.gov is available 24 hours each day, 365 days each year. If you would like acknowledgement 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: Mr. Bill Mahorney, Chief, Enforcement Division, FMCSA, 202-493-0001, bill.mahorney@dot.gov. If you have questions about viewing or submitting material to the docket, contact Docket Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

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

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2020-0118), 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-2020-0118” 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.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain

commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this guidance publication. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, FMCSA, 1200 New Jersey Avenue S.E., Washington, D.C. 20590. Any comments FMCSA receives that are not specifically designated as CBI will be placed in the public docket for this guidance publication.

FMCSA will consider all comments and material received during the comment period and may make changes based on your comments.

B. 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-2020-0118” 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 Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

II. Background

The Federal Motor Carrier Safety Regulations require most drivers of commercial motor vehicles (CMVs) to document their hours of service (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). Drivers are required to document their duty status on their RODS irrespective of the method used to record the driver's HOS (i.e., whether paper logs or electronic logging devices (ELDs)).

The minimum performance and design standards for ELDs in the Agency's December 16, 2015, final rule, "Electronic Logging Devices and Hours of Service Supporting Documents" (80 FR 78292), require manufacturers to include two special driving categories: authorized personal use ("personal conveyance") and "yard moves." These categories may be used by drivers at the motor carrier's discretion (49 CFR 395.28). FMCSA stated in its Supplemental Notice of Proposed Rulemaking that the intent of the "yard move" category was to capture time "where the CMV may be in motion but a driver is not necessarily in a 'driving' duty status" (79 FR 17656, 17668, March 28, 2014). Some commenters asked that the term "yard move" be defined. Commenters generally viewed "yard moves" as an on-duty not driving activity occurring on private property.

The Agency declined to define the term "yard move" in its final rule, noting that "yard moves" relate broadly to the HOS rules, not just to CMV operations using ELDs. The final rule, however, provides that ELDs will record "yard moves" as on-duty not driving time (49 CFR part 395, subpart B, appendix A, section 4.4.1.1(b)).

FMCSA published revised regulatory guidance concerning operating a CMV as a "personal conveyance" on June 7, 2018 (83 FR 26377). On February 28, 2020, FMCSA updated its guidance on "yard moves" in the U.S. Department of Transportation's guidance portal (85 FR 12663, March 3, 2020).

The Federal Highway Administration, FMCSA's predecessor agency, issued guidance on "yard moves" in a compilation of regulatory guidance published on April 4, 1997 (49 CFR 395.2, Question 9, 62 FR 16370, 16422). The 1997 guidance stated that a driver who jockeys CMVs in the yard (private property) on weekends should record that

time as on-duty (driving) time. The 1997 guidance is no longer in effect. FMCSA's revised 2020 guidance provides that the time jockeying CMVs in the yard is not driving time. The driver should record that time as on-duty (not driving) time.

The 2020 updated guidance is consistent with the principle in the ELD rule that time spent performing "yard moves" should be recorded as on-duty not driving time. Because "yard moves" occur on private property within the confines of a yard and not on a public road, this time does not constitute "driving time" within the meaning of 49 CFR 395.2. The updated guidance is available on the Agency's website in the guidance portal at <https://www.fmcsa.dot.gov/guidance> as FMCSA-HOS-395.2-Q09 and reads as follows:

Question 9: A driver drives on streets and highways during the week and jockeys commercial motor vehicles in the yard (private property) on weekends.

How is the yard time to be recorded?

Guidance: On-duty (not driving).

FMCSA also published guidance in the guidance portal on February 28, 2020, that distinguishes between movements of the CMV that may be considered as off-duty "personal conveyance" and movements that are on-duty "yard moves." This guidance is available on the Agency's website in the guidance portal at <https://www.fmcsa.dot.gov/hours-service/elds/when-can-movement-cmv-during-duty-period-be-considered-personal-conveyance> and reads as follows:

FAQ 12: When can a movement of a CMV during an off-duty period be considered personal conveyance?

Answer: A move may be considered as personal conveyance if the driver is off-duty and the movement is not for the motor carrier, shipper or receiver's commercial benefit. Examples include moving a CMV from one parking space to another at a shipper or port, or driving to a truck stop, rest area or any other location. In these situations, the

CMV movement is made in the off-duty period. However, the CMV should be moved no farther than the nearest reasonable and safe location to complete the rest period.

An on-duty yard move, such as moving the vehicle a short distance while waiting to load, would not qualify as personal conveyance.

III. Proposed Guidance Language

FMCSA proposes to clarify when a driver may record time performing “yard moves” as on-duty not driving time by providing examples of properties that qualify as yards. Therefore, the movement of a CMV on these properties would qualify as a “yard move” and be recorded as on-duty not driving time.

FMCSA proposes to replace Question 9 to 49 CFR 395.2 at <https://www.fmcsa.dot.gov/regulations/hours-service/ss3952-definitions> with the following revised Question 9 and seeks comments on this proposed guidance.

This guidance, if finalized, lacks the force and effect of law and is not meant to bind the public in any way. This guidance document is intended only to provide clarity to the public regarding the Agency’s interpretation of its existing regulations.

Question 9: Under what circumstances may a driver classify the operation of a commercial motor vehicle (CMV) as a yard move and record it as on-duty not driving time?

(a) *Guidance:* A driver may record time operating a CMV for yard moves as on-duty not driving under 49 CFR 395.8(b) only if the movement of the CMV occurs in a confined area on private property (or intermodal facility or briefly on public roads, as described below). Examples of properties that may qualify as yards include, but are not limited to:

1. An intermodal yard or port facility.
2. A motor carrier’s place of business.
3. A shipper’s privately-owned parking lot.

4. A public road, but only if and while public access to the road is restricted through traffic control measures such as lights, gates, flaggers or other means. For example, if a driver must operate on a public road briefly to reach different parts of a private property, the movement may be considered a yard move if public access is restricted during the move.
- (b) Examples of properties that do not qualify as yards, include, but are not limited to:
1. A public road without the traffic control measures in paragraph (a)(4) above.
 2. Public rest areas.

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, Public Law 114-94, 129 Stat. 1312, 1535 (Dec. 4, 2015), 49 CFR part 5, subpart C, and Executive Order 13891, the proposed regulatory guidance will be posted on FMCSA's website in the guidance portal, <https://www.fmcsa.dot.gov/guidance>, if finalized. It would be reviewed by the Agency no later than 5 years after it is finalized. The Agency would consider at that time whether the guidance should be withdrawn, reissued for another period up to 5 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. 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 requests responses to the following questions:

1. Would defining "yard moves" in the Agency's regulations provide necessary clarification and therefore benefit carriers and drivers?

2. Are there other properties or situations where drivers may be in a “yard move” status that should be included as examples in this guidance?
3. Would adding examples of “yard moves” be beneficial for this guidance (e.g., moving a CMV for maintenance)? If so, please provide examples for consideration.
4. How should “yard” be defined for the purposes of this guidance?

James W. Deck,
Deputy Administrator

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