



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

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Docket Operations

U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket Number: FMCSA-2024-0208
Regulatory guidance; notice of review of guidance

The Commercial Vehicle Safety Alliance (CVSA) respectfully submits the following comments in response to the notice of review of guidance from the Federal Motor Carrier Safety Administration (FMCSA) regarding the agency's regular review of existing guidance documents, published in the Federal Register on Aug. 13, 2024, Docket No. FMCSA-2024-0208.

CVSA is a nonprofit organization comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to prevent commercial motor vehicle crashes, injuries and fatalities and believes that collaboration between government and industry improves road safety and saves lives. Our mission is to improve commercial motor vehicle safety and enforcement by providing guidance, education and advocacy for enforcement and industry across North America.

General Comments

Clear, enforceable rules are the cornerstone of an effective regulatory framework designed to ensure safety on our roadways. It is imperative that those subject to the Federal Motor Carrier Safety Regulations (FMCSR) understand their responsibilities and that those tasked with enforcing the safety regulations can do so effectively to ensure the quality and uniformity of the more than three million roadside inspections conducted annually throughout North America. CVSA commends the agency for conducting this periodic review of existing regulatory guidance documents. Continued review and updates to guidance to remove redundancies, reflect recent changes, correct errors and eliminate contradictions provides both the enforcement community and motor carrier industry with clearer guidelines to follow.

CVSA has identified a number of instances where the regulatory guidance needs to be updated or clarified, outlined below. However, while the Alliance is appreciative of the agency's decision to provide a two-week extension of the comment period for this notice, CVSA cautions the agency that the comment period given to stakeholders to provide feedback to this notice is not sufficient, particularly when considering that FMCSA requested feedback on all regulatory guidance. FMCSA's Guidance Portal includes more than 1,300 individual guidance documents, dating as far back as 1987. As such, it is unlikely that all issues with existing guidance will be identified in this cycle.

CVSA encourages the agency to consider a more methodical approach to meeting this agency responsibility. Specifically, CVSA encourages FMCSA to consider soliciting feedback on regulatory guidance on a rolling basis, by each part of the FMCSR. This approach, or a similar, structured one, would provide predictability for stakeholders and the agency alike while resulting in better quality feedback for the agency to consider. It would also provide the agency with a more manageable scope of work.

Finally, CVSA encourages FMCSA to consider improvements to the Guidance Portal itself. Establishing the portal as the definitive resource on regulatory guidance is an effective way to ensure all stakeholders have access to the same information and the regulations are being interpreted and applied consistently. However, the current portal is cumbersome to navigate. In particular, the search results function needs to be refined significantly, in order to provide those using the portal with reliable, accurate information. CVSA encourages FMCSA to work with industry stakeholders and the enforcement community to identify necessary improvements to the Guidance Portal.

Specific Recommendations

Below, please find a list of specific recommended changes, corrections and clarifications to existing regulatory guidance. The 'Agency Identifier' for each specific item is noted in parentheses. In addition, CVSA has provided recommended language for consideration, where appropriate. Instances where multiple guidance items all require the same correction, for example updating the reference from Appendix G to Appendix A, are grouped. To the extent possible, the items below are organized by regulatory part and section, for ease of review.

1. *Remove Outdated Q&A Related to Entry-Level Driver Training Implementation Date*

FMCSA should archive Part 380 – Entry Level Driver Training Guidance Q&A Question 26 (FMCSA-ELDT-380-Q026), as the guidance is outdated. The question refers to the implementation date for the entry-level driver training (ELDT) requirements in part 380. However, that implementation date has passed, and the guidance is no longer necessary. If FMCSA chooses to leave the question in place, it should be updated to reflect the date is in the past.

2. *Update Guidance in Part 383 Regarding P/S Endorsements*

Guidance found in both § 383.3 and § 383.93 indicate that a driver delivering an empty school bus to the end user is required to have a passenger endorsement. Both responses were updated and made effective in March of 2019, according to FMCSA's website. However, an enforcement memo issued by the agency on Aug. 13, 2019 indicates that:

“The P and S endorsements are intended primarily to ensure that the driver has the knowledge and skills needed to transport passengers safely and help them evacuate the vehicle in case of an emergency. Those qualifications are not relevant when the bus is empty. Under those circumstances, the vehicle operates as a straight truck. Because FMCSA's view is that the regulations do not require P or S endorsements in these circumstances, it does not intend to take enforcement action against drivers who operate in these circumstances without one or both endorsements.”

As a result, the following Guidance Q&A items need to be updated to be consistent with the 2019 enforcement memo:

- § 383.3: Applicability. Guidance Q&A Question 9 (FMCSA-CDL-383.3-Q9)
- § 383.93: Endorsements. Guidance Q&A Question 10 (FMCSA-CDL-383.93-Q10)

3. *Clarify Answer in § 383.5: Definitions. Guidance Q&A Question 5*

Currently, the response to § 383.5: Definitions. Guidance Q&A Question 5 (FMCSA-CDL-383.5-Q5) is simply ‘No’. CVSA recommends FMCSA add additional clarifying language (below) to ensure the regulation is applied consistently and accurately.

Guidance: *No. Off-road motorized construction equipment is outside the scope of these definitions when (1) operated at construction sites; or (2) operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.*

4. *Correct § 383.93: Endorsements. Guidance Q&A Question 2*

The language found in § 383.93: Endorsements. Guidance Q&A Question 2.a. (FMCSA-CDL-383.93-Q02) is being interpreted incorrectly. Currently, the guidance reads:

Question 2: Would the driver in the following scenarios be required to have a CDL with an HM endorsement?

- a. A driver transports 1,001 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,001 pounds?

Guidance:

- a. Yes; unless the explosive is a 1.4S explosive, which never requires placarding.

This is being interpreted to mean that 1.4S explosives never require placarding. However, except for a few very narrow exceptions found in Special Provision 382 and § 172.504(f)(6), 1.4S explosives require placarding. Placarding requirements for 1.4S explosives can be found in § 172.504(a). In addition, the reference to a ‘Class

C explosive’ in the question is outdated and should be removed. To clarify, CVSA recommends the guidance be revised as follows:

Question 2: Would the driver in the following scenarios be required to have a CDL with an HM endorsement?

- a. A driver transports 1,001 or more pounds of Division 1.4 ~~(Class C explosive)~~ materials in a vehicle with a GVWR of less than 26,001 pounds?

Guidance:

- a. Yes; unless ~~otherwise excepted, such as the explosive is a 1.4S explosive those found in Special Provision 382 or § 172.504(f)(6), which never requires placarding.~~

5. *Correct § 390.3T: General Applicability. Guidance Q&A Question 24*

Currently, § 390.3T: General Applicability. Guidance Q&A Question 24 (FMCSA-RG-390.3T-Q024) reflects a number of outdated hours-of-service regulations, specifically, the language refers to the 10- and 15-hour rules for property carriers, rather than the current 11- and 14-hour requirements. All property carrying references to the “10-hour rule” should be updated to reflect the “11-hour rule” and all references to the “15-hour rule” should be updated to reflect the “14-hour rule.”

6. *Resolve Conflicting Guidance in § 390.5T: Definitions. Guidance Q&A Question 5 and FMCSA Personal Conveyance FAQs Question 11*

The response to § 390.5T: Definitions. Guidance Q&A Question 5 (FMCSA-RG-390.5T-Q005) conflicts with guidance provided in Question 11 of FMCSA’s Personal Conveyance FAQs, dated November 2018. § 390.5T: Definitions. Guidance Q&A Question 5 states that if a driver is using a CMV for personal reasons, not associated with interstate commerce, the driver is not subject to the FMCSR:

Question 5: A driver used by a motor carrier operates a CMV to and from his/her residence out of State. Is this considered interstate commerce?

Guidance: If the driver is operating a CMV at the direction of the motor carrier, it is considered interstate commerce and is subject to the FMCSRs. *If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the FMCSRs.* (Emphasis added.)

However, Question 11 of the Personal Conveyance FAQs indicates that a driver operating in personal conveyance is subject to the FMCSR:

11. Can a driver be inspected during personal conveyance? If so, what is the driver’s duty status during the inspection?

Yes. *Since the driver is still subject to the FMCSRs,* the driver or vehicle can be inspected. The driver’s duty status would be “on-duty, not driving” during the inspection. (Emphasis added.)

The guidance in these two documents conflict directly and results in confusion and inconsistencies in the use and enforcement of the personal conveyance designation. Based on the various guidance documents and

informal discussions, it is CVSA's understanding that a driver operating in the scenario under Question 5 assumes the movement is completely separate/not associated with an interstate movement and therefore the driver is not regulated. However, drivers document that time in the CMV as personal conveyance. However, in Question 11 assumes that the driver has an associated interstate movement, but has been relieved of all work responsibilities and is using the personal conveyance designation in line with the guidance provided in § 395.8: Driver's record of duty status. Guidance Q&A Question 26. FMCSA should clarify personal use of a CMV not currently regulated by the FMCSR and the use of personal conveyance in association with a regulated movement.

7. *Resolve Conflicting Guidance in § 392.5: Alcohol Prohibition. Guidance Q&A Question 3 and FMCSA Personal Conveyance FAQs Question 11*

The response to § 392.5: Alcohol Prohibition. Guidance Q&A Question 3 (FMCSA-DRV-392.5-Q003) conflicts with guidance provided in Question 11 of FMCSA's Personal Conveyance FAQs, dated November 2018. § 392.5: Alcohol Prohibition. Guidance Q&A Question 3 states that a driver who is off-duty is not prohibited from carrying alcoholic beverages:

Question 3: Does the prohibition against carrying alcoholic beverages in §392.5 apply to a driver who uses a company vehicle, for personal reasons, while off-duty?

Guidance: No. For example, an owner-operator using his/her own vehicle in an off-duty status, or a driver using a company truck or tractor for transportation to a motel, restaurant, or home, would normally be outside the scope of this section.

Meanwhile, Question 11 of the Personal Conveyance FAQs indicates that a driver operating in personal conveyance is subject to the FMCSR:

11. Can a driver be inspected during personal conveyance? If so, what is the driver's duty status during the inspection?

Yes. Since the driver is still subject to the FMCSRs, the driver or vehicle can be inspected. The driver's duty status would be "on-duty, not driving" during the inspection.

A driver who is off-duty and using the commercial motor vehicle, under personal conveyance, to transport alcoholic beverages to their hotel for personal use could be stopped by an inspector and, per the guidance in Question 11 of the FAQs, immediately placed in "on-duty, not driving" status for the inspection. In this scenario, the driver would immediately be in violation of § 392.5 and placed out of service. Additional clarification from FMCSA is needed to address this.

8. *Revise Unauthorized Persons Not To Be Transported Guidance*

Currently, § 392.60: Unauthorized persons not to be transported. Guidance Q&A Question 1 (FMCSA-DRV-392.60-Q001) indicates that documentation of a driver's authorization to transport a passenger must be maintained at the carrier's principal place of business. The roadside enforcement community and industry share the U.S. Department of Transportation (DOT) and FMCSA's commitment to raising awareness of and

combating the crime of human trafficking. However, because drivers are not required to carry and produce the documentation, inspectors have difficulty verifying whether or not a passenger found in a property-carrying commercial motor vehicle is authorized to be there, and therefore whether they may be the victim of human trafficking. Roadside inspectors are in a unique position to identify instances of human trafficking when conducting inspections on commercial motor vehicles, but only if given the necessary tools. An inspector's ability to contact and confirm with the carrier that the passenger is authorized is limited by several factors, including the time of inspection being outside normal business hours, poor cell signal and being unable to reach the appropriate motor carrier employee with access to the information. Without access to the written authorization document, the inspector may be unable to verify the passenger's status and could potentially miss an opportunity to intervene in a human trafficking incident. To address this shortcoming, CVSA is requesting that FMCSA update § 392.60: Unauthorized persons not to be transported. Guidance Q&A Question 1 (FMCSA-DRV-392.60-Q001) to read:

Question 1: Does §392.60 require a driver to carry a copy of the written authorization (required to transport passengers) on board a CMV?

Guidance: ~~No~~Yes, the authorization, in either hard copy or electronic format, must be maintained on board the CMV as well as at the carrier's principal place of business. ~~At the discretion of the motor carrier, a driver may also carry a copy of the authorization.~~

9. *Update § 393.130: What are the rules for securing heavy vehicles, equipment and machinery? Guidance Q&A Question 3*

The question of whether or not tiedowns are necessary to secure accessory equipment has been the subject of discussion by the North American Cargo Securement Harmonization Public Forum for some time. The regulation and subsequent guidance in Question 3 is being misinterpreted in multiple ways and inconsistently applied by the enforcement community. As a result, some inspectors are incorrectly placing vehicles out of service when tiedowns are not present. In some instances, the inspector is citing the driver for not having the accessories tied down when a tie down is not required. In other instances, the accessories are secured with something other than a chain and inspectors are citing the driver for not using a chain to secure the load. Both of these are incorrect. Representatives from FMCSA have indicated that changes to the interpretation are necessary. Discussion with the regulators and heavy equipment industry representatives has concluded that there is no value in putting a tiedown over accessory equipment that cannot pivot from side to side. CVSA encourages FMCSA to act on the Alliance's August 2018 petition, which requested that the agency make these necessary changes to the DOT Regulatory Guidance Interpretation Question 3 (FMCSA-VEH-393.130-Q03.cm) in Title 49 C.F.R. § 393.130 to read:

Question 3: A tractor loader-backhoe weighing over 10,000 pounds is being transported on a trailer. The loader and backhoe accessories are each equipped with locking devices or mechanisms that prevent them from moving up and down and from side-to-side while the construction equipment is being transported on the trailer. Must these accessories also be secured to the trailer with ~~chains~~ a tiedown?

Guidance: ~~No. However, if the construction equipment does not have a means of preventing the loader bucket, backhoe, or similar accessories from moving while it is being transported on the trailer, then a~~

~~chain would be required to secure those accessories to the trailer.~~ Accessory equipment on a heavy vehicle, including a hydraulic shovel, shall be completely lowered and secured to the vehicle with a tiedown unless:

- a) the accessory equipment can only move vertically;
- b) accessory equipment that can pivot, tilt or move sideways is blocked or immobilized by the transporting vehicle's structure or by a blocking or securement mechanism built into the transported vehicle.

10. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Question 3 Regarding Use of Adverse Driving*

On June 1, 2020, FMCSA published a final rule (FMCSA–2018–0248) making several changes to the hours-of-service regulations, including expanding the driving window during adverse driving conditions. Per the 2020 final rule, drivers are allowed to extend the maximum “driving window” by up to two hours during adverse driving conditions. This change applies both to drivers of property-carrying CMVs (14-hour “driving window”) and passenger-carrying CMVs (15-hour “driving window”). § 395.1: Scope of rules in this part. Guidance Q&A Question 3 (FMCSA-HOS-395.1-Q3) needs to be rewritten to reflect the change to the use of adverse driving.

11. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Question 11 Regarding Off-Duty and Sleeper Berth Requirements*

Currently, § 395.1: Scope of rules in this part. Guidance Q&A Question 11 (FMCSA-HOS-395.1-Q11) reflects outdated hours-of-service regulations. First, the question and the guidance both reference meeting the requirement for “8 consecutive hours off-duty;” however, per § 395.3, a driver must have 10 consecutive hours off-duty. In addition, the answer to Question 11 refers to the old sleeper berth regulations, which were updated as part of the June 1, 2020 final rule (FMCSA–2018–0248). § 395.1: Scope of rules in this part. Guidance Q&A Question 11 should be updated to reflect both the current requirement in § 395.3 that a driver have 10 consecutive hours off-duty and the current sleeper berth requirements found in § 395.1(g).

12. *Update Hours-of-Service Short-Haul Exception to Reflect 150 Air Mile Radius*

On June 1, 2020, FMCSA published a final rule (FMCSA–2018–0248) making several changes to the hours-of-service regulations, including expanding the short-haul operations exception from 100 air miles to 150. The following Guidance Q&A items reflect the old limit of 100 air miles and should be updated to be consistent with the current limit of 150 air miles.

- § 395.1: Scope of rules in this part. Guidance Q&A Question 12 (FMCSA-HOS-395.1-Q12)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 13 (FMCSA-HOS-395.1-Q13)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 14 (FMCSA-HOS-395.1-Q14)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 15 (FMCSA-HOS-395.1-Q15)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 16 (FMCSA-HOS-395.1-Q16)
- § 395.8: Driver’s record of duty status. Guidance Q&A Question 19 (FMCSA-HOS-395.8-Q19)
- § 395.8: Driver’s record of duty status. Guidance Q&A Question 20 (FMCSA-HOS-395.8-Q20)
- § 395.8: Driver’s record of duty status. Guidance Q&A Question 25 (FMCSA-HOS-395.8-Q25)
- Cross Border Transportation FAQs (FMCSA-ELD-Cross-Border-Transportation-FAQs (2023-03-08))

While these were the items identified by CVSA, given time constraints it should not be considered an exhaustive list. As part of this regulatory review process, FMCSA should ensure that all references to the short-haul operations exception are updated to reflect the current 150 air-mile limit.

13. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Question 18*

Currently, § 395.1: Scope of rules in this part. Guidance Q&A Question 18 (FMCSA-HOS-395.1-Q18) reflects the old 100 air-mile limit for the short-haul operations exception. On June 1, 2020, FMCSA published a final rule (FMCSA–2018–0248) making several changes to the hours-of-service regulations, including expanding the short-haul operations exception from 100 to 150 air miles. § 395.1: Scope of rules in this part. Guidance Q&A Question 18 should be updated to be consistent with the current limit of 150 air miles. In addition, the guidance should be updated to clarify no additional fields are required of a driver operating under the short-haul operations exception in § 395.1(e). Currently, inspectors are documenting form and manner violations when drivers are exempt from maintaining a record of duty status. Adding clarifying language will help address this and ensure the regulation is enforced correctly.

Question 18: Must the driver’s name and each date worked appear on the time record prepared to comply with §395.1(e), ~~100~~ 150 air-mile radius driver?

Guidance: Yes. The driver’s name or other identification and date worked must be shown on the time record. **No other form and manner fields are required if the driver is recording time on a record of duty status form.**

14. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Question 19*

Currently, § 395.1: Scope of rules in this part. Guidance Q&A Question 19 (FMCSA-HOS-395.1-Q19) reflects a number of outdated hours-of-service regulations, including the old short-haul operations exception of 100 air miles, shift limits, rest requirements and a reference ‘Section 395.1(e)(5),’ which no longer exists. § 395.1: Scope of rules in this part. Guidance Q&A Question 19 should be updated to read:

Question 19: May drivers who work split shifts take advantage of the ~~100~~ 150 air-mile radius exemption found at §395.1(e)?

Guidance: Yes. Drivers who work split shifts may take advantage of the ~~100~~ 150 air-mile radius exemption if: 1. The drivers operate within a ~~100~~ 150 air-mile radius of their normal work-reporting locations; 2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than ~~12~~14 consecutive hours; 3. The drivers are off-duty for more than ~~8~~10 consecutive hours before reporting for their first shift of the day and spend less than ~~12~~14 hours, in the aggregate, on-duty each day; 4. The drivers do not exceed a total of ~~10~~11 hours driving time and are afforded ~~8~~10 or more consecutive hours off-duty prior to their first shift of the day; and 5. The employing motor carriers maintain and retain the time records required by 395.1(e)(~~5~~1)(iv).

15. *Update Hours-of-Service Short-Haul Exception to Reflect 150 Air Mile Radius and 14-Hour Work Shift*

On June 1, 2020, FMCSA published a final rule (FMCSA–2018–0248) making several changes to the hours-of-service regulations, including expanding the short-haul operations exception from 100 air miles to 150 and extending the allowable work shift from 12 to 14 hours. The following Guidance Q&A items reflect the old limit of 100 air miles and 12 hours and should be updated to be consistent with the current limit of 150 air miles and 14 hours.

- § 395.1: Scope of rules in this part. Guidance Q&A Question 20 (FMCSA-HOS-395.1-Q20)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 22 (FMCSA-HOS-395.1-Q22)

16. *Update Hours-of-Service Short-Haul Exception to Reflect 150 Air Mile Radius and 11 Hour Total Driving Time*

Currently, § 395.1: Scope of rules in this part. Guidance Q&A Question 21 (FMCSA-HOS-395.1-Q21) reflects the old 100 air mile limit for the short-haul operations exception. In addition, the language references a maximum allowable driving time of 10 hours. However, § 395.3(a)(3) sets the total allowable driving time at 11 hours. § 395.1: Scope of rules in this part. Guidance Q&A Question 21 should be revised as follows:

Question 21: When a driver fails to meet the provisions of the ~~100~~-150 air-mile radius exemption (section 395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption. A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the exemption cannot be met. The record of duty status must cover the entire day, even if the driver has to record retroactively changes in status that occurred between the time that the driver reported for duty and the time in which he/she no longer qualified for the ~~100~~-150 air-mile radius exemption. This is the only way to ensure that a driver does not claim the right to drive ~~10~~ 11 hours after leaving his/her exempt status, in addition to the hours already driven under the ~~100~~-150 air-mile exemption.

17. *Revise § 395.1: Scope of rules in this part. Guidance Q&A Question 26*

Currently, § 395.1: Scope of rules in this part. Guidance Q&A Question 26 (FMCSA-HOS-395.1-Q26) indicates that a driver may not record time spent in the sleeper berth as off-duty time on line one of the record of duty status. However, this is inconsistent with the guidance provided sections such as in § 395.2: Definitions. Guidance Q&A Question 2, which provides language defining the term “off-duty”. FMCSA consistently defines “off-duty” as when the driver is relieved of all work responsibilities and free to pursue activities of their choosing. Based on the guidance provided by FMCSA related to what constitutes “off-duty,” a driver in the sleeper berth who is relieved of all responsibilities would qualify as “off-duty.” However, the guidance in § 395.1: Scope of rules in this part. Guidance Q&A Question 26 results in inspectors documenting this as a violation. CVSA recommends revising the answer to Guidance Q&A Question 26 to read:

Guidance: Yes, however a driver cannot record off-duty time as sleeper berth time if they are not physically in the sleeper berth.

18. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Question 27*

The language in § 395.1: Scope of rules in this part. Guidance Q&A Question 27 (FMCSA-HOS-395.1-Q27) reference outdated sleeper berth regulations, which were revised as part of the June 1, 2020 final rule (FMCSA–2018–0248). § 395.1: Scope of rules in this part. Guidance Q&A Question 27 should be updated to reflect the new sleeper berth language found in § 395.1(g). Specifically, the reference to 6 hours in the sleeper berth should reflect 7 hours in the sleeper berth.

19. *Correct § 395.1: Scope of rules in this part. Guidance Q&A Questions 17 and 29*

On June 1, 2020, FMCSA published a final rule (FMCSA–2018–0248) making several changes to the hours-of-service regulations, including expanding the short-haul operations exception from 100 air miles to 150. The following Guidance Q&A items reflect the old limit of 100 air miles. In addition, the guidance below references ‘Section 395.1(e)(5),’ however, that section no longer exists within the regulations. Both should be updated to reflect the current limit of 150 air miles for the short-haul operations exception, and the regulatory citations should be updated to reflect § 395.1(e)(1)(iv), which is the requirement that a motor carrier maintain accurate and true time records.

- § 395.1: Scope of rules in this part. Guidance Q&A Question 17 (FMCSA-HOS-395.1-Q17)
- § 395.1: Scope of rules in this part. Guidance Q&A Question 29 (FMCSA-HOS-395.1-FAQ29)

20. *Correct § 395.2: Definitions. Guidance Q&A Question 13*

The guidance in § 395.2: Definitions. Guidance Q&A Question 13 (FMCSA-HOS-395.2-Q13) is inconsistent with FMCSA’s June 1, 2020 final rule (FMCSA–2018–0248). The revised regulations allow a co-driver to be seated in the front of the commercial motor vehicle for up to three hours in off-duty status. FMCSA should update the guidelines in § 395.2: Definitions. Guidance Q&A Question 13 to be consistent with the current language in § 395.2: Definitions – On duty time (4)(iii).

21. *Correct § 395.8: Driver’s record of duty status. Guidance Q&A Question 15*

Currently, the guidance in § 395.8: Driver’s record of duty status. Guidance Q&A Question 15 (FMCSA-HOS-395.8-Q15) incorrectly refers to a requirement for foreign drivers to produce a current record of duty status and documentation for the previous 6 days. However, § 395.8(k)(2) requires a driver to produce the previous 7 days. FMCSA should update the guidance in § 395.8: Driver’s record of duty status. Guidance Q&A Question 15 to be consistent with § 395.8(k)(2).

22. *Clarify § 395.8: Driver’s record of duty status. Guidance Q&A Question 26*

As noted previously in this document (see Items 6 and 7 above), the existing guidance related to the use of personal conveyance is conflicting and unclear, resulting in misuse by drivers and inconsistent enforcement by inspectors. CVSA recommends a number of clarifications be made to guidance in the § 395.8: Driver’s record of duty status. Guidance Q&A Question 26 (FMCSA-HOS-395.8-Q26) related to personal conveyance.

- *Clarify that personal conveyance time cannot count towards a driver’s rest time.*
Currently, time spent in personal conveyance status is counted as off-duty time. However, guidance under § 395.8: Driver’s record of duty status. Guidance Q&A Question 26 (a)(2) and (a)(3) seems to

indicate that time spent under personal conveyance should not count towards rest time. Presumably, this is because clearly the driver is driving during that time, which contributes to fatigue. While allowing this time to be considered off duty is understandable to avoid interrupting a rest period, it also can contribute to unsafe driving conditions when a driver does not obtain a full 10 hours of rest. CVSA recommends making this more explicit in the guidance, in order to avoid confusion and misuse.

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.**

- *Clarify that searching for parking after a driver has reached their maximum driving time is not an appropriate use of personal conveyance.*

FMCSA has stated verbally and through email that it is the responsibility of the driver to find parking before running out of time by planning ahead. However, there is no guidance specific to the use of personal conveyance that makes that clear. This, combined with the guidance in § 395.8: Driver's record of duty status. Guidance Q&A Question 26 (a)(3), results in drivers using personal conveyance to search for parking at the end of their allowable driving time. FMCSA should issue guidance, similar to the language in § 395.1: Scope of rules in this part. Guidance Q&A Question 28, to clarify that it is the responsibility of the driver to plan for the need to locate a safe parking location.

- *Clarify the term "enhancing operational readiness."*

§ 395.8: Driver's record of duty status. Guidance Q&A Question 26(b)(1) states that a movement that "enhances the operational readiness" of a load is not an appropriate use of the personal conveyance designation. However, there is no clear definition of the term "enhances the operational readiness." Guidance is needed from FMCSA to ensure that this regulation is being applied consistently.

For example, a driver rests at a rest area and decides to go to a restaurant for food 10 miles up the road. This will obviously get the driver closer to their destination, but the purpose of the movement is to use personal conveyance for an allowable reason – to get food. Some inspectors consider this improper because it advances the load closer to the destination. However, others believe that a driver cannot be expected to back-track in the wrong direction to get food to avoid a violation for enhancing the operational readiness.

- Clarify the use of personal conveyance by an owner-operator to return or leave their home.*

FMCSA has provided emails stating that as soon as an owner-operator leaves their home, they are furthering their business. Furthermore, FMCSA has stated that an owner-operator cannot return home after dropping off a shipment because their home is their principal place of business. This would be considered a continuation of the trip according to correspondence CVSA and others have received from FMCSA. However, this is not stated anywhere in FAQs or guidance. CVSA requests that the agency provide formal guidance clarifying whether or not an owner-operator can use personal conveyance to return/leave home.
- Clarify the term “yard move.”*

As part of the Alliance’s 2023 data collection on the use of personal conveyance, there were numerous instances of drivers using the yard move status or personal conveyance while moving trucks to look for parking, moving trucks at shipper/receiver facilities to load or unload, etc. Loading, unloading, or moving vehicles for that purpose is clearly on-duty or driving time, but it is being claimed as a yard move. There is no regulatory definition for yard move, which leads to confusion and abuse of the exception. FMCSA has stated verbally and through email that a yard move is only to be used on private property that is not open to the public. It was not intended to allow drivers to move trucks around truck stops, shipping/receiving facilities, etc. CVSA requests that the agency provide formal guidance clarifying what qualifies as a “yard move”.
- Clarify the distinction between personal use of a non-regulated vehicle and personal conveyance.*

As noted previously in this document (see Items 6 and 7 above), there is confusion among the motor carrier community and enforcement regarding the use of personal conveyance versus a personal use of a non-regulated vehicle. Currently, drivers who use a CMV that is not currently operating in commerce and therefore not subject to the FMCSR often designate that time as personal conveyance in their record of duty status, in order to account for the driving time. However, as noted in § 390.5T: Definitions. Guidance Q&A Question 5, if a driver is using a CMV for personal reasons, not associated with interstate commerce, the driver is not subject to the FMCSR. CVSA requests that the agency provide formal guidance distinguishing between personal use of a CMV not currently regulated by the FMCSR and the use of personal conveyance in association with a regulated movement.

23. *Correct § 395.8: Driver’s record of duty status. Guidance Q&A Question 28*

Currently, the language of in § 395.8: Driver’s record of duty status. Guidance Q&A Question 28 (FMCSA-HOS-395.8-Q28) indicates that a driver is required to provide printed copies of their current and prior seven days’ record of duty status (if required on those days) at the time of inspection, if requested by the inspector. Failing to provide the printed copies upon request can result in the driver being cited, based on this guidance. Compliance with this guidance would require a driver to carry a printer in their vehicle at all times. However, this guidance conflicts with the regulatory language in § 390.32, updated in 2018, which states that electronic documents and signatures meet federal requirements. CVSA recommends that FMCSA update the guidance in § 395.8: Driver’s record of duty status. Guidance Q&A Question 28 to be consistent with the current language in § 390.32.

24. *Update § 396.11: Driver vehicle inspection report(s). Guidance Q&A Question 6*

Currently, § 396.11: Driver vehicle inspection report(s). Guidance Q&A Question 6 (FMCSA-VM-396.11-Q006) reads:

Question 6: Does § 396.11 require a motor carrier to effect repairs of all items listed on a DVIR prepared by a driver before the vehicle is subsequently driven?

Guidance: The motor carrier must effect repairs of defective or missing parts and accessories listed in Appendix G to the FMCSRs before allowing the vehicle to be driven.

First, the language incorrectly refers to Appendix G. However, on Oct. 14, 2021, FMCSA published a final rule (FMCSA–2021–0132) that redesignated Appendix G to subchapter B of chapter III (“Minimum Periodic Inspection Standards”) as Appendix A to part 396.

In addition, CVSA recommends FMCSA consider revising this language. Currently, the Appendix A does not include all components and violations that could be identified and documented on a roadside inspection. The guidance should instruct the motor carrier to repair all defects that affect the safe operation of the vehicle or could result in a mechanical breakdown.

25. *Update § 396.11: Driver vehicle inspection report(s). Guidance*

Currently, § 396.11(a)(2)(i) specifies the reporting requirements for driver vehicle inspection reports (DVIR). Specifically, the requirement states:

“The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. **Drivers are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.**” (Emphasis added)

As a result, the following Guidance Q&A items need to be corrected to be consistent with the regulatory language, which states that no DVIR is required if no defects/deficiencies are identified:

- § 396.11: Driver vehicle inspection report(s). Guidance Q&A Question 13 (FMCSA-VM-396.11-Q013)
- § 396.11: Driver vehicle inspection report(s). Guidance Q&A Question 17 (FMCSA-VM-396.11-Q017)
- § 396.11: Driver vehicle inspection report(s). Guidance Q&A Question 21 (FMCSA-VM-396.11-Q021)

26. *Update Reference to Appendix G to Appendix A*

The following Guidance Q&A items incorrectly refer to Appendix G. On Oct. 14, 2021, FMCSA published a final rule (FMCSA–2021–0132) that redesignated Appendix G to subchapter B of chapter III (“Minimum Periodic Inspection Standards”) as Appendix A to part 396.

- § 396.17: Periodic inspection. Guidance Q&A Question 7 (FMCSA-VM-396.17-Q07.cm)
- § 396.17: Periodic inspection. Guidance Q&A Question 9 (FMCSA-VM-396.17-Q09.cm)
- § 396.17: Periodic inspection. Guidance Q&A Question 12 (FMCSA-VM-396.17-Q12.cm)

- § 396.17: Periodic inspection. Guidance Q&A Question 13 (FMCSA-VM-396.17-Q13.cm)
- § 396.17: Periodic inspection. Guidance Q&A Question 14 (FMCSA-VM-396.17-Q14.cm)
- Cross-border commercial and non-commercial driver license requirements (FMCSA-BOR-VM-396-FAQ001)

While these were the items identified by CVSA, given time constraints it should not be considered an exhaustive list. As part of this regulatory review process, FMCSA should ensure that all references to Appendix G regarding minimum periodic inspection standards are updated to reflect the redesignated Appendix A.

Conclusion

CVSA looks forward to working with FMCSA to continue to improve and clarify the FMCSR and associated guidance to ensure that regulatory requirements are clear to both the motor carrier community and enforcement. CVSA reiterates its recommendation that, in the future, stakeholders be provided additional time to assemble and submit comments. In addition, CVSA encourages the agency to consider a phased approach to its regulatory review process, evaluating the FMCSR one portion at a time.

CVSA works to closely monitor, evaluate, and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. Commercial motor vehicle safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the opportunity to provide feedback to the agency.

If you have further questions or comments, please do not hesitate to contact me at 202-998-1008 or collin.mooney@cvsa.org.

Respectfully,



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