



U.S. Department
of Transportation

Memorandum

MC-ECE-2018-0005

**Federal Motor Carrier
Safety Administration**

Subject:

ACTION: Use of a Commercial
Motor Vehicle for Personal Conveyance

Date:

MAY 30 2018

From:

William A. Quade
Associate Administrator for Enforcement

Reply to
Attn. of:

MC-ECE

To:

All FMCSA Staff

PURPOSE

The purpose of this memorandum is to provide guidance for Federal Motor Carrier Safety Administration personnel and State law enforcement on how to validate time claimed as personal conveyance on hours of service (HOS) records during inspections, new entrant safety audits, and investigations for Electronic Logging Device (ELD) and non-ELD users.

BACKGROUND

Prior personal conveyance guidance, found in 49 CFR § 395.8, Question 26, encompassed guidance from the Federal Highway Administration's November 18, 1996, memorandum titled "Personal Conveyance in a Commercial Motor Vehicle" and a compilation of guidance published on April 4, 1997, in the Federal Register notice titled, "Regulatory Guidance for Federal Motor Carrier Safety Regulations" (62 FR 16370, 16426). The guidance reiterated the basic principle that the driver must be relieved from work and all responsibility for performing work for the driving time to be considered personal conveyance. It highlighted the use of the commercial motor vehicle (CMV) as a personal conveyance in traveling to and from the place of employment (e.g., the normal work reporting location). The guidance included discussion of use of the CMV to travel "short distances" from a driver's en route lodgings to restaurants in the vicinity of such lodgings. In addition, the 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.

On December 16, 2015, FMCSA published the "Implementation of Electronic Logging Devices and Hours of Service Supporting Documents Final Rule," (ELD Rule). The required use of ELDs and the supporting documents provisions included in the ELD rule took effect on December 18, 2017. This rule established minimum performance and design standards for ELDs, which include the automatic recording of data related to the movement of the CMV equipped with an ELD. This data includes, but is not limited to:

- CMV geographic location information;
- Engine hours; and
- Vehicle miles.

Prior to the ELD rule, drivers could manually log their use of a CMV for personal conveyance on paper Records of Duty Status (RODS) as off-duty time without detailed vehicle location information. As a result, inspectors and investigators reviewing RODS may have been unaware of the movement of the CMV and any potential misuse of the vehicle for personal conveyance.

Although the term “off-duty” is not specifically defined in the Federal Motor Carrier Safety Regulations (FMCSRs), it is interpreted as the opposite of time spent “on-duty” as defined in 49 CFR § 395.2.

The Rule requires the ELD device to have an option for motor carriers to be configured with a special driving category titled “authorized personal use.” However, the motor carrier is not required to authorize the use of a CMV for personal conveyance. It should be noted that if the motor carrier decides to configure the device with the “authorized personal use” special driving category, then the position reporting accuracy will be reduced from 1 mile radius to 10 mile radius and the driver must identify the start and end of the personal conveyance driving on the ELD using the configured special driving category. If the motor carrier does not configure the ELD to allow the selection for authorized personal use, but does prohibit the use of the CMV for personal conveyance, then the driver must identify the start and end of personal conveyance by making an annotation on the ELD.

The ability of drivers using ELDs to identify special driving categories, such as authorized personal use, combined with the automatic recording of data related to the movement of the CMV, will aid inspectors, investigators, and auditors in validating the use of CMVs as personal conveyance.

Revised regulatory guidance titled, “Hours of Service of Drivers of Commercial Vehicles, Regulatory Guidance Concerning the Use of Commercial Motor Vehicles for Personal Conveyance” will be published in the Federal Register soon. The new guidance provides that “A driver may record time operating a CMV for personal conveyance (e.g., 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 Federal Register Notice will be provided upon publication.

The revised guidance eliminates the requirement that the CMV be unladen in order to be operated as personal conveyance and clarifies when a driver is allowed to use personal conveyance to leave a shipper or receiver and travel to a safe location for rest. It is also important to note that there is not a mileage restriction on personal conveyance; however, it is the responsibility of the motor carrier and driver to ensure that the driver is not operating while ill or fatigued (see 49 CFR 392.3).

DEFINITIONS

On-duty time

On-duty time is defined in 49 CFR 395.2, in part, as “all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work.”

Off-duty time

Off-duty time is that time that is not on-duty, when a driver is relieved from work and all responsibility for performing work.

Personal Conveyance

Personal conveyance is use of a CMV during off-duty time. Personal conveyance is referenced as “authorized personal use” in the ELD rule.

POLICY

Investigators, auditors, and inspectors must follow the revised regulatory guidance and the procedures provided in this policy for determining whether a driver is operating the CMV as a personal conveyance, and, therefore, permitted to record that time as off-duty.

A determination should be made as to whether the driver is operating a CMV while on-duty by reviewing the driver’s HOS data and supporting documentation; and interviewing the driver. If an inspector, auditor, or investigator discovers a driver who alleges the CMV was used as personal conveyance, but did in fact operate the CMV while on-duty, the driver or carrier should be cited for false RODS, when appropriate.

Please note that the driver is not required to have proof of personal conveyance authorization from the motor carrier in their possession during inspections.

PROCEDURES

The following are two questions that should be used to determine if time recorded as personal conveyance was off-duty time:

- 1) Is the driver relieved from all work responsibilities by the motor carrier?
- 2) Are the trip and destination personal in nature?

If the answer is yes for both questions, the trip is likely an appropriate use of the CMV for personal conveyance. It should be noted that these questions may not be applicable for every situation concerning the use of a CMV for personal conveyance.

Inspectors, auditors, and investigators must use all supporting documents in the driver’s possession and or maintained by the motor carrier to determine if a driver was on-duty or off-duty for time recorded as personal conveyance. An example of a supporting document that may be in the possession of the driver during an inspection is a bill of lading. A bill of lading may identify the origin, destination, pickup date, and scheduled delivery date of a shipment. A driver may attempt to conceal the driving time needed to arrive at the destination on the scheduled delivery date by identifying driving time between the origin and destination as use of the CMV

for personal conveyance. This would be a case of improper use of personal conveyance and the driver should be cited for any discovered HOS violations, including false RODS. See Attachment A for examples of proper use and misuse of a CMV for personal conveyance.

If a driver or motor carrier is using an ELD to record drivers' HOS, then the location referenced in the ELD record, in combination with supporting documents in the driver's possession or maintained by the motor carrier, should be used to help determine if the movement of the CMV while the driver is off duty is contributing to a motor carrier's operational readiness. In addition, annotations of authorized personal use made on the ELD record should be analyzed to ensure the accuracy of the ELD record and the proper use of personal conveyance.

Section 392.3 prohibits a driver from operating a CMV while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the CMV. Investigators, auditors, and inspectors must determine if the personal conveyance driving impaired the driver's alertness or contributed to fatigued driving, when the driver returns to on-duty driving status.

A motor carrier may ban the use of a CMV for personal conveyance purposes, impose a distance limitation on personal conveyance, prohibit personal conveyance while the CMV is laden, or impose any other lawful restriction on the operation of CMVs by its drivers. While the investigator, auditor, inspector may not enforce the carrier's policy on personal conveyance, the company policy may be used as additional evidence to indicate that the driver was not operating the CMV in an appropriate personal conveyance status.

IMPLEMENTATION

This policy is effective immediately. This policy should be distributed to and shared with all Motor Carrier Safety Assistance Program enforcement personnel.

Should you have any questions or need additional information regarding this policy, please contact Bill Mahorney in the Enforcement Division at (202) 493-0001 or via e-mail at bill.mahorney@dot.gov.