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

RE: Hours of Service of Drivers of Commercial Motor Vehicles: Proposed Regulatory Guidance Concerning the Use of a Commercial Motor Vehicle for Personal Conveyance (Docket No. FMCSA-2017-0108)

The Western States Trucking Association (“WSTA”)¹ supplies these comments in response to a request for comment on Proposed Regulatory Guidance published in the Federal Register on December 19, 2017. The WSTA supports the new guidance language proposed by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) related to using a commercial motor vehicle (“CMV”) for personal conveyance by a driver with one caveat discussed at the end of our comments.

Focusing on the “reason” a CMV is being used for personal conveyance instead of whether a CMV is laden is imminently a much fairer way for the Agency to interpret its hours-of-service (“HOS”) rules. This is especially true since its state enforcement partners also rely on interpretations when conducting roadside inspections even for exclusively intrastate operators. As FMCSA correctly stated in the Notice as justification for this update of its regulatory interpretation, the current definition did negatively affect drivers of single unit vehicles especially those operators whose vehicles are primarily used to carry “tools of trade and related matters.”

Denying drivers of laden vehicles the same ability to use their CMV to travel to restaurants, lodging, or even to their home has never made any sense even from a safety perspective. The WSTA is an active member and participant in the Commercial Vehicle Safety Alliance and virtually every time the issue of using personal conveyance has been discussed at conferences our position has always been that absent relevant statistical data showing the use of a CMV as personal conveyance is related to negative safety outcomes, curtailing its use in any manner is unwarranted.

FMCSA in the published Notice asked for response to a series of questions and we offer selected responses below.

Question #1: Which carriers or drivers would take advantage of the additional flexibilities proposed in this guidance?

Answer: CMV’s encompass a wide array of vehicles beyond the oft quoted “long-haul tractor-trailer” and FMCSA’s HOS regulations do apply to those operators either directly through the authority of the

¹ The *Western States Trucking Association* is the oldest, independent nonprofit trucking association in the U.S. founded in 1941. We are headquartered in Upland, CA. Our nearly 6,000 member and affiliated motor carriers are engaged in virtually every mode of trucking including construction, port drayage, cross-border, general freight, heavy-haul and agricultural operations.

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Secretary of Transportation or indirectly by state's having to adopt conforming regulations that affect their "intrastate" rules governing the use of CMV's.

Many WSTA members are engaged in construction trucking related activities and oftentimes the CMV's they operate do in-fact carry "tools of their trade." For example, a power unit could be pulling a trailer loaded with a back hoe or a foreman's heavy-duty pick-up truck could have materials related to their job function. We have members engaged in heavy-haul operations who have been told they could not use personal conveyance simply because the only items on their trailers were "dunnage," such as blocking and chains. The new proposed interpretation will allow these types of drivers to legally travel to restaurants, lodging, or to their homes.

Question #5: What benefits would the new flexibilities provide to carrier and drivers?

Answer: If allowing a driver to go to their home instead of needing to sleep in a CMV's sleeper berth or even hotel, the benefit of restorative rest in their home is far greater than time spent away from home. The new interpretation will simply allow drivers previously prohibited from engaging in this activity to be able to take advantage of this new "flexibility."

Clarify when a CMV can be used for personal conveyance

The WSTA appreciates the intent of FMCSA's proposed change in its guidance and some examples are given, we do believe the Agency should make it clear in its guidance language that a CMV can be used for personal conveyance outside of the 11 hour, 14 hour, and 60/70 hour rules. We'd also ask to add clarification that utilizing personal conveyance does not break-up a 34-hour restart.

While it may seem self-evident that a driver would use personal conveyance when in these circumstances, it is not always clear to roadside law enforcement that its permissible and without further clarifying guidance it will still leave drivers vulnerable to individual interpretations at roadside. The current regulatory guidance expressly prohibits a driver placed out-of-service ("OOS") for exceeding HOS rules from being able to use a CMV as personal conveyance. While that language is notably absent in this new guidance, that presents a completely different set of circumstances than the clarification we request. It is appropriate that a driver placed OOS for an HOS violation not be allowed to utilize personal conveyance and that prohibition should be expressly stated in the new guidance along with differentiating the circumstances where a driver is on personal conveyance when beyond the HOS limitations.

Conclusion

The WSTA supports modernizing regulatory guidance concerning the usage of a CMV for personal conveyance. We do believe FMCSA should clarify specifically that personal conveyance can be used outside of HOS limitations.

Respectfully submitted,



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