

TRANSPORTATION ALERT

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FMCSA Issues New Guidance Regarding the Use of Personal Conveyance

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The Federal Motor Carrier Safety Administration (FMCSA) recently issued new guidance regarding the use of “personal conveyance” status. Effective immediately, the FMCSA will allow drivers to enter into personal conveyance status—whether the truck is loaded or not—for certain purposes after their hours of service are exhausted. The guidance updates a 1997 policy requiring the trailer be empty before the vehicle could be used as a personal conveyance. Although the guidance will give drivers greater flexibility, the subjective language in the guidance will likely give rise to further disputes in the tort and insurance coverage arenas.

Generally speaking, under the new guidance, a driver can operate a laden vehicle for personal reasons without running afoul of the hours of service regulations as long as the purpose of the operation is not to “enhance the operational readiness” of the motor carrier. The guidance gives the following examples of appropriate uses of a Commercial Motor Vehicle (CMV) for personal conveyance:

- (1) Traveling to a nearby, reasonably safe location to obtain required rest after loading or unloading;
- (2) Time spent traveling from a driver’s en route lodging (such as a motel or truck stop) to restaurants and entertainment facilities;
- (3) Commuting between the driver’s residence and terminal, trailer-drop lots, and work sites; and
- (4) Moving a CMV at the request of a safety official during the driver’s off-duty time.

The guidance does not define what is a “nearby, reasonably safe location to obtain the required rest,” nor does it define what is deemed to “enhance the operational readiness” of the motor carrier, other than to say that a driver may not bypass available resting locations in order to get closer to the next loading or unloading point or other scheduled motor carrier destination.

Drivers often cite a scenario where they are delivering or picking up a load at a shipper or carrier and it takes longer than planned, using up the driver’s available hours of service. The driver is then told to leave the property. If the driver at that point goes off duty and moves the CMV under personal conveyance to the nearest safe parking spot to continue required off-duty time, that would be a legitimate use of personal conveyance under the guidance. But, if the driver were to pass the nearest safe parking spot in order to get to another location that is closer to the next delivery or pickup, that is advancing the load/job and would not be a proper use of personal conveyance status.

What if a driver determines that the nearest location to rest is inadequately lit or otherwise unsafe, so he or she proceeds to the next location that happens to be closer to his or her next loading or unloading point? What if the driver passes up multiple locations that he or she determines are not “reasonably safe”? What is a “nearby, reasonably safe location” will inevitably vary from driver to driver. Until case law sheds light on some of these issues, there will be significant room for dispute

in tort and insurance coverage matters, particularly as relates to coverage under the company's insurance policy and any bobtail and non-trucking liability insurance policies.

Until some of these issues are resolved, carriers can enact policies on the use of personal conveyance, including limiting the distance of travel under personal conveyance status or altogether prohibiting personal conveyance while the CMV is laden. In fact, the FMCSA recommends that carriers have a policy in place on what they do or do not allow regarding personal conveyance, including any limits.

If you have any questions about how the guidance affects you, please contact any of the listed Roetzel attorneys.

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