

# Personal Conveyance Update – Trying to Define What a Driver Can and Cannot Do

*SmithAmundsen Commercial Transportation Alert*  
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Hours of Service and when is a driver on duty, how time is tracked (ELDs), and what can a driver do, have been the subject of ongoing regulatory activity, litigation and debate for the past decade and more. One of the issues that the Federal Motor Carrier Safety Administration (FMCSA) recently addressed is the “personal conveyance” provision of the regulations. On May 31, 2018, the FMCSA provided new guidance for commercial motor vehicle (CMV) – both trucks and motorcoaches – personal use while off duty.

The updated guidance applies to §395.8 Driver’s Record of Duty Status. Some of the key aspects of the guidance include:

- A driver may record time operating a CMV for personal conveyance (i.e., 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*. (If permitted, a personal conveyance does not effect on-duty time.)
- The commercial motor vehicle may be used for personal conveyance even if it is laden, since the load is not being transported for the commercial benefit of the carrier at that time. (Driving to a place to sleep or rest, restaurants and “entertainment” facilities are included, while bobtailing and deadheading are not.)
- Motor carriers can establish personal conveyance limitations either within the scope of, or more restrictive than, this guidance, such as banning use of a CMV for personal conveyance purposes, imposing a distance limitation on personal conveyance, or prohibiting personal conveyance while the CMV is laden.

The guidance goes on to offer many examples of possible applicable circumstances and can be found in full on the FMCSA website.

We counsel clients, draft polices and contracts, litigate cases, and respond to accidents that involve the issues covered by this guidance. We are asked what do we think is (and is not) proper? What should we do? The guidance does not address all of the issues and, like every rule, creates new ones.

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Driving is never as simple as getting from point A to point B. This updated guidance still leaves the decision whether to allow personal conveyance up to the motor carrier. It does shift the focus, however, from what was on the CMV to why the driver is operating the CMV while off-duty. To successfully manage these situations, carriers need to be clear on the policies that are in place.

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