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DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 395****Regulatory Guidance on the Applicability of Property-Carrier Hours-of-Service Rules to the Driveaway Operation of Vehicles Designed to Transport Passengers****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of regulatory guidance.

SUMMARY: The property-carrier hours-of-service (HOS) rules in 49 CFR 395.3 are applicable to drivers operating commercial motor vehicles designed or used to transport passengers on “driveaway-towaway” trips, as defined in 49 CFR 390.5. This notice provides Federal and State enforcement personnel, and the motor carrier industry, with uniform guidance concerning these rules.

DATES: *Effective Date:* This regulatory guidance is effective June 6, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: MCPSD@dot.gov. Phone (202) 366-4325.

SUPPLEMENTARY INFORMATION:**Legal Basis**

The Motor Carrier Act of 1935 provides that “The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards for equipment of, a motor private carrier, when needed to promote safety of operation” [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the

authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for commercial motor vehicles (CMVs). At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)], and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

Background

This document adds regulatory guidance on the applicability of the hours-of-service (HOS) regulations for property-carrying drivers in 49 CFR 395.3 to drivers of vehicles designed or used to transport passengers, while operating the vehicle on a “driveaway-towaway” trip as defined 49 CFR 390.5. These drivers often work for motor carriers that specialize in delivery of commercial motor vehicles (CMVs), and they do not operate CMVs to transport passengers on a regular basis.

The § 390.5 definition of “driveaway-towaway” is “* * * an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported: (1) Between vehicle manufacturer’s facilities; (2) between a vehicle manufacturer and a dealership or purchaser; (3) between a dealership, or other entity selling or leasing the vehicle, and a purchaser or lessee; (4) to a motor carrier’s terminal or repair facility for the repair of disabling

damage (as defined in § 390.5) following a crash; (5) to a motor carrier’s terminal or repair facility for repairs associated with the failure of a vehicle component or system; or (6) by means of a saddle-mount or tow-bar.”

Reason for This Notice

Section 395.3 prescribes the primary HOS regulations applicable to property-carrying drivers, and § 395.5 prescribes the comparable regulations for passenger-carrying drivers. Neither the term “property-carrying” nor “passenger-carrying” is defined in these regulations. The FMCSA has received inquiries from motor carriers as to whether the property-carrying or passenger-carrying HOS rules would apply in driveaway situations usually involving the delivery of a bus, motorcoach, or similar CMV from the manufacturer or distributor to the dealer, or similar scenario. The Agency agrees that regulatory guidance is needed to clarify applicability of the HOS regulations. For the reasons explained above, FMCSA issues Regulatory Guidance Question 1 to § 395.5 of the FMCSRs.

PART 395—HOURS OF SERVICE OF DRIVERS**§ 395.5 “Maximum driving time for passenger-carrying vehicles.”**

“*Question 1:* Would a driver delivering an empty commercial motor vehicle designed or used to carry passengers, from the manufacturer or distributor to a dealer, or otherwise engaged in a “driveaway-towaway” trip as defined in § 390.5, be required to comply with the hours-of-service regulations for passenger-carrying drivers?”

Guidance:

No. The *property-carrier* hours-of-service rules in § 395.3 are applicable to drivers operating commercial motor vehicles designed or used to transport passengers in a “driveaway-towaway” operation, as defined in § 390.5.”

Issued on: May 29, 2012.

Anne S. Ferro,
Administrator.

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