

PART III: DRIVERS' HOURS OF SERVICE: PERSONAL CONVEYANCE: DO YOU KNOW IT WHEN YOU SEE IT?

THE PROBLEM: PERSONAL CONVEYANCE TIME PARAMETERS ARE NOT CLEARLY DEFINED BY REGULATION. Yet, the penalties for misusing personal conveyance can be significant.

"We know it when we see it." This appears to be the FMCSA's approach to personal conveyance in their proposed guidance. The most succinct, though nonauthoritative, explanation of personal conveyance comes from the FMCSA website: "Personal conveyance is the movement of a commercial motor vehicle (CMV) for personal use while off duty." *But what does that mean?*

Personal conveyance has long been an issue in the trucking industry. How many miles can the driver run using personal conveyance? How many hours can the driver drive? From where? To where? Personal conveyance has had as many definitions as there have been trucking companies and drivers who use it. It has been construed in a way to reconcile the limits of driving and on-duty time to meet the needs of a particular type of activity.

In today's age of nuclear verdicts, misuse or excessive use of personal conveyance can be a verdict detonator. The regulation does not define personal conveyance time parameters, but the penalties for misusing personal conveyance can be significant.



WHAT IT IS

The type of travel that qualifies as personal conveyance is also framed by examples rather than established by definition. Those examples are travel:

- from en-route lodging to a restaurant or entertainment and back;
- between the driver's terminal and his/her residence;
- between work sites and his/her residence;
- to a nearby, reasonable, safe location to obtain required rest after loading or unloading;
- to move a CMV at the request of a safety official during driver's off-duty time;
- to transport personal property while off duty; and
- with authorization using a CMV to travel home after working at an off-site location.

Basically, it is using a CMV as one would a personal vehicle and not furthering the business purpose.

WHAT IT IS NOT

Conversely, the proposed guidance gives examples of what is NOT personal conveyance. Those examples are:

- movement that improves the operational readiness of a motor carrier, such as closer to a loading/unloading location;
- a towing unit that no longer meets the definition of a CMV after delivering the towed unit and which is directed to return to pick up another unit;
- a continued trip in interstate commerce, even if bobtailing or unloaded, to retrieve another load or reposition the CMV at the direction of the motor carrier;
- transportation of a CMV to a facility for maintenance;
- time spent driving to a location for required rest after being placed out of service for exceeding maximum time periods under 395, unless directed to do so by an enforcement officer at the scene; and
- travel to a motor carrier terminal after loading or unloading from a shipper or receiver.

In short, personal conveyance is not available for time deadheading or repositioning before loading or after delivering.

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BEST PRACTICES FOR TRUCKING COMPANIES TO MANAGE PERSONAL CONVEYANCE TIME

- **Audit.** Personal conveyance audits should be done per driver and per dispatcher. Often, there will be a strong correlation between who uses the most personal conveyance and a specific set of dispatchers.
- **Establish Limits.** Remember, personal conveyance time is a privilege not a right. Set your own limits. Use the most conservative practical interpretation of personal conveyance. Drivers should be aware that personal conveyance is not intended for their leisure use. Drivers talk. Drivers listen. Allowing your standard of use on personal conveyance to slip on just one occasion has the potential to spiral out of control and lead down a path of exposure to unnecessary risk.
- **Don't allow personal conveyance abuse.** If drivers abuse personal conveyance, take the privilege away until they can correct their behavior.
- **Train.** Inform and enforce your personal conveyance policy through training. Outline not only what is expected but also why it is expected, and the damage that can be done to the company's reputation, the driver's status, and the industry as a whole. This training should be mandatory for drivers, managers, dispatchers, and anyone else who may be in charge of driver personnel.



FOCUS ON FATIGUE!

While the personal conveyance rules allow drivers to operate a commercial motor vehicle in certain circumstances beyond published hours of service, safe companies must put greater emphasis on fatigue. Even if drivers can legally operate, they should not drive if they are too fatigued.

There are several details to note:

Personal conveyance has no law or regulation governing it. Instead, it is the subject of FMCSA "guidance" (Question 26 under Section 395.8—Driver Record of Duty Status).

The FMCSA guidance contains no definition of personal conveyance. In contrast to Canada's 75-kilometer limit, the FMCSA provides examples and concepts to frame what is or isn't personal conveyance.

We are left with the conceptual guidance. The most recent permutation was in 2019. The biggest change at that time was to remove the requirement that a CMV be "unladen" to qualify for personal conveyance.

The reason for the removal of the laden exclusion was to make personal conveyance available to straight trucks and work vehicles from which loads and equipment cannot be removed. The resulting

guidance looks at the nature of the activity of the CMV, either laden or unladen, in determining whether it constitutes personal conveyance.

The general concept is presented at the beginning of the guidance: "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."

Personal conveyance is available in limited instances. It is not a springboard for creativity. When you have insufficient guardrails, uncomfortable DOT audits can occur and negatively impact your hours-of-service score. While misuse can be problematic at a roadside, that is nothing compared to the impact if an accident occurs while the driver or employer misuses personal conveyance time.

CONTRIBUTING AUTHOR DOUG MARCELLO | Doug Marcello, a shareholder with the law firm of Saxton & Stump and chief legal officer of Bluewire, is a trucking defense attorney with a CDL. He has represented trucking clients across the country, having been specially admitted for cases in 35 states. Doug received the 2018 Leadership Award of the ATA Safety Council and has served on the advisory board of the American Trucking Research Institute.