



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

March 29, 2022

Mrs. Robin Hutcheson
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
6th Floor, West Building
Washington, DC 20590-9898

RE: Petition for Rulemaking – Add a Definition of Personal Conveyance to Title 49 CFR § 395.2 and Remove all Interpretative Guidance from § 395.8

Dear Acting Administrator Hutcheson,

Pursuant to Title 49 Code of Federal Regulations (CFR) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend § 395.2 by adding a definition of the term “personal conveyance.” To adequately clarify what the agency means by “personal conveyance,” the term needs to be defined with the maximum distance and/or time a driver may operate for personal conveyance.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

Justification

FMCSA guidance for § 395.8, Driver’s record of duty status currently states:

Question 26: Under what circumstances may a driver operate a commercial motor vehicle (CMV) as a personal conveyance?

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. The CMV 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. Personal conveyance does not reduce a driver’s or motor carrier’s responsibility to operate a CMV safely. 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.

To be eligible to log personal conveyance time as off-duty, commercial motor vehicle drivers must meet several conditions as outlined in the regulatory guidance on the agency's website and noted above. These include being relieved of all on-duty activities and responsibilities and ensuring that the off-duty trip is personal in nature. While these conditions present certain parameters to drivers and enforcement, the guidance it offers is incomplete because it does not provide a maximum distance and/or time that a driver can travel under the personal conveyance designation. This change adversely affects safety by allowing drivers to utilize personal conveyance to legally drive many hours beyond the hours-of-service limits and by making it difficult for inspectors to identify the misuse of the provision. To correct this, FMCSA should add a definition of personal conveyance to § 395.2 that includes a maximum daily distance or time limit and subsequently remove the existing guidance.

Under the current guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of personal conveyance. This presents the opportunity for increased driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. Without a maximum daily distance and/or time limit, the guidance presents a legal way for drivers to significantly extend their driving time and the furtherance of their load while recording personal conveyance. The hours-of-service limits exist to mitigate the impacts of fatigue on highway safety. Allowing significant extension of driving time with the use of personal conveyance undermines the goals of the hours-of-service regulations.

In addition, the lack of a defined maximum daily time or distance makes it difficult for law enforcement to determine if a driver is genuinely operating under personal conveyance or attempting to circumvent the hours-of-service regulations. The guidance provides some parameters for the use of personal conveyance, all with the goal of ensuring the trip is for personal use. These parameters, however, are extremely difficult to verify during a roadside inspection, particularly when the personal conveyance has been utilized on previous days and/or trips in the record of duty status, making enforcement of the misuse of personal conveyance very difficult. These challenges were exacerbated by the change in the guidance to allow laden vehicles to be used under personal conveyance. That change has opened the door for drivers to falsely claim the use of personal conveyance when they are really attempting to further their trip and extend driving time.

CVSA initially petitioned FMCSA (Attachment 1) to make this change on Dec. 17, 2018. The petition was subsequently denied on Sept. 18, 2020 (Attachment 2). Since our original petition, inspectors are seeing an increased misuse of this provision. In some instances, inspectors are able to identify this misuse and cite a driver for false record of duty status. As a result, the number of false log violations are increasing. In 2021, false records of duty status violations represented the 3rd most documented driver violation, as compared to it being the 6th most frequent violation in 2019. In addition, in June 2021, the violation code 395.8E1PC was added to the roadside inspection software, allowing inspectors to specifically note when false record of duty status violations were a direct result of the misuse of personal conveyance. As of Jan. 28, there were already 3,041 violations cited under 395.8E1PC, indicating the misuse of personal conveyance. Of those violations, 61% resulted in the driver being placed out of service because their misuse of personal conveyance was an attempt to conceal extra driving time. Although this data is preliminary, it demonstrates that drivers are in fact using the vague guidance for personal conveyance in an attempt to avoid hours-of-service violations. The violation data, however, only represents instances where inspectors were able to identify and prove this misuse. As noted above, it is very

difficult for an inspector to prove a driver falsely claimed personal use of the vehicle if the driver is not actively operating under the personal conveyance designation at the time of inspection. Because of this, the violations that are being documented likely represent only a small fraction of the instances where drivers have used personal conveyance to extend their driving or on-duty time. Establishing a maximum daily time or distance limit would allow inspectors to better identify the misuse of personal conveyance at any point in a driver's record of duty status, improving the enforcement of the provision and reducing its use to conceal extra driving time.

In addition to drivers who intentionally misuse the provision to conceal hours, many drivers are unintentionally misusing personal conveyance because the definition and guidance are unclear. This has resulted in many safety-conscious motor carriers prohibiting their drivers from using personal conveyance to prevent violations based on their confusion of the proper use or their driver's misinterpretation of allowable uses. A maximum distance and/or time limit would help eliminate this confusion and allow more drivers and motor carriers to responsibly use the provision. Additionally, it would prevent drivers who misuse personal conveyance because they don't understand the requirements from illegally extending their driving time.

By establishing a maximum allowed distance or time for personal conveyance, FMCSA will not only eliminate confusion and inconsistent enforcement among inspectors on this issue but will also ensure safer roads as commercial motor vehicle drivers and motor carriers are on notice that personal conveyance time cannot be used as a safe harbor for driving hundreds of miles after exhausting their hours of service.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. CMV safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,



Collin B. Mooney, MPA, CAE
Executive Director
Commercial Vehicle Safety Alliance



Commercial Vehicle Safety Alliance

Improving uniformity in commercial motor vehicle safety and enforcement

December 17, 2018

The Honorable Raymond P. Martinez
Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
6th Floor, West Building
Washington, DC 20590-9898

RE: Petition for Rulemaking – Add a Definition of Personal Conveyance to Title 49 C.F.R. § 395.2 and Remove all Interpretative Guidance from § 395.8 and the Agency

Dear Administrator Martinez,

Pursuant to Title 49 Code of Federal Regulations (C.F.R.) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend § 395.2 by adding a definition of the term “personal conveyance.” To adequately clarify what the agency means by “personal conveyance,” the following term needs to be defined: the maximum distance and/or time a driver may operate for personal conveyance.

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

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To be able to log personal conveyance time as off-duty, commercial motor vehicle drivers must meet several conditions as outlined in the regulatory guidance on the agency's website and noted above. These include being relieved of all on-duty activities and responsibilities and ensuring that the off-duty trip is personal in nature. While these conditions present certain parameters to drivers and enforcement, the guidance it offers is incomplete because it does not provide a maximum distance and/or time that a driver can travel under the "personal conveyance" designation.

In reference to the revised FMCSA guidance, the term "reasonable and safe location" is used in the "Federal Register" response to comments to describe travel under personal conveyance. This lack of definitive language leaves it up to the inspector's interpretation to determine compliance. Individual inspectors will likely have different interpretations of what is "reasonable," resulting in inconsistencies in enforcement. This will result in some commercial motor vehicle drivers being cited for hours-of-service violations while other drivers, who are traveling similar distances, are avoiding such citations.

More importantly, the published guidance does not address the underlying issue of setting a limit on how far a driver may travel under the personal conveyance designation. Under the revised guidance, a driver could, in theory, drive hundreds of miles over the course of several hours all under the designation of personal conveyance. This presents the opportunity for increased driver fatigue and risk on our roadways, as drivers may decide to travel hundreds of miles in order to strategically relocate to an alternate location after driving a full day. When combined with the ability to operate under personal conveyance while laden, this new guidance provides an opportunity for drivers to abuse personal conveyance time in order to circumvent the hours-of-service regulations. Further, the allowance of laden vehicles for personal conveyance use makes it much more difficult for a roadside inspector to determine the intent of a driver at the time of inspection.

FMCSA should provide a clear, set distance that is permissible under the personal conveyance designation. In setting clear guidelines on the use of personal conveyance, FMCSA may look to the standard set in Canada, which allows drivers to use a vehicle for personal conveyance purposes for a maximum of 75 km per day (approximately 46 miles), unladen. FMCSA should similarly set a quantifiable distance that drivers are allowed to log as personal conveyance, in addition to the parameters already offered for § 395.8.

By establishing a maximum allowed distance for personal conveyance, FMCSA will not only eliminate confusion and inconsistent enforcement among inspectors on this issue but will also ensure safer roads as commercial motor vehicle drivers are on notice that personal conveyance time cannot be used as a safe harbor for driving hundreds of miles after exhausting their hours of service.

CVSA made a similar request in response to the agency's request for comments on the proposed guidance in early 2018 (Docket Number FMCSA-2017-0108). The agency indicated in its response that such a change would be outside the scope of the regulatory guidance and would require a formal rulemaking proceeding. CVSA requests the agency address the Alliance's request for a maximum travel distance and/or time under personal conveyance as part of the rulemaking that is underway to make changes to existing hours-of-service regulations (Docket Number FMCSA-2018-0248).

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our highways. CMV safety continues to be a challenge and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency's commitment to safety and stakeholder involvement.

If you have further questions or comments, please do not hesitate to contact me by phone at 301-830-6149 or by email at collinm@cvsa.org.

Respectfully,

A handwritten signature in black ink, appearing to read 'Collin B. Mooney'.

Collin B. Mooney, MPA, CAE
Executive Director
Commercial Vehicle Safety Alliance



**U.S. Department
of Transportation**
**Federal Motor Carrier
Safety Administration**

Deputy Administrator
September 18, 2020

**1200 New Jersey Ave, SE
Washington, DC 20590**

Mr. Collin B. Mooney
Executive Director
Commercial Vehicle Safety Alliance
6303 Ivy Lane, Suite 310
Greenbelt, MD 20770

Dear Mr. Mooney:

Thank you for your petition for rulemaking to amend § 395.2 by adding a definition of the term “personal conveyance,” and to include within the definition a limit on the maximum distance and/or time a driver may operate in personal conveyance status.

The premise of your petition is that the Federal Motor Carrier Safety Administration’s (FMCSA) June 17, 2018, regulatory guidance concerning drivers’ use of a commercial motor vehicle (CMV) for personal conveyance does not provide sufficient precision for enforcement officials or motor carriers. The language leaves the determination of compliance to the individual inspector’s interpretation. These inspectors will likely have different interpretations of a “reasonable” time or distance traveled in personal conveyance status. The guidance language results in enforcement inconsistencies which in turn results in some CMV drivers being cited for hours-of-service (HOS) violations while other drivers who travel similar distances avoid such citations.

In addition, you believe a driver could drive hundreds of miles over the course of several hours, all designated as personal conveyance. This situation creates an increased risk of driver fatigue, as drivers may travel hundreds of miles to strategically relocate to an alternate location after driving a full day. Further, the allowance of personal conveyance with laden vehicles makes it much more difficult to determine the intent of a driver at the time of inspection.

While we acknowledge the Commercial Vehicle Safety Alliance’s concerns, we do not believe there is a sufficient safety basis for initiating a rulemaking. The Agency is unable to estimate the extent to which drivers may be circumventing the HOS requirements by claiming personal conveyance status, or the extent to which drivers’ violations result in safety critical events. While your petition includes examples of records of duty status in which drivers may have inappropriately claimed personal conveyance, adopting specific time or distance limits would not resolve such cases. We continue to believe FMCSA’s 2018 regulatory guidance is an appropriate response to the issue, given the lack of research and data to support the adoption of specific restrictions.

A rulemaking would propose certain time or distance limits on use of personal conveyance status without data to determine its economic impact. The rulemaking would essentially propose arbitrary limits without any evidence of safety critical events avoided. Irrespective of the limits to be considered, FMCSA would have no basis for estimating how many drivers per year would

be affected by the changes or for developing a quantitative estimate of improvements in motor carrier safety.

For the reasons noted above, we deny your petition for rulemaking. Should you need additional information or assistance, please contact Larry W. Minor, Associate Administrator for Policy, at (202) 366-2551 or by email at larry.minor@dot.gov.

Sincerely,

A handwritten signature in blue ink that reads "Wiley Deck". The signature is written in a cursive style with a large, stylized "W" and "D".

Wiley Deck
Deputy Administrator