

Checklist

DRIVERS	Keeping it personal (What is a <i>Permitted Personal Activity</i>?) Is the proposed work for anything other than private reasons? ☐ Yes ☐ No Will you get paid or financially rewarded for the proposed work? ☐ Yes ☐ No Have you been instructed or asked to use the additional time by your boss? ☐ Yes ☐ No <i>If you answered 'yes' to any of the questions above the proposed work is <u>NOT</u> a <u>permitted personal activity</u></i>	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☹️ You CANNOT use this exemption	See section 1 for more information on permitted personal
	Keeping it legal Have you used a FRHV for permitted personal activities in the previous 24 hour period? ☐ Yes ☐ No Will it take more than 1 hour of work time to complete your permitted personal activity? ☐ Yes ☐ No Is the FRHV to be used for permitted personal activities carrying a load or towing another vehicle? ☐ Yes ☐ No Is the permitted personal activity to be done during any time other than during your 24 continuous hours stationary rest break? ☐ Yes ☐ No <i>If you've answered 'yes' to any of the questions above this exemption <u>does not apply</u></i>	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☹️ You CANNOT use this exemption	See section 2 for more information on restrictions on using this exemption
	Keeping it safe Has your company given you permission to use the FRHV truck for permitted personal activities? ☐ Yes ☐ No Is there alternative transport available to use? ☐ Yes ☐ No Have you slept less than 7 hours in the past 24 hours? ☐ Yes ☐ No Have you been awake more than 14 hours since your last major rest break? ☐ Yes ☐ No Have you consumed alcohol or drugs that may impact your driving in the last 24 hours? ☐ Yes ☐ No <i>If you've answered 'yes' to any of the questions above you may be at an <u>elevated risk of fatigue impairment</u></i>	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ? DO NOT use this exemption until you've rested ✓ You may use the exemption	See section 3 for more information on factors to consider before doing permitted personal activities
	Keeping it official (What to do when using the exemption) Have you noted the use of the exemption in the Comments section of your daily sheet? ☐ Yes ☐ No Have you recorded the extra work time as work on your daily sheet? ☐ Yes ☐ No <i>If you've answered 'yes' to all of the questions above you have done everything required to correctly record the use of the personal use exemption</i>	☐ Yes ☐ No ☐ Yes ☐ No FINISHED You must record your permitted personal activity	See section 4 for more information on what to do after

Heavy Vehicle Advisory Publication 1701b

Personal use of fatigue-regulated heavy vehicles BFM and AFM

1 November 2022

HVAP	1701b
Project	Previously N17-13 Private use of unladen vehicles project
Issued by	Safety Standards and Assurance, NHVR
Audience	This Heavy Vehicle Advisory Publication (HVAP) will be of interest to: • Drivers of fatigue-regulated heavy vehicles (FRHVs) operating under Basic Fatigue Management (BFM) and Advanced Fatigue Management (AFM)AFM • Other persons who schedule, manage or influence these drivers • Authorised officers under the HVNL
Purpose of this document	The <i>National Work and Rest Hours Exemption (Personal Use BFM and AFM) Notice 2019</i> (herein personal use exemption BFM and AFM) provides drivers of FRHVs with up to one additional hour of work time (to BFM or AFM work limits) for permitted personal activities: • In a 24 continuous hour stationary rest break The intent of this exemption is to develop a uniform approach to managing the risks associated with drivers' private use of FRHVs under the HVNL, in a way that protects both drivers and public safety. This exemption does not mean that drivers, or their managers, are separated from requirements about driver fatigue, or get a 'free pass' as such. While the risks may be equivalent to using other types of vehicles, the NHVR recognises there are inherent risks to effective fatigue management that must be managed any time a driver uses a FRHV, including for personal activities. This advisory publication: • sets out safety considerations associated with personal use of a FRHV • describes the limits within which the NHVR intends the personal use exemption to be used, and • provides guidance on the risks and responsibilities that must be acknowledged and managed when using the exemption.

1. What is a permitted personal activity?

The personal use exemption has been implemented to remove legislative restrictions faced by drivers that need to undertake personal activities but cannot reasonably access other forms of transport as an alternative to using a FRHV. To do this, additional work time has been allowed for **permitted personal activities**.

Permitted personal activities are any work involving a FRHV that is done for private, non-commercial reasons.

Defining private and non-commercial activities

Private and non-commercial are not defined in the HVNL. For the purpose of interpreting this exemption, the common definition applies.

Private activities are activities completed by a driver that relate to their private life and not to their professional life as an operator of FRHVs.

Non-commercial activities are activities completed by a driver that do not attract or facilitate a direct commercial or financial advantage to the driver in their professional life as an operator of FRHVs.

Permitted personal activities

For the purposes of section 6 of the *National Heavy Vehicle Work and Rest Hours Exemption (Personal Use – BFM and AFM) Notice 2022 (No.2)*, the following are *permitted personal activities* in the exemption:

- driving the heavy vehicle to reach accommodation for the driver
- driving the heavy vehicle to purchase goods or services for use by the driver, such as
 - food and beverages
 - medical support and supplies
 - banking or post office facilities
- stowing clothes and food in the cab of the heavy vehicle for use by the driver
- driving the heavy vehicle as part of a historic vehicle event.

What can't the exemption be used for?

The exemption cannot be used for any activities that relate to the driver's professional life as an operator of a FRHV or from which the driver derives direct commercial or financial benefit.

Examples of activities that are not permitted personal activity in this definition include:

- activities the driver is being paid to perform or receives a financial reward for performing
- performing or facilitating maintenance of the heavy vehicle
- activities requested by parties in the driver's chain of responsibility.

Requesting drivers to use a FRHV

Activities requested by, or caused by a direct request of the employer (or by other parties in the driver's chain of responsibility) are not personal permitted activities if they cause commercial benefit to the heavy vehicle driver or party in the driver's chain of responsibility.

For example, if the contractor for a driver of a FRHV schedules the driver to complete a journey that requires the driver to complete the maximum hours of work in their 24 hour period, the contractor cannot request that the driver then use the personal use exemption to gain another hour of work time in order to return to base. Similarly, an owner operator would not be permitted to schedule a journey which they know cannot reasonably be completed within their maximum hours of work time, and then access the exemption as a means of gaining more work time.

2. Who can use the personal use exemption?

The personal use exemption requires drivers to comply with the requirements of BFM or their AFM hours with one exception. Drivers may drive, or perform any other task in relation to a FRHV, for up to one extra hour in a 24 continuous hour stationary rest break. The extra time must be taken in a single continuous period of work and cannot be conducted in the first and/or last three hours of any 24 hour rest break.

The personal use exemption does not apply to every driver of a FRHV. This section sets out when the exemption applies and when it does not.

Restriction based on heavy vehicle type/loading

The personal use exemption can only be used by drivers of FRHVs, that is, those heavy vehicles that are subject to the HVNL's fatigue management requirements. Section 7 of the HVNL defines a FRHV as any of the following:

- a motor vehicle with a Gross Vehicle Mass (GVM) of more than 12t.
- a combination where the combined GVMs of each vehicle in the combination is equal to more than 12t.
- a fatigue-regulated bus (a heavy motor vehicle fitted to carry more than 12 adults).

This definition includes vehicles or combinations with a GVM or GCM of more than 12t regardless of whether the vehicle is laden or unladen, and regardless of whether it is being used for hire or reward.

However, the personal use exemption cannot be used if the FRHV is carrying a load or towing another vehicle.

Restriction based on work and rest option

This personal use exemption can only be used by solo drivers, working under BFM or AFM hours. Drivers using Standard Hours should refer to The National Work and Rest Hours Exemption (Personal Use) Notice 2018 and associated [Heavy Vehicle Advisory Publication](#).

Restriction based on past permitted personal activities

The personal use exemption does not allow additional work time for permitted personal activities in consecutive 24 hour counting periods. This means that a driver can only use the exemption every second 24 hour counting period.

3. Considerations to make permitted personal activities safer

The personal use exemption does not alter drivers' obligations to not drive while impaired by fatigue or the obligations of parties in drivers' chain of responsibility to ensure that drivers meet their obligation not to drive while impaired by fatigue. Regardless of the work and rest limits, if a driver believes they are impaired by fatigue when driving a FRHV, they must stop driving immediately and rest.

This section sets out factors that drivers and other parties in the chain of responsibility should consider prior to using a FRHV for permitted personal activities.

Prior permission

Fatigue impairment is very difficult to self-detect. Even when it is detected, one of the first changes that comes with driver fatigue is an increased appetite for taking risk. This means that drivers should not rely solely on their own judgement before deciding to use a FRHV for permitted personal activities. Where possible, drivers should talk to parties in their chain of responsibility (i.e., their operator or scheduler) to get prior permission to use a FRHV for permitted personal activities. Transport operators should consider whether or not they consent to their FRHV being used by drivers for permitted personal activities.

Fatigue risk factors

Time spent awake, amount and quality of sleep, time of day and time between reset rest breaks all affect drivers' potential fatigue impairment. To minimise these potential risks, the NHVR recommends that drivers and other parties consider the following countermeasures:

- take short rest breaks from driving within the work opportunity to reduce performance impairment due to extended time-on-task. If possible, drivers should;
- reduce the time spent continuously working take more frequent breaks from driving
- take recovery breaks so that sleep opportunities provide enough time to obtain sufficient sleep, reducing the likelihood of unsafe levels of fatigue. Drivers should;
 - provide an adequate sleep opportunity in order to obtain sufficient sleep
 - maximise adequate night sleep
 - minimise shifts ending between 00:00 to 06:00h
 - minimise extended shifts
- take reset breaks in sequences of work opportunities to reduce the likelihood of build-up of unsafe levels of fatigue over multiple shifts. Drivers should take at least 30 hours of rest (including two periods of rest between 00:00-06:00) between work sequences.

Use alternative transport where available

The longer a person spends performing a particular task, the more draining it becomes and the more it contributes to fatigue impairment. So a driver who has spent 12 hours of their work driving is likely to experience a higher level of fatigue impairment than a driver who has broken up a 12 hour work period with work activities other than driving.

Whilst not an explicit requirement, drivers are encouraged not to use this exemption to allow permitted personal activities if they can reasonably access other forms of transport than a FRHV.

4. How to use the exemption

Rules for completing work and rest records still apply under the personal use exemption. This means that drivers must record their details, details of the vehicle they are working with (e.g., registration and odometer) and their work and rest in a work diary and carry their work diary with them for 28 days.

Recording personal use

It is a requirement that drivers record when they use the personal use exemption in their work diary. If they do not do this, the exemption will not apply and any additional time used for permitted personal activities may cause a breach of work and rest limits.

To record work time used under the personal use exemption, drivers using a written work diary must:

1. Note the use of the exemption in the Comments section of the daily sheet by writing “Personal use exemption BFM AFM” or “Permitted personal activity” and include the start and finish time of the permitted personal activity.
2. Record the extra work time as work on the daily sheet (including relevant details like place and odometer reading).

100km work

Drivers who are undertaking 100km work under standard hours are not required to complete a work diary. Rather, the drivers’ record keepers must record work and rest information about the drivers, their work and pay.

To use the personal use exemption, drivers who were undertaking 100km work must:

1. Start using a work diary.
2. Record all the work and rest done on that calendar day required by the law, including the personal use, and
3. Carry the work diary for the next 28 days.