

“Ask The Law”™ offers Q & A’s

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HOS and Driving in Bad Weather questions answered by law enforcement officials as of March 2007

Warning: Laws are subject to change without notice

Braking HOS Rules

Q: Why is it that it seems that the various state and Federal agencies want to punish the commercial driver, when it is the policies of the carriers, shippers and receivers that "Force" a driver to "falsify" logs and flat out ignore the HOS regulations? It seems to be all about punishing the drivers with economic ruin. If a driver even attempts to follow the regulations to the letter, he is on the shortlist as an undesirable employee and his loads are adjusted to force him to quit. Can someone tell me why the efforts are not concentrated on the real problem – Mike in Michigan.

A: Provided by Senior [Trooper Monty Dial](#), Texas Highway Patrol, Commercial Vehicle Enforcement Division, Garland, Texas:



The answers that I'm fixing to give you will either make you continue to have a dislike for Law Enforcement or it will change your mind about Law Enforcement.

Drivers need to stand up to motor carriers that force or encourage drivers to violate the Regulations. Usually when this happens, drivers are usually forced to leave the motor carrier. You and I both know this happens. There is a mechanism in place for driver to contact the Federal Motor Carrier Safety Administration and report these motor carriers. I'm also here to tell you that there are a lot of motor carriers out there that are willing to hire drivers that abide by the Regulations.

The FMCSA has a process called The Compliance Review. The selection by which motor carrier are chosen for the reviews on are based on 2 ways. The first way is based on the motor carrier's Safety Rating. All Roadside Inspection goes into a central database and the data is used to calculate the motor carrier SafeStat Rating. Crash information is also used. If a motor carrier gets clean inspections and has very few crashes, the motor carrier will maintain a Satisfactory Rating. Motor Carrier with a rating of less than Satisfactory are now placed on FMCSA's radar screen to be watch more closely. There is also another method by which motor carrier are selected for Compliance Reviews. It's called the Complaint Process. When drivers call or e-mail complaints to FMCSA and provide factual and provable information, FMCSA will generate a review. If the motor carrier is found to be in violation by allowing drivers to violate the Regulations, then civil penalties are levied against the motor carrier. These

penalties can run into the thousands of dollars. But we need the help of drivers who feel that they are being forced dispatched or are willing to violate the Regulations for the motor carrier to keep their job, to send in their complains.

As for the Shippers/Receivers/Brokers, there currently are no Regulations on the books that can be used against them. What we need is for drivers and/or motor carriers to contact their US Senators and Representatives and express their problems. Whether or not this will do anything, I cannot answer that. But enough people contact them and they realize it is a big problem, and then they might change the laws. If you choose to file a complaint against your current motor carrier (which I hope you do), go to www.1-888-dot-saft.com/HotlineIntro.asp

HOS for Relief Driver

Q. I am a vacation relief driver for our company. We operate in CA, AZ, and NV. Some weeks I travel to all three states, on other weeks I only travel in CA. What limitations do I need to follow to go from federal HOS rules to CA HOS rules?
Gary in California

A. Provided by [Officer Chris Sahagun](#), California Highway Patrol, Commercial Vehicle Section, Sacramento, California:



Hours of service (HOS) regulations are determined by your status as a driver. Federal Motor Carrier Safety Regulations (FMCSR) Part 390.3 defines the general applicability of the FMCSR with regards to transporting property or passengers in interstate commerce. In 390.3 FMCSR - Interpretations, question 6 states:

"Question 6: How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs?"

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs."

Additionally, question 24 interprets the HOS regulations with regards to drivers only occasionally operating in interstate commerce. The guidance in question 24 reads in part.

"Any driver who begins a trip in interstate commerce must continue to meet the requirements of 49 CFR 395.3(a) and (b) through the end of the next 7 to 8 consecutive days, depending on which rule the motor carrier operates under.

The driver must continue to comply with the requirements of 49 CFR Part 395, even if he/she operates exclusively in intrastate commerce for the remainder of the 60/70 hour period (i.e. 7-8 day schedule) at the end of the interstate trip. The driver must also continue to comply with the 10- and 15-hour rules as well as the 60- or 70-hour rules for the remainder of that day, and the following 7 days (if the 60-hour rule was applicable) or 8 days (if the 70-hour rule was applicable).

A driver who begins a trip in interstate commerce in a CMV must have in his/her possession a copy of records of duty status for the previous 7 consecutive days, as required by 49 CFR 395.8(k)(2) unless they meet 49 CFR 395.1(e), even if the driver operated only in intrastate commerce during that 7-day period. During the 7-day period prior to the interstate trip the driver may follow the state regulations applicable to intrastate commerce with regard to the states' CMV driving and on-duty requirements."

The interpretations for 390.3 FMCSR may be located on the Internet at:
http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.asp?rule_toc=759§ion=390.3§ion_toc=1738&guidance=Y.

Driving in Bad Weather

Q: Is there a toll free phone number and/or e-mail address to report company dispatchers who demand that drivers run in bad weather when the State Patrol says "travel is not recommended"? Many times I have had to put my job on the line by refusing to go out in bad weather. If the DOT has a program like this, please let me know? Dale in Nebraska

A: Provided by [Sgt. Jim Brokaw](#), Nebraska State Patrol, Carrier Enforcement Division, Lincoln, Nebraska:



The Federal Motor Carrier Safety Violation Hotline is a line of communication available to commercial vehicle drivers who wish to submit reports of actual or potential violation of the federal motor carrier safety regulations. 1-888-DOT-SAFT (368-7238) is a toll-free number for drivers nationwide to contact the FMCSA. Additional information may be found on FMCSA's website at www.1-888-dot-saft.com/HotlineIntro.asp.

49 CFR §392.14 states, "Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction." It goes on to say, "If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated." In regards to regulatory guidance for this section, the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions. In regards to carriers that "force" their drivers to operate in unsafe conditions, Section 405 of the STAA—Surface Transportation Assistance Act of 1982 (49 U.S.C. 31105) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

The Ask The Law™ programs, which are provided as a public service by Alcoa Wheel Products™, are an ongoing educational effort between Ol' Blue, USA™ and commercial law enforcement agencies. The specific purpose is to have truckers contact Ol' Blue,

USA and pose questions to law enforcement officials relating to safety and legal issues concerning commercial vehicles. Truckers may submit questions at www.askthelaw.org. Warning: Laws are subject to change without notice. These interpretations were made in February 2007.

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