

**“Ask The Law”™ offers Q & A’s**

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**HOS update, Tread Depth, Out-of-Service and  
Flasher use questions answered by law enforcement  
officials as of Nov. 2007**

**Warning: Laws are subject to change without notice**

**Update on FMCSA’s 2005 Hours-of-Service:**

On September 28, 2007, the United States District Court issued an order in the various Hours-of-Service cases, addressing the motion for stay filed by the American Trucking Associations and various requests for rehearing.

**The order denied all requests for rehearing;** so the previous Court's decision to reject FMCSA's "34-hour restart" and "11-hour driving" limitation stands. The only modification to the Court's earlier order is that the mandate is stayed until December 27, 2007, at which time the Court's opinion will take effect.

**All rules and regulations in effect as of this date on HOS are continued until at least Dec 27, 2007, unless the FMCSA brings forward some acceptable new program.**

To view the Court’s order, for more information from FMCSA, and our Log Book Presentation, please view our Webpage at [www.olblueusa.org/HOS/update.html](http://www.olblueusa.org/HOS/update.html)

**What is the Out-of-Service Rule for Tread Depth on a CMV?**

**Q:** I recently pulled a load in a company truck that had tires with low tread depth. The tread bars were showing on one tire. On the others there were spots where the tread was worn down - probably from some heavy skidding. I know that the rule is 2/32-inch tread depth on drive tires and 4/32-inch on steer tires but how do the tread bars figure into it? What if it is bald only in one spot on the tire? Thank you. Paul in Oregon

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



All we measure is the depth of the tread.

A quick and simple way to tell if the tire has enough tread is to take a penny and with Lincoln's head pointing down and place it in between the tread. If you can see any portion of Lincoln's head, the tire has less than 2/32" of tread depth. As for the flat spots, if you have an area that is 2 inches square or more, then that too is a violation.

For the tire to be Out-of-Service, you have less than 2/32" on a steer tire and no tread (slick) on both tires on the same side and on the same axle.

### **CDL and Out-of-Service**

**Q:** My husband had been put out of service because the main frame on the trailer needed to be welded. He did what he had to do to get back on the road and be legal again. Now he is worried what will happen if he gets put out of service again on the same trailer. What will this do to his CDL? Heidi in Nebraska

**A:** Provided by [Jim Brokaw](#), formerly a Staff Sergeant with Nebraska State Patrol, Carrier Enforcement Division, Lincoln, Nebraska:



Safety violations meeting the Out-of-Service criteria must be immediately corrected before the vehicle may be operated again.

If your husband had the trailer frame properly repaired, this would have corrected the Out-of-Service condition and returned his trailer to service.

**It is when a person takes a chance, continuing to operate a vehicle that has been declared in an Out-of-Service condition, without making the necessary repairs, that they jeopardize their CDL.**

### **California Law on Emergency Flashers use?**

**Q:** Fact or Fiction: A truck driver can be ticketed for using his/her emergency flashers while climbing a hill in the state of California because emergency flashers are only allowed for the use in an emergency. Thanks, Kim in Kentucky

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



Slow moving vehicles can pose hazards, not only to faster moving traffic but also to themselves. These vehicles can also present an obstruction to the smooth flow of traffic, causing traffic back-ups, particularly on two-lane rural roads. Section 25251(a)(3) of the California Vehicle Code (VC) allows a slow moving vehicle to use its hazard warning lights while on an upgrade, however there are other laws the driver needs to be aware of.

Section 21654(a) VC requires any vehicle proceeding upon a highway at a speed less than the normal speed of traffic to be driven in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb. Section 21656 VC requires a slow-moving vehicle, on a two-lane highway, with five or more vehicles behind it to turn off the roadway at the nearest turnout to permit the vehicles following it to proceed. Section 21758 VC mandates that while on an upgrade, when a vehicle is overtaking a slower moving vehicle, the driver must not pass unless it can be done within one quarter of a mile.

*The Ask The Law™ programs, which are provided as a public service by Ol' Blue, USA™, 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](http://www.askthelaw.org). **Warning: Laws are subject to change without notice. These interpretations were made in October 2007.**

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