



Federal trucking-safety regulations

AN ADDITIONAL AVENUE OF LIABILITY IN TRUCKING CASES

For over a decade, major injury and wrongful-death trucking cases have been a large part of my practice, and I consider such cases to be crucially important to making our roadways safe.

Trucking cases commonly involve large trucks that weigh 26,001 pounds or more (in gross vehicle weight or gross vehicle weight rating). Due to their weight and large size, these trucks differ from passenger sedans, SUVs, and other motor vehicles on our roads. They take longer to accelerate and decelerate and require more room to maneuver. And they sit higher off the road, which can cause crashes with an override or underride configuration. (Generally, a truck underride crash occurs when a passenger vehicle hits and slides under a large truck. (See *Truck Underride Guards: Improved Data Collection, Inspections, and Research Needed* (March 2019) GAO-19-264 at 1.) By contrast, a truck override crash occurs when a large truck hits and rides over a passenger vehicle. (See *Id.* at 5.) Override and underride crashes may involve only part of each vehicle – for example, when the bumper of a large truck overrides the rear structure of a passenger sedan.)

Because of their distinct design, large trucks are regulated by the Federal Motor Carrier Safety Administration (FMCSA), an administrative agency within the Department of Transportation. The FMCSA was established on January 1, 2000, with a primary mission of reducing crashes,

injuries, and fatalities involving large trucks and buses. (See *Our Mission* (Dec. 13, 2013) FMCSA, <https://www.fmcsa.dot.gov/mission>; see also 42 U.S.C. § 113 [“the [FMCSA] shall consider the assignment and maintenance of safety as its highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation”].)

To accomplish its mission, the FMCSA enforces a set of minimum safety standards that are broadly applicable “to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.” (49 C.F.R. § 390.3(a); see also 49 C.F.R. § 393.1 [“The rules in this part establish minimum standards for commercial motor vehicles”]; 49 C.F.R. § 383.5 [defining *commercial motor vehicle* and other terms].) These minimum safety standards are known as the Federal Motor Carrier Safety Regulations (FMCSRs). (See *The Motor Carrier Safety Planner* (2022) FMCSA at Ch. 1, 1.2 [“The Federal Motor Carrier Safety Regulations...set forth minimum safety standards for motor carriers and drivers”].)

Identifying violations of the FMCSRs

Trucking cases commonly involve violations of the FMCSRs by the motor carrier, the truck driver, or both. Such violations provide an additional avenue of liability for the plaintiff to pursue so long

as they are a substantial factor in causing the plaintiff’s serious injury or a decedent’s wrongful death. “A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.” (California Civil Jury Instructions (CACI) (2022) 430.) In short, the violation of the FMCSRs must have more than a remote or trivial connection to the plaintiff’s damages.

This article aims to help plaintiffs’ attorneys spot and pursue violations of the following FMCSRs in trucking cases: hours of service (49 C.F.R. Part 395) and hazardous conditions (49 C.F.R. § 392.14). These FMCSRs are summarized below with tips for pursuing them. The remaining FMCSRs are beyond the scope of this article but are helpful to research and consider when handling trucking cases.

Hours of service

Hours of service refers to the hours that a truck driver is on duty. Hours of service includes the time from when the “driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work.” (49 C.F.R. § 395.2.)

Hours of service matter because, in general, the longer that a truck driver is

on duty, the greater the risk that they may become fatigued, inattentive, or otherwise less able to safely operate their vehicle. Truck drivers who are on duty for too long can cause crashes by falling asleep or failing to see and avoid other vehicles.

For these reasons (and others), the FMCSRs prohibit any truck driver from operating a commercial vehicle “while the driver’s ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle.” (49 C.F.R. § 392.3.) Similarly, motor carriers must enforce this prohibition as to their truck drivers and their commercial vehicles. (*Ibid.*)

As a further measure, FMCSR Part 395 regulates hours of service for all motor carriers and truck drivers, with certain exceptions. (49 C.F.R. § 395.1(a)(1).) These regulations distinguish between commercial motor vehicles used to carry property and those used to carry passengers. Property-carrying commercial vehicles are governed by 49 C.F.R. § 395.3, which provides the following requirements:

Start of work shift. A driver may not drive without first taking 10 consecutive hours off duty. (49 C.F.R. § 395.3(a)(1).)

14-hour period. A driver may not drive after a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. (49 C.F.R. § 395.3(a)(2).) This means that a driver who comes on duty has a 14-hour window to drive. Once the window is up, the driver must go off duty to obtain a new driving window. This requirement is sometimes called the “daily on-duty limit.” (See *Am. Trucking Associations, Inc. v. Fed. Motor Carrier Safety Admin.* (D.C. Cir. 2013) 724 F.3d 243, 245.)

Driving time. A driver may drive a total of 11 hours during the [14-hour] period. (49 C.F.R. § 395.3(a)(3)(i).) This requirement is sometimes called the “daily driving limit.” (See *Am. Trucking Associations, Inc., supra*, 724 F.3d at 245[.])

Interruption of driving time. A driver must take a break when they have driven

for eight hours without an interruption of at least 30 consecutive minutes. The break may be satisfied by 30 consecutive minutes of non-driving activity, including on-duty not driving, off-duty time, sleeper berth time, or any combination of these taken consecutively. (49 C.F.R. § 395.3(a)(3)(ii).)

The 60/70-hour limit. This limit varies depending on whether or not the driver works for a motor carrier that operates commercial vehicles every day of the week (an “every-day motor carrier”). A driver who works for an every-day motor carrier must stop driving after being on duty for 70 hours in eight consecutive days. (49 C.F.R. § 395.3(b)(2).) Other drivers must stop driving after being on duty for 60 hours in 7 consecutive days. (49 C.F.R. § 395.3(b)(1).) In either case, a driver may restart the 7/8-day period by taking at least 34 consecutive hours off duty. (49 C.F.R. § 395.3(c)(1) and (2).)

These requirements are subject to certain exceptions, including (but not limited to) the following:

The sleeper berth exception. When operating a commercial vehicle with a sleeper berth, a driver may split his or her 10-hour off-duty requirement between off-duty time and sleeper berth time, so long as the split includes at least seven consecutive hours spent in the sleeper berth. (49 C.F.R. § 395.1(g)(ii).) When split in this fashion, neither the off-duty time nor the sleeper berth time counts against the 14-hour driving window. (49 C.F.R. § 395.1(g)(iii)(B).)

The adverse conditions exception. A driver is allowed to extend the 11-hour maximum driving limit and 14-hour driving window by up to two hours after encountering adverse driving conditions that require extra time for safety. (49 C.F.R. § 395.1(b)(1).) Adverse driving conditions include “snow, ice, sleet, fog, or other adverse weather conditions or unusual road or traffic conditions that were not known, or could not reasonably have been known, to a driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper

berth period, or to a motor carrier immediately prior to dispatching the driver.” (49 C.F.R. § 395.2.)

The short-haul exception. 49 C.F.R. § 395.3(a)(3)(ii) excepts short-haul drivers from the requirement to take breaks of 30 consecutive minutes. Short-haul drivers are drivers who operate within a 150 air-mile radius of their normal work reporting location as well as certain other drivers. (49 C.F.R. § 395.1(e).)

Hours of service for passenger-carrying commercial vehicles

Passenger-carrying commercial vehicles are also subject to certain hours-of-service requirements, including a 10-hour daily driving limit and a 15-hour daily on-duty limit. (49 C.F.R. § 395.5(a)(1) and (2).) There is also a limit on driving after 60/70 hours on-duty in 7/8 consecutive days. (49 C.F.R. § 395.5(b)(1) and (2).) Generally speaking, these requirements are broadly applicable to motor carriers and drivers of passenger-carrying commercial vehicles. (See 49 C.F.R. §§ 395.1 and 395.5.)

Truck drivers must use extreme caution in hazardous conditions

Like other drivers, truck drivers encounter snow, sleet, fog, mist, wind, rain, dust, and other similar conditions on the road. These conditions are hazardous when they reduce a large truck’s traction or a truck driver’s visibility. Indeed, the FMCSA has estimated that 13% of large-truck crashes with injury or death involve weather problems and 16% involve roadway problems such as slick surfaces. (*Report to Congress on the Large Truck Crash Causation Study* (Mar. 2006) FMCSA at 18.)

To help prevent such crashes, the FMCSRs require drivers of commercial vehicles to use extreme caution “when hazardous conditions...adversely affect visibility or traction.” (49 C.F.R. § 392.14.) This means that the driver must reduce their speed and, if the conditions are sufficiently dangerous, stop driving. (*Ibid.*) A driver who does not reduce their speed and instead drives

at the speed limit is in violation of the extreme caution requirement.

On its face, the extreme caution requirement is a higher standard than the basic standard of care for driving, which only requires reasonable care. (CACI 700; see also CACI 401 [“Negligence is the failure to use reasonable care to prevent harm to oneself or to others”].) This conclusion is supported by the *Weaver* decision, which involved a trial court’s refusal to give a jury instruction based on the extreme caution standard. (*Weaver v. Chavez* (2005) 133 Cal.App.4th 1350, 1352.) The trial court instead instructed the jury on the basic standard of care and the plaintiff appealed. (*Ibid.*) In considering both instructions, the *Weaver* decision notes that the FMCSRs must be followed whenever they impose a higher standard of care than state law. (See *Id.* at 1354 [quoting 49 C.F.R. § 392.2].) The decision further notes that “reasonable care” is defined as “ordinary prudence,” while “extreme” is defined as “[g]reatest, highest, strongest, or the like.” (*Id.* at 1355 [emphasis removed].) As such, “[a] reasonable person standard is not consonant with [the higher] standard of extreme care.” (*Ibid.*) Moreover, where the standard of extreme care applies, it is reversible error to refuse to instruct the jury on the standard. (*Id.* at 1352.)

Evidence to establish hours of service and hazardous conditions

Violations of the hours of service and hazardous conditions requirements must be established through evidence. All of the following evidence may be helpful in that regard (or in establishing other violations of the FMCSRs):

- The results and records of any pre- or post-crash drug or alcohol tests completed by the driver. (Such tests are required under the terms and circumstances set forth in 49 C.F.R. §§ 382.301, 382.303, and 382.305.)
- Photos from the route leading to the crash, from the scene of the crash, and from any post-crash inspections.
- Video from when the truck started the route leading to the crash to when the

truck left the crash scene. (The truck may be equipped with a dashcam, a rear camera, and other cameras. Request video with sound from each camera on the truck.)

- Telematics data and reports from when the truck started the route leading to the crash to when the truck left the crash scene. (Telematics is a method of monitoring a truck’s movement by using GPS technology and on-board diagnostic systems.)
- Records and data for each cell phone that was in the truck at the time of the crash.
- All data and downloads from the truck’s black box/engine control module (ECM).
- All data from each mapping/GPS device that was in the truck at the time of the crash.
- All data from the cloud-storage for each device that was in the truck at the time of the crash.
- All dispatch documentation, including text messages and logs.
- All electronic mobile communication records, reflecting communications through the fleet management system.
- Fuel receipts.
- Weight receipts.
- Expense receipts.
- The bill of lading and other similar documents for the movement of freight, including shipping orders, shipping tickets, and freight bills.
- All service and shipping contracts for the route leading up to the crash.
- All documents that the driver created or exchanged while loading or unloading the truck before the crash.
- The truck driver’s hours of service and duty status documentation for 10 days before the crash.
- The truck, including all trailers, parts, and components.

Preserving evidence

You can take steps to preserve this evidence. You can send written requests to preserve the evidence to the police, the relevant device manufacturers, the relevant tow yards, the potential

defendants, and anyone else who might have evidence related to the crash. Ask each of them to act affirmatively to preserve the evidence and to prevent it from being destroyed, overwritten, removed, lost, or revised. Also ask the custodian of the truck to keep it out of service and turned off until you can attempt to retrieve the truck’s data.

You can also have an expert (or a qualified investigator) inspect the approach to the crash, the scene of the crash, and the vehicles involved in the crash. The expert can help determine what devices the truck was equipped with and whether any devices have been removed from the truck. The expert can also obtain photos, data, and other relevant evidence. Ask the expert to look for video cameras on the approach to the crash since they may have relevant video footage.

The motor carrier and the truck driver will often have much of the evidence listed above. Both motor carriers and truck drivers create and keep such evidence to show their compliance with the FMCSRs. In addition, motor carriers and truck drivers must create or retain certain evidence under the following FMCSRs: 49 C.F.R. § 379.3, which generally requires motor carriers and truck drivers to retain bills of lading, freight bills, and certain other documents that are listed in 49 C.F.R. § 379, Appendix A. 49 C.F.R. § 395.8, which generally requires motor carriers and truck drivers to record the driver’s duty status in 24-hour segments. 49 C.F.R. § 395.11, which generally requires motor carriers and truck drivers to generate and retain dispatch records, expense receipts, and certain other documents.

Despite these regulations, there are ways in which relevant evidence may be lost, destroyed, or overwritten. Some engine control modules, for example, will overwrite the last stop record as soon as the truck is moved (even at slow speeds). In some cases, simply moving the truck off the road can cause data to be erased.

This type of loss is less likely with appropriate steps to preserve evidence.

Obtain and evaluate hours-of-service and hazardous-conditions evidence

You also want to work diligently to request and obtain the relevant evidence. You can request the evidence informally or through subpoenas, inspection requests, depositions, and other discovery tools.

Once you have the evidence, carefully evaluate whether the evidence shows a violation of the FMCSRs. Come up with questions that draw from the triggering language of the FMCSRs. These questions should be designed to give you a sense of

- 1) whether the FMCSRs apply to your facts and
- 2) whether FMCSRs were violated in your case.

With regard to hours of service and hazardous conditions, it may be helpful to ask the following:

- Was the driver involved in interstate commerce?
- Was the driver carrying property or passengers?
- Was the driver on a short-haul or a long-haul?
- Was the driver in a commercial vehicle with a sleeping berth?
- What did the driver do from 24 hours before the driver’s trip started to the time of the crash?
- When and where did the driver’s trip start?
- What was the driver’s duty status during the trip?

- When and where did the driver stop during the trip?
- How many miles did the driver cover between stops and during the trip?
- When and where did the driver take breaks during the trip?
- When and where did the driver sleep during the trip?
- When and where did the driver eat during the trip?
- When and where did the driver refuel during the trip?
- When and where did the driver last have a 34-hour restart?
- When and where was the driver last off duty for at least 10 hours?
- What was the driver’s schedule during the trip?
- When and where was the driver scheduled to make deliveries?
- When and where did the driver make deliveries?
- Did the driver experience reduced traction or visibility during the time leading up to the crash?
- If so, did the driver take any safety measures in response to the reduced traction or visibility?
- Did the driver plan his/her route for the trip?
- If so, where did the driver intend to stop and what was the driver’s intended route?
- How many hours was the driver on duty in the 7/8 days before the crash?
- Are there witness observations of fatigued or inattentive driving (such as

failure to slow or turn to avoid a visible hazard)?

- Are there driver statements indicative of fatigue or inattentive driving (such as the other vehicle “came out of nowhere” or “suddenly appeared”)?

By answering these questions (and similar questions of your own design) you can develop a good sense of whether the hours of service and hazardous conditions regulations are a potential avenue for liability in your trucking case.

Keep fighting

As plaintiffs’ attorneys, we have the privilege of fighting for individuals and families who have been hurt by negligence or other wrongful conduct. Sometimes the fight involves an interstate motor carrier or truck driver who has acted wrongly. When it does, it is helpful to know the FMCSRs and to consider whether they have been violated. Doing so will help ensure that you are pursuing all applicable avenues of liability to do justice for your client.

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