



November 20, 2017

Daphne Jefferson, Deputy Administrator  
Federal Motor Carriers Safety Administration  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Dear Ms. Jefferson:

On behalf of the 1600 members of the American Traffic Safety Services Association (ATSSA), I write to request assistance in clarifying the role of electronic logging devices (ELDs) in documenting Hours of Service regulations as they apply to roadway striping operations. ATSSA represents the manufacturers and contractor installers of roadway safety devices (including roadway striping trucks), materials such as paint and thermoplastic that are used for markings, and the companies that install these materials on roadways in compliance with roadway owner specifications.

On October 23, 2012 I submitted a request for the Federal Motor Carrier Administration (FMCSA) to clarify pending regulations relative to “on-duty, driving” and “on-duty, not driving” for drivers of roadway striping vehicles (Wentz). Our assertion is that road striping vehicle drivers are operating within a mobile work zone and should be permitted to designate this striping activity as “on-duty, not driving” on their driving logs. In response FMCSA Administrator Anne S. Ferro’s letter dated December 2012, communicated the following:

*“The operators of commercial motor vehicles in a mobile closure operation, as you have described, would be in an “on-duty, not driving” status while within the mobile work zone that is closed to public travel. These vehicles would not be operating on a highway, as defined in 49 CFR 390.5 because the roadway in the mobile zone is not “open to public travel (Ferro).”*

This clarification has proven invaluable in educating Hours of Service auditors – often State Troopers, in clarifying the appropriate log book designation.

As the industry transitions from paper log books to Electronic Logging Devices (ELD), a new issue has arisen. The response provided by Administrator Ferro has been deemed by ELD providers as insufficient to allow their software to provide an “on-duty, not driving” designation while operating in a work zone. They are requesting a more formal response from FMCSA. As a result, I am requesting that FMCSA release an official public clarification or interpretation of the “on-duty, not driving” status for commercial motor vehicles in a mobile closure operation operating less than 15 miles per hour within a work zone that is not open to public travel.

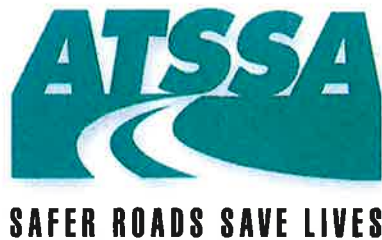
I have included both our initial letter and Administrator Ferro's response as a reference. Your assistance in this matter is greatly appreciated.

Sincerely,



Roger A. Wentz

Enclosure



October 23, 2012

Anne S. Ferro, Administrator  
Federal Motor Carriers Safety Administration  
1200 New Jersey Avenue, SE, Floor W6  
Washington, D.C. 20590

Dear Ms. Ferro;

On behalf of the 1600 members of the American Traffic Safety Services Association (ATSSA), I write to request an official clarification and interpretation of the agency's Hours of Service regulations as they apply to roadway striping operations. ATSSA represents the manufacturers and contractor installers of roadway safety devices, including roadway striping trucks, materials such as paint and thermoplastic that are used for markings, and the companies that actually install the materials on the roadways in compliance with roadway owner specifications.

The simplest, most effective, least expensive way to make roadways safer is to clearly delineate the roadway edges. Roadway striping is usually conducted in a work zone. ATSSA provides extensive work zone worker training and certification. In 2011 we trained 22,500 workers. We also initiated National Work Zone Awareness Week (NWZAW) in partnership with the Federal Highway Administration (FHWA) and the American Association of State Highway and Transportation Officials (AASHTO). We are recipients of multiple work zone training grants from FHWA. We believe that these efforts made a significant contribution to a 42% reduction in work zone fatalities from 2006 to 2010.

A question has arisen as to when the drivers of roadway striping vehicles are on "on-duty, driving" and "on-duty, not driving" status. Clearly, when driving to or from the work site, the driver is "on-duty, driving." Hours of Service auditors, often State Troopers, also consistently classify a driver working behind the barrels of a lane closure as described below as "on-duty, not driving." It appears that the situation of the driver of the same vehicle in what is known in our industry as a "mobile closure" is more subject to interpretation.

It is our understanding that two definitions under the agency's Section 390.5 are applicable to this issue. The first is the definition of a commercial motor vehicle and the second and most important is the definition of a highway, which we understand to be any road, street, or way, whether on public or private property, that is *open to public travel*. We further understand that *open to public travel* is interpreted as a road section that is available, except during

scheduled periods, extreme weather or emergency conditions, passable by four wheel standard passenger cars, and open to the public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight or class of registration.

Generally, striping vehicles in our industry operate under two conditions. The first is a condition where the lane that is being striped is closed to traffic, usually with cones or barrels, "work zone ahead" signs, "right/left lane closed" advisories and "end road work" signs. There are "Typical Applications" and spacing for these traffic control devices detailed in the United States Department of Transportation's *Manual on Uniform Traffic Control Devices* (MUTCD). This "stationary work zone" is the situation that auditors clearly interpret as the road being closed to public travel.

The second condition of general operation is what in our industry is known as a "mobile closure." In this instance, a striping truck is typically followed by a Truck Mounted Attenuator which is a device that protects workers and absorbs a crash from an errant vehicle, which is followed by one or more truck mounted flashing arrowboards that indicate that the lane is closed and the driver should move right or left. Hours of Service auditors seem unsure whether this "mobile work zone" should be classified the same as the closed lane stationary work zone in the above instance.

These mobile work zone operations are also described in the MUTCD. Work zone durations are defined in Chapter 6G, Section 6G.02, paragraph 02. Item E states "Mobile is work that moves intermittently or continuously". Typical Applications figures describing these Mobile work zones are identified as figure 6H-17 Mobile Operations on a Two-Lane road (TA-17) and figure 6H-35 Mobile Operation on a Multi-Lane Road (TA-35). The MUTCD considers these mobile striping operations as work zones and thus they should not be considered open to public travel.

ATSSA feels that both of these instances, stationary and mobile work zone operations, represent an official lane closure whereby a designated area of worker operation is closed to public travel and that therefore driver time should be classified as "on-duty, not driving." We request clarification from the Federal Motor Carriers Safety Administration that would ensure that this interpretation is applied evenly nationwide.

The significance of the requested clarification relates to safety, performance and financial burden. Given the financial commitment required to enter the pavement marking industry, there are areas in many states that are not populated with pavement marking companies. When roadways in these areas require marking, pavement marking companies are often required to drive their vehicles several hours to and from the worksite. Classifying time working within a mobile work zone is as "on-duty, driving" dramatically decreases the available time for a striping operation within the allowable "driving window" of a work day, potentially by up to 3 hours. The decreased time may require the striping vehicles to leave the work site prior to completing a job, leaving behind an unsafe roadway condition for motorists. Given the normal speed of an active striping operation at 2-5 mph, it can mean a difference of up to 15 miles of unmarked roadway per day.

The financial burden is two-fold. If the available hours are shortened and results in the need for the striping equipment to make additional trips to and from the worksite the cost of the job is increased. Also, one of our members reported a \$1300 fine resulting from an audit where the auditor did not agree that the time working within the mobile work zone should have been classified as "on-duty, not driving".

ATSSA members are trained professionals. They have a vested interest in protecting their workers, their equipment which is acquired at a cost of \$400,000 or more per truck, and in complying with applicable regulations. Your clarification of this issue will better enable them to do so. Please don't hesitate to contact us if additional information or more specificity is needed.

We look forward to your favorable response.

Sincerely,

  
Roger A. Wentz



U.S. Department  
of Transportation

**Federal Motor Carrier  
Safety Administration**

**Administrator**

December 10, 2012

1200 New Jersey Avenue, SE  
Washington, DC 20590

Refer to: MC-PSD

Mr. Roger A. Wentz  
President and CEO  
American Traffic Safety Services Association  
15 Riverside Parkway, Suite 100  
Fredericksburg, VA 22406

Dear Mr. Wentz:

Thank you for your October 23 letter requesting clarification of the Federal Motor Carrier Safety Administration's hours of service regulations as they apply to roadway striping operations. You specifically asked for clarification as to when the drivers of roadway striping vehicles in a "mobile closure" operation are in an "on-duty, driving" or "on-duty, not driving" status.

You advised that in a "mobile closure" striping operation, the vehicle applying the paint moves continuously at a slow speed within a moving one-lane zone that is closed to public travel. The main vehicle is preceded and followed by vehicles with electric signboards stating that the lane is closed and traffic must move right or left.

The operators of commercial motor vehicles in a mobile closure operation, as you have described, would be in an "on-duty, not driving" status while within the mobile work zone that is closed to public travel. These vehicles would not be operating on a highway, as defined in 49 CFR 390.5 because the roadway in the mobile zone is not "open to public travel."

I hope this information is helpful. Should you need additional information or assistance, please contact Thomas Yager, Chief, Driver and Carrier Operations Division, at (202) 366-4325, or via e-mail at [tom.yager@dot.gov](mailto:tom.yager@dot.gov).

Sincerely,

FOR Anne S. Ferro