



NO INTIMIDATION ALLOWED HERE

For years, truck drivers have complained about being intimidated by dispatchers and others to violate federal regulations in order to meet unrealistic delivery deadlines. On January 29th of this year, Federal Motor Carrier Safety Administration's so-called driver coercion rule, formally known as the "Prohibiting Coercion of Commercial Motor Vehicle Drivers," took effect. Many shippers may not have heard about this rule or the impact it could have on their business.

The new regulations prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate commercial motor vehicles in violation of certain provisions of the Federal Motor Carrier Safety Regulations. This includes the driver's hours-of-service limits; driver's license regulations; drug and alcohol testing rules; and HAZMAT rules. The rule also prohibits anyone who operates a Commercial Motor Vehicle in interstate commerce from coercing a driver to violate the commercial regulations.

The definition of driver coercion can include: withholding of business, withholding of employment or work opportunities, taking or permitting any adverse employment actions against the driver. It could be something as simple as telling a driver this is the last load we will allow you to pick up for us. The rule has stiff penalties of up to \$16,000 per occurrence if a shipper, receiver or intermediary makes threats to a driver "to induce the driver to operate ... under conditions which the driver indicated would require him or her to violate one or more of the regulations," according to the rule's language.

Here is an example: A driver arrives at your dock to pick a load from Chicago to Pittsburg and is told that the load must arrive the next day. The driver states that he does not have enough hours to meet that requirement and you as shipper state that it must get there on time. The

driver can report that he was coerced into taking the load. Likewise, if there is a problem with the safety of a trailer, for example the tires are bald, and the driver is told that he must use that trailer you may find the driver filing a complaint. Drivers have 90 days to file their complaint.

The ultimate exposure is if the driver should have an accident after making an initial objection to taking the load. The rule generally puts the onus on drivers, who must communicate that they believe they are being coerced to do something unsafe or in violation of a regulation.

To protect themselves, shippers should never speak directly with the driver. If the driver does not have enough hours, call their dispatcher. Shippers are under no obligation to ask the driver if he or she can make the delivery on time. To claim coercion the driver must object and at least identify the regulation that will be violated i.e. 'there is a maintenance issue – the last inspection certificate is over three years old'. However the ruling is not definitive as to whom the driver must object to: Is it the night watchmen, a yard jockey, a supervisor? Shippers should also make notes immediately of any driver complaints and the actions that were taken to mitigate that complaint. Staff members should also be advised about this new regulation and actions that should and should not be taken.

We all want to ensure there are no surprises and that every shipment arrives on time and undamaged. But in the real world that is not always the case. As more and more regulations are published affecting the transportation industry, keep up to date. We do not want you to be surprised by legislation.

*Don't be surprised in 2016. To learn more about how Data2Logistics can guide you through these **surprising** times please contact Harold B. Friedman, Sr. Vice President Global Corporate Development, at harold.friedman@data2logistics.com or +1 609 577 3756.*