

MICHIGAN HELMET LAW UNLAWFUL

The MSP, (Michigan State Police) is mandated by the Michigan legislature to approve helmets and promulgate rules for the implementation of the states helmet law. In an attempt to fulfill this mandate the MSP has adopted the Federal Motor Vehicle Safety Standard 218 guidelines by reference.

In the Administrative rules, the MSP rules state; **Motorcycle helmets shall meet the model specifications established by the United States Department of Transportation, National Highway Safety Administration. These specifications, located at and identified as "Motorcycle Helmets", 49 C.F.R. § 571.218, published April 15, 1988 in the Federal Register (53 FR 12529), effective October 3, 1988, are adopted in these rules by reference.**

A careful examination of the entirety of FMVSS-218 reveals that it is a testing protocol created for manufacturers of motorcycle helmets to have their helmets tested for compliance, thus allowing them to self certify their helmets as compliant with FMVSS-218. Nothing in FMVSS-218 specifies any model designation, specification, or construction criteria. While a careful reading of the standard may allow a layman to have a vague notion of what the standard is seeking to accomplish, it seems clear that only an engineer trained in the laboratory nomenclature and scientific criteria involved would have a complete understanding of this standard as it is written, and as it applies in determining the legality of a particular motorcycle helmet in the State of Michigan.

The vague nature of trying to determine whether a helmet is legal by virtue of compliance with this standard in Michigan does not end there.

Over the past 10 or so years the National Highway Traffic Safety Administration, (NHTSA), has annually selected about 40 - 50 helmet models at random off store shelves and had them independently tested for compliance. <http://www.nhtsa.dot.gov/Cars/testing/comply/fmvss218/index.html>

On average about 40% of all helmets tested FAIL. If 40% tested fail then it stands to reason that 40% not tested would fail also. That's thousands of noncompliant helmets on store shelves, motorcyclists heads, and no way of distinguishing them from compliant ones. Further, of those failing NHTSA testing only a notice for recall and an order for fixing the defects is sent to the manufacturer. I have been able to find most of the 2007 list of "fail" helmets still for sale on the internet with no notice of recall mentioned. I even purchased one in September of 08 that failed the "impact attenuation" portion of the testing. It is illogical to assume that anyone would be able to identify a helmet that absolutely meets compliance with FMVSS-218. It is illogical to assume that anyone would therefore be able to absolutely meet the requirements of the Michigan Helmet law.

I have taken the time to attend many Helmet Law violation court cases across Michigan in 2008. The only consistency in the interpretation of the Michigan Helmet Law by judges and prosecutors has been the inconsistency of their interpretations. This law as written is Vague. Worse, it is enforced in an ad hoc and arbitrary manner forcing law enforcement to guess according to their personal perceptions what is and what is not a legal helmet in Michigan.

Some courts have presumed that the labeling requirements of the standard directed to the manufacturer apply to the consumer. This has been refuted numerous times by NHTSA. These labeling requirements do not apply to consumers. Some courts presume that there are specific physical construction requirements of helmets that are required. Nothing in the FMVSS-218 can be found addressing this, and this also has been refuted by DOT. I have had personal contact with DOT engineer Claudia Covell who is in charge of FMVSS-218 verifying this.

Dear Mr. Bongard:

Thank you for your inquiry. It was forwarded to me because I am the Safety Compliance Engineer responsible for FMVSS No. 218, Motorcycle helmets. The answers to your questions are listed below. If you still have questions after reviewing my responses, please feel free to contact me directly at claudia.covell@dot.gov <<mailto:claudia.covell@dot.gov>> or (202) 366-5293 and I will be happy to assist you further.

Question 1. Does any of the criteria in FMVSS-218 regarding helmets apply to the consumer or purchaser

of the helmet, ie; DOT sticker, interior labeling, etc?

Please refer to the interpretation drafted by our Chief Counsel

<<http://isearch.nhtsa.gov/files/23642ogm.html>> or go [HERE](#) <[labeling_requirements.html](#)> for a complete response to your question. In summary, FMVSS 218 does not govern actions by consumers or purchasers of helmets.

2. Does the DOT have any specifications for motorcycle helmets that explicitly describe the construction and retention straps of an approved helmet? We have guidelines for recognizing novelty helmets but nothing that definitively addresses the physical construction material requirements of approved helmets.

The standard does not specify the type of material or design that manufacturers must use to comply with FMVSS 218. In general, FMVSS 218 is a performance based standard, so as long as the manufacturer ensures that the helmet is designed and manufactured to meet or exceed the retention system requirements of FMVSS 218, they may use any materials they wish.

3. Does the DOT have access to a list of approved helmets other than those annually tested and passing?

No; we do not maintain a list of helmets that are certified to FMVSS-218. Also, please be aware that publication of our test results on our website does not constitute a list of "approved helmets".

4. Are there ANY roadside tests that an Officer can conduct on a helmet to verify its compliance with FMVSS-218?

There are no performance tests that can be done "roadside."

Regards,

Claudia Covell

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There have been assumptions made by police officers, prosecutors, and judges that the requirements of the federal standard can be applied to the citizens of Michigan by virtue of the State Police specifying that they apply. The MSP has never made this specification and the Supremacy Clause of the Constitution disallows it anyway.

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/preemption.htm>

Preemption disallows the state to alter the intent or meaning of the adopted federal law or standard.

No average citizen of Michigan can with certainty go out and purchase a helmet that will comply with these standards. They can purchase one that has the APPEARANCE of compliance, and law enforcement can issue tickets based on the APPEARANCE of Non-compliance, but certainly the intent of the law in the first place was not to force citizens to maintain an "appearance" of lawfulness nor for law enforcement to ticket citizens for the unjustifiable "appearance" of unlawfulness.

Truly, only those motorcyclists who take the time to study and research the complexities of, and testing of various motorcycle helmets, can make an educated, personal decision on the merits of a particular helmet and avail themselves of any safety benefits attributable to motorcycle helmets.

Hmmmm, adults making an intelligent choice, as opposed to the unconstitutional mandate of a vague law which accomplishes little more than the draconian enforcement of the appearance of compliance to a testing protocol for manufacturers.

<http://www.nhtsa.dot.gov/Cars/testing/comply/fmvss218/index.html>

http://www.nhtsa.gov/cars/rules/import/FAQ_Site/pages/page3.html

<http://www.bikersrights.com/nhtsa/fmvss218.html>

http://www.nhtsa.dot.gov/portal/site/nhtsa/template.MAXIMIZE/menuitem.d7975d55e8abbe089ca8e410dba046a0/?javax.portlet.tpst=4670b93a0b088a006bc1d6b760008a0c_ws_MX&javax.portlet.prp_4670b93a0b088a006bc1d6b760008a0c_viewID=detail_view&itemID=f1fd61db8a390010VgnVCM1000002c567798RCRD&overrideViewName=Article

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/preemption.htm>

THE Present MICHIGAN LAW;

Motorcycle Helmets

All persons riding a motorcycle, and any person less than 19 years of age operating a moped on a public thoroughfare, are required to wear a crash helmet on his or her head. **The Michigan Department of State Police has been given the legislative responsibility to approve crash helmets and to promulgate rules to implement this law.** Section 257.658 of the Michigan Vehicle Code reads as follows:

Sec. 658. (1) A person propelling a bicycle or operating a motorcycle or moped shall not ride other than upon and astride a permanent and regular seat attached to that vehicle.

(2) A bicycle or motorcycle shall not be used to carry more persons at 1 time than the number for which it is designed and equipped.

(3) A moped shall not be used to carry more than 1 person at a time.

(4) A person operating or riding on a motorcycle, and any person less than 19 years of age operating a moped on a public thoroughfare shall wear a crash helmet on his or her head. **Crash helmets shall be approved by the department of state police. The department of state police shall promulgate rules for the implementation of this section** pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.315. Rules in effect on June 1, 1970, shall apply to helmets required by this act. This subsection does not apply to a person operating or riding in an autocytle if the vehicle is equipped with a roof which meets or exceeds standards for a crash helmet.

(5) A person operating or riding in an autocytle shall wear seat belts when on a public highway in this state.

MICHIGAN ADMINISTRATIVE CODE;

R 28.951, effective July 27, 2000, promulgated pursuant to the Administrative Procedures Act of 1969, as required by MCL 257.658(4):

R 28.951 Approved Equipment: Motorcycle helmets shall meet the model specifications established by the United States Department of Transportation, National Highway Safety Administration.

Rule 1. These specifications, located at and identified as "Motorcycle Helmets", 49 C.F.R. § 571.218, published April 15, 1988 in the Federal Register (53 FR 12529), effective October 3, 1988, are adopted in these rules by reference.

Due Process Clause:

A doctrine derived from the **DUE PROCESS CLAUSES** of the **FIFTH** and **FOURTEENTH AMENDMENTS** to the U.S. Constitution that requires criminal laws to be drafted in language that is clear enough for the average person to comprehend.

If a person of ordinary intelligence cannot determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed under a particular law, then the law will be deemed unconstitutionally vague. The U.S. Supreme Court has said that no one may be required at peril of life, liberty, or property to speculate as to the meaning of a penal law. Everyone is entitled to know what the government commands or forbids.

The void for vagueness doctrine advances four underlying policies. First, the doctrine encourages the government to clearly distinguish conduct that is lawful from that which is unlawful. Under the Due Process Clauses, individuals must be given adequate notice of their legal obligations so they can govern their behavior accordingly. When individuals are left uncertain by the wording of an imprecise statute, the law becomes a standardless trap for the unwary.

Second, the void for vagueness doctrine curbs the arbitrary and discriminatory enforcement of criminal statutes. Penal laws must be understood not only by those persons who are required to obey them but by those persons who are charged with the duty of enforcing them. Statutes that do not carefully outline detailed procedures by which police officers may perform an investigation, conduct a search, or make an arrest confer wide discretion upon each officer to act as he or she sees fit. Precisely worded statutes are intended to confine an officer's activities to the letter of the law.

The Supremacy Clause of the U.S. Constitution:

In the legal system of the United States, **preemption** generally refers to the displacing effect that federal law will have on a conflicting or inconsistent state law. The Supremacy Clause (Article VI, section 2) of the United States Constitution states that The Laws of the United States, (which shall be made in Pursuance to the Constitution), shall be the supreme Law of the land. Thus, when there is a conflict between a state law and federal law, the federal law (subject to the Tenth Amendment to the United States Constitution and Fifth Amendment and other Constitutional Law) trumps – or "preempts" – the state law, according to this theory. The term is also sometimes used to refer to the displacing effect state laws might have on ordinances enacted by municipalities. The preemption doctrine derives from the Supremacy Clause of the Constitution which states that the "Constitution and the laws of the United States...shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding." This means of course, that any federal law--**even a regulation of a federal agency**--trumps any conflicting state law.

Rusty "Thorsblood" Bongard

B.O.L.T. (Bikers of Lesser Tolerance) of Michigan

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