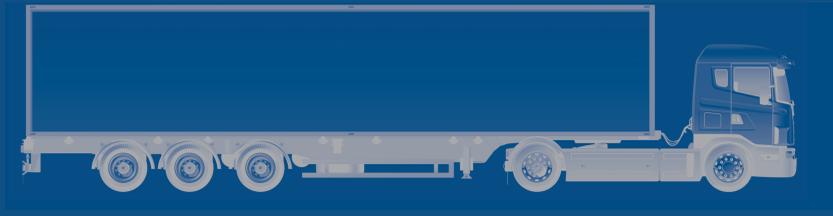


Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations





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Traffic prosecutors across the country deal every day with the consequences of these large vehicles that, by necessity, share our roads.



ON SEPTEMBER 13, 1899, Henry H. Bliss became the first American in recorded history to die in a motor vehicle collision when he stepped from a New York City trolley and was struck and killed by a passing taxi. For the first time, a prosecutor decided that a traffic “accident” merited criminal prosecution. The driver, who was arrested and later acquitted of manslaughter, laid the blame for the death on a large truck that was blocking his lane, causing him to strike Mr. Bliss.¹ Thus began the long and often antipathetic relationship between passenger and commercial vehicles sharing the country’s roadways. Over a hundred years later, traffic prosecutors across the country deal every day with the consequences of these large vehicles that, by necessity, share our roads.

Commercial vehicles play a critical role in the nation’s economy with large trucks moving billions of tons of goods each year. Commercial motor vehicles (CMV) provide over two thirds of the shipping required

each year by American industry.² Motor coaches transport passengers across the nation and school buses carry America’s children safely to school each day. Millions of Americans work in the transportation and commercial vehicle industries with over 1.5 million driving large trucks and buses. The majority



¹ *Fatally Hurt by Automobile*, *N.Y. Times*, Sept. 14, 1899.

² “American Industry Shipped 13 Billion Tons of Goods in 2007” Bureau of Transportation Statistics (Research and Innovative Technology Administration).



of these companies and individuals are committed to the safe operation of their vehicles. These carriers and their drivers do their best to follow state and federal safety guidelines and regulations. They expect and deserve a level playing field where they can compete with others in their business who are also following these rules. Unfortunately, as in any field, there are bad actors who refuse to “play by the rules,” cutting corners and disregarding regulations. These carriers and drivers place others in jeopardy through aggressive or negligent driving, drug use, poor maintenance and a host of other failures to comply with government standards.

Every year commercial trucks and buses log millions of miles on the U.S. roads and each year, along the way, thousands of these vehicles are involved in crashes causing property damage, injury, and death. Although personal vehicles travel many more miles each year than commercial vehicles, these heavy trucks and buses represent a disproportionately large percentage of serious and fatal crashes.³ A significant portion of these crashes are the fault of non-commercial drivers, but many are caused by commercial vehicle operators who are operating unsafe vehicles or committing traffic violations. Often, these crashes are caused by CMV drivers who have repeatedly violated safety regulations and who may

have repeatedly avoided any real consequences for their violations.

At a minimum, prosecutors must attain a working knowledge of the commercial driver licensing laws that affect their cases. Although the terminology and regulations might be unfamiliar or even intimidating, understanding the basics about commercial motor vehicles (CMVs) and commercial drivers' licenses is fundamental to effective enforcement, prosecution, and adjudication of these cases. Without proper local support, critical commercial traffic safety legislation is ineffective. Given the size and power of these vehicles, ensuring their safe operation will save lives. Finding easily understandable and readily available information regarding the commercial driver's license (CDL) violations that show up on a morning docket is a challenge, but the prosecutors who handle these CDL cases have a duty to properly and accurately apply the law. This monograph addresses the need for a brief, to-the-point, “instruction manual” that explains the basics of the CDL. It is intended to present the essential, federally mandated elements of commercial driver licensing, explain the special sanctions affecting CDL holders and to provide further information about other available resources.⁴

³ *Federal Motor Carrier Safety Administration, Large Truck and Bus Crash Facts 2008*, March 2010. The most recent statistics available indicate that although large trucks represent only 227,458,000, or 7.6%, of the 2,973,509,000 total vehicles miles traveled in 2008, they represent a disproportionately high 11.35% of total fatalities from vehicle crashes. The statistics do not include buses.

⁴ To the extent that there is a discrepancy between the regulations and this guide, the regulations control. Additionally, prosecutors must always be mindful that federal regulations establish minimum standards for CDL control and commercial vehicle driver and carrier requirements. Each state has the right to create additional, potentially more stringent rules. Prosecutors should become familiar with both the state and federal laws that affect their CDL cases. Traffic regulations will change as research, technology and scientific innovations dictate. It is incumbent upon prosecutors to check for updates regularly.



THE IMPORTANCE of commercial motor vehicles to the fundamental operation of the nation's economy cannot be over emphasized. A strong economy, based on the flow of commercial materials, supports all the essential functions of a country. Our lives run smoothly because of the daily uninterrupted provision of goods and services. The commercial transportation industry provides the efficacious delivery of those goods and, more importantly, the safe transport of the people who provide those services from one location to another.

In the United States, the transportation of goods and services has evolved over the past several hundred years. The first commercial transportation in America was accomplished via rivers and other waterways. Later, man-made power replaced the natural system of transport through the innovation of the railroad. Transportation was then further revolutionized by the speed and convenience of the motorized vehicle. Widespread transportation of goods, however, required an equally widespread, safe, and regulated system of transport. Although cars and trucks had become the primary mode of personal transportation during the first half of the 20th century, it was not until the federal government stepped in to create an organized and well-maintained system of roads across the entire country that motorized transport became the pre-

ferred method of industrialized shipping.

When President Eisenhower signed the Federal-Aid Highway Act of 1956, creating the infrastructure for a nationwide ground transport system, the foundation for the modern trucking industry was established. In addition to authority over the roads themselves, the government attained the authority to regulate the transportation of goods and services on those interstate highways. The Interstate Commerce Commission had been given authority to regulate motor carriers and drivers by the Motor Carrier Act of 1935. Section 206 of the Act declared that “no common carrier by motor vehicle...shall engage in any interstate or foreign operation on any public highway... unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the commission authorizing such operation.”⁵

Prior to 1986, little effective federal legislation existed to govern the operation of large trucks and buses on interstates. Individual states determined their own methods of testing and ensuring the qualifications of CDL applicants. Drivers could obtain a driver's license in multiple states. There was very little communication between states regarding a driver's traffic violations. This resulted in drivers with little or no training or poor driving histories operating on the nation's roadways. The crash data

⁵ Interstate Commerce Act: Part II (Motor Carrier Act, 1935) as amended November 1, 1954, with legislative history, plus related statutes. United States Reprints from the collection of the University of Michigan.

⁶ “Large Truck and Bus Crash Facts 2008: Early Release” Analysis Division, Federal Motor Carrier Safety Administration FMCSA-RRA-09-052 October 2009.



reflected the inadequacy of governance. Accurate statistics on crash data involving large trucks has been collected by the federal government since the mid 1970s. From 1975 to 1985, there was an average of 4.53 fatal crashes for every 100 million vehicle miles traveled by large trucks on U.S. roadways.⁶ In 1986, the U.S. Congress enacted the Commercial Motor Vehicle Safety Act (CMVSA) to improve the safety of commercial motor vehicle (CMV) drivers throughout the nation.

The CMVSA was signed into law on October 27, 1986. One of the goals of this legislation was to increase highway safety by removing unqualified commercial motor vehicle drivers from the roads. The CMVSA also standardized the minimum requirements for commercial driver licensing from state to state and prohibited drivers from holding more than one commercial driver's license (CDL). This helped to eliminate the practice of drivers holding CDLs in multiple states. States retained their right to issue and control drivers' licenses in accordance with minimum national standards for driver knowledge and skills competence. From the time that the CMVSA was passed in 1986, the total number of large trucks registered in the United States has almost doubled, and the total number of vehicle miles traveled by those trucks has nearly tripled.⁷ This safety-oriented legislation has been successful. Despite the significant increase in the numbers of large trucks on the road, the fatal crash rate per million miles traveled had fallen to 1.79 by 2008.⁸

The federal government not only established legislation to improve the safety of the commercial motor vehicle industry, it also responded to the need for an organization whose primary task was that industry's oversight. In 1999, Congress passed the Motor Carrier Safety Improvement Act and created the Federal Motor Carrier Safety Administration (FMCSA). FMCSA is a separate administration within the U.S. Department of Transportation operating with the mission of "improving the safety of commercial motor vehicles (CMV) and saving lives."⁹ It employs over 1000 individuals and maintains a presence in all 50 states and the District of Columbia and US territories. Administration headquarters is located in Washington, D.C. There are also field offices including four regional service centers and a division office in each state, the District of Columbia and Puerto Rico. FMCSA seeks to improve commercial vehicle safety through a multifaceted approach which includes regulation, education, and partnering with stakeholders such as federal, state, and local enforcement agencies, and other traffic safety professionals. It conducts multiple safety programs focusing on border and international safety, commercial driver licensing, and safety and education outreach. The CDL program is among FMCSA's key programs and serves to develop, monitor, and support compliance with federal commercial driver licensing standards for drivers, carriers and states.¹⁰

⁷ "Large Truck and Bus Crash Facts 2008: Early Release" Analysis Division, Federal Motor Carrier Safety Administration FMCSA-RRA-09-052 October 2009.

⁸ "Large Truck and Bus Crash Facts 2008: Early Release" Analysis Division, Federal Motor Carrier Safety Administration FMCSA-RRA-09-052 October 2009.

⁹ FMCSA.dot.gov. 2009, Federal Motor Carrier Safety Administration. 13 January 2009 <<http://www.fmcsa.dot.gov/about/aboutus.htm>>.

¹⁰ Information concerning other key FMCSA programs can be located at <http://www.fmcsa.dot.gov/about/what-we-do/keyprograms/keyprograms.htm>.

CDL Basics



BEGINNING WITH THE CMVSA in 1986, the federal government attempted to correct the lack of uniformity in commercial driver licensing across the country. Logically, a driver licensed in Virginia who wants to drive through Texas should possess the same basic skills and qualifications that the State of Texas requires of its own CDL holders. Similarly, a California law enforcement officer should be able to examine a CDL from Florida and find the same basic information that appears on a CDL from his

own state. The federal regulations address this uniformity and require security measures that make fraudulent or forged CDLs easier to identify.

While CDLs may vary somewhat in appearance from state to state, all CDLs are required to prominently display important identifying descriptors pursuant to 49 CFR 383.153. The license must provide the driver's full name, mailing or residence address, and signature. The face of the license will also display a photograph of the driver as well as the driver's

CDL number from the issuing state. The CDL must indicate the group(s) of vehicles that the driver is authorized to operate and any special endorsements, privileges or restrictions. Finally, the CDL must clearly show if the holder is a "non-resident" CDL driver. With very few exceptions, drivers are prevented by federal law from holding more than one CDL at any given time.¹¹



¹¹ 49 CFR 383.21 (2010).

CDLIS

One of the many changes brought about by the 1986 CMVSA was the inception of a more accurate method of keeping comprehensive driver history records. The move was necessitated by the disjointed and often incomplete records kept by individual states. Too often, conviction records were available only in the state where the traffic violation occurred and not transmitted to the driver's state of licensure. Enforcement of the federally mandated "one state-issued CDL per driver" limitation was impeded by the states' inability to communicate with each other to provide out-of-state conviction and withdrawal data. CMVSA addressed this communication problem through the creation of the Commercial Driver's License Information System (CDLIS) which is a centralized pointer system providing an interactive information system. The driver licensing authorities in each state can communicate with CDLIS to check for information on new CDL applicants. CDLIS works to assist states assessing CDL applicants by directing the licensing agency to the driver's current state of licensure so that a complete driver history can be obtained.

CMVSA did not create a federally-issued CDL system and CDLIS does not replace the individual states' licensing authorities. State licensing agencies issue CDLs. CDLIS is an important tool that helps to facilitate information sharing between states regarding driver histories for CDL holders. Prior to issuing a CDL, states are required to run a CDLIS check to determine whether the driver applicant already had a CDL, if his driver's license is suspended,

revoked or canceled and if he is otherwise disqualified from holding a CDL.¹² If a state has issued a prior CDL to the applicant, that state can provide all relevant history to the state requesting the information on the driver. Each time a state issues a CDL it will add that record into the CDLIS central site.

The type of information that should be reported to CDLIS is governed by 49 CFR 383 and 384. The reported record should include the driver's name, address, physical description and Social Security number¹³ of any CDL holder.¹⁴ Additionally, the record should indicate the state of issuance of any CDL, when it is valid, whether it or any prior driver's license has ever been suspended, revoked or canceled and any periods of disqualification from operation of a CDL. The success of the CDLIS program depends on the ability of the states' licensing authorities to promptly share accurate CDL information.

LICENSING REQUIREMENTS

Because the safe operation of certain large vehicles require specialized knowledge and skills, every state and the federal government requires operators of those vehicles to possess a valid CDL.¹⁵ For CDL purposes, FMCSA defines a commercial motor vehicle (CMV) as one that is used for business purposes, involved in interstate or intrastate commerce and has any one or more of several specific characteristics. Those characteristics include a having a GVWR/GCWR¹⁶ of 26,001 pounds or more, being designed to transport 16 or more passengers in-

¹² F 49 CFR 383.205 (2010).

¹³ The Social Security number must be part of the record but need not appear on the face of the CDL itself.

¹⁴ 49 CFR 383.151 (2010).

¹⁵ 49 CFR 383.23(a) (2010).

¹⁶ GVWR (gross vehicle weight rating) and GCWR (gross combined weight rating) describe the weight rating established by the vehicle manufacturer. These terms are discussed further in this monograph.

cluding the driver, or transporting enough hazardous materials to require placarding under federal guidelines (or any amount of materials designated as special agents or toxins).

If a vehicle meets the definition of a CMV, its driver will need (barring certain legal exemptions discussed below) a state CDL issued in compliance with federal regulations. Title 49 Code of Federal Regulations (CFR) Parts 383 and 384 deal specifically with CDLs and driver requirements. The rules establish the requirement that all drivers operating qualifying CMVs hold a valid CDL issued by a certified state.¹⁷ These regulations were developed “to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver’s license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.”¹⁸

The same federal regulations detailed in 49 CFR 383 place obligations on both drivers and employers. Drivers, for instance, are required to inform current and prospective employers regarding specified convictions (having implications on their CDL status) and their employment history. Employers are required to allow only drivers with valid licenses to operate their vehicles. The federal regulations ensure that wherever a driver or carrier operates, they do so with a certain standard of behavior. It is



important to remember, though, that the federal regulations serve only as the baseline for the minimum regulations each state must use for CDL issuance and management. Individual states are allowed to craft legislation that is more stringent than the federal guidelines. The basic standards are fairly uniform across the United States and make sure that drivers licensed in any state have the same minimum level of knowledge, skills, and general qualifications to drive a large truck or bus. Prosecutors should always check their own state code as well as the federal regulations to determine the actual requirements to apply in each case.

Skills/Knowledge Testing

Federal regulations establish minimum standards of CDL drivers’ ability and proficiency. A primary requirement for licensing is that a driver be able to demonstrate the requisite level of knowledge regarding the rules of the road for CMVs.¹⁹ Pursuant to the CFR, all commercial motor vehicle operators seeking a CDL must have “knowledge and skills necessary to operate a CMV safely.”²⁰ It is important to note that, before being issued a CDL, all drivers are required to become familiar with the safe operation regulations governing the type of vehicle they are operating or anticipate operating. These regulations cover “vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe CMV operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.”²¹ Another requirement is that the drivers

¹⁷ One exception to this rule is contained in 49 CFR 383.23(c) which allows drivers with valid “state’s learners’ permits” to operate commercial motor vehicles in order to obtain “behind-the-wheel” training.

¹⁸ 49 CFR 383.1(a) (2010).

¹⁹ 49 CFR 383.23(a)(1) states that as of April 1, 1992 “no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards” detailed within the CFR language.

²⁰ 49 CFR 383.110 (2010). It should be noted that there are some limited exceptions where a driver’s prior history of vehicle operation may allow him to bypass skills testing.

²¹ 49 CFR 383.111(a) (2010).

Drivers must pass knowledge-based testing regarding the proper operation of a large truck or bus and the use of its safety systems...



must pass knowledge-based testing regarding the proper operation of a large truck or bus and the use of its safety systems such as lights, horns, mirrors, and fire extinguishers.²² This test should also cover the symptoms and diagnosis of common system malfunctions (e.g., loss of braking ability or skidding) and the appropriate countermeasures.²³

CDL applicants must also complete a three-part test that includes components related to pre-trip inspection, basic vehicle control skills and on-the-

road performance. The test is designed to evaluate readiness for real-life commercial motor vehicle operation. To succeed, the applicant should be well able to control his²⁴ truck and show proper signaling, lane change, etc. Also, the applicant must be able to demonstrate appropriate pre-trip inspection of the braking system.²⁵ The skills required for a CDL may vary depending on the type of vehicle the driver will be operating (tank, hazardous material, passenger, double trailer, etc.).²⁶ In some instances,

²² 49 CFR 383.111(b) (2010).

²³ In cases involving potential CDL holder negligence or recklessness, a prosecutor should consider that 49 CFR 383.111(b) requires these drivers to have a knowledge of driving safety superior to that of a non-commercial vehicle driver. A commercial driver should be familiar with the basic operations of his truck, trailer, and stopping systems. Additionally, he or she has most likely received instruction regarding extreme weather conditions, emergency maneuvers, and hazard perception.

²⁴ Throughout this document the pronoun he is used as the proper, gender-neutral form of reference to a non-specific individual. “He” or “his” is intended to indicate both male and female drivers. See William Strunk, Jr. & E.B. White, *The Elements of Style*, The Penguin Press 89 (2005).

²⁵ 49 CFR 383.113(c)(1) (2010).

²⁶ Specific requirements for all federal mandated endorsements can be found in 49 CFR 383.115 through 49 CFR 383.123.

a driver may “grandfather” into a CDL based on driving experience gained prior to the passage of the federal requirements. There are certain restrictions placed on this “waiver” procedure that are allowable at the discretion of individual state licensing authorities. Per FMCSA, this ability to waive certain licensing requirements under the “grandfather” provision is scheduled to be eliminated from the regulations. For a sampling of the types of items that states include on knowledge or skills test, see 49 CFR 383, Subpart G. Appendix.

Medical Qualification

In addition to demonstrating basic proficiency in the operation of their vehicles, CDL applicants must also be in good health and free from any mental or physical condition that would make them unable to safely operate the CMVs for which they are licensed. The federal government has established minimum guidelines for physical qualifications.²⁷ These regulations, in effect since 1971, are intended to keep drivers with particular medical conditions from interstate operation of commercial vehicles.²⁸ Loss of limb, epilepsy, insulin-dependent diabetes, cardiovascular or respiratory problems, certain psychiatric illnesses, and other vision or physical limitations are among the conditions that could potentially make a commercial driver medically unqualified.²⁹

An interstate CDL driver must provide proof that he has undergone a medical examination by a licensed medical examiner³⁰ and is in possession of a medical certificate from that medical examiner.³¹ Currently, this certificate must be kept on his per-

son while he is on duty.³² On December 1, 2008, FMCSA issued new rules intended to improve the quality of medical examinations given to CDL drivers and to strengthen the ability of states to license only medically qualified drivers.³³ Under the new rules, the CDL and the medical certificate would merge into a single document, streamlining record keeping for states and allowing instant access to a driver’s medical certification by state or federal authorities.³⁴ Between 2012 and 2014, a new system will be implemented to eliminate the need for drivers to carry a physical copy of their medical certification. CDL drivers will no longer need to carry their certificate because a digital version will become a part of the information in their permanent CDLIS record. Drivers must continue to carry the physical copy during this two-year transition period.³⁵ Federal law requires states to sanction CDL holders who do not follow the medical examination requirements.³⁶ There has been a recent shift towards stricter control of who may be considered qualified to perform physical examinations of CDL holders. Under a newly proposed FMCSA registry, states will be unable to accept medical certificates from medical examiners who do not meet the required standards.

To be considered medically qualified, a driver must not be taking any Schedule I controlled substance, amphetamine, narcotic, or any other habit forming drug.³⁷ If a driver does have a prescription for a medication falling within that definition, he may only be qualified under very limited circumstances. He must have no current diagnosis of alcoholism. Also, the prescription must be issued by a

²⁷ 49 CFR 391.41 (2010).

²⁸ RONALD R. KNIPLING, PHD., SAFETY FOR THE LONG HAUL: LARGE TRUCK CRASH RISK, CAUSATION & PREVENTION 85 (2009).

²⁹ Id.

³⁰ 49 CFR 390.5 (2010) defines “medical examiner” as a state-licensed professional allowed to perform physical examinations. The term includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

³¹ 49 CFR 391.41(a)(1)(i) (2010).

³² 49 CFR 391.41(a)(2)(i) (2010).

³³ FMCSA Improves Medical Requirements for Commercial Truck and Bus Drivers, *The Guardian*, First Quarter 2009, at 7.

³⁴ Id.

³⁵ 49 CFR 391.41(a)(2)(i).

³⁶ FMCSA Improves Medical Requirements for Commercial Truck and Bus Drivers, *The Guardian*, First Quarter 2009, at 7.

³⁷ 49 CFR 391.41(a)(12)(i) (2010).

licensed physician familiar with the driver's medical history (including drug and alcohol use and other medications) and assigned duties.³⁸ That same doctor must have advised the driver that the prescribed drug will not adversely affect that driver's ability to operate a commercial motor vehicle safely.³⁹

Under 49 CFR, part 391.45, subpart E, medical certificates are generally valid for two years from date of issuance. In some circumstances, a medical examiner may determine that a shorter time period for reevaluation is required and qualify the driver for a period of time ranging from three months to one year. If, within the two-year period between required exams, a driver suffers any injury or physical or mental illness that impairs his ability to perform his normal duties, he must submit to another medical examination. While a driver is not required to undergo a new examination simply because he is changing employment, carriers are responsible for making sure their drivers are medically certified. In case of illness or injury, an employer may require additional testing to be certain the driver's abilities are not impaired. It is the driver's duty to make sure he submits to regular medical examinations in accordance with federal and state regulation.

Drug & Alcohol Testing

While drivers are required to submit to a medical examination prior to licensing and within every subsequent 24 month period (and in case of any intervening and potentially impairing illness or use of drugs/medicines), there is no requirement that doc-

tors perform any drug testing during the certification physical. The DOT-mandated Drug and Alcohol testing regulations, contained in 49 CFR parts 40 and 382, place the responsibility for drug testing on employers. Employers are, with few exceptions, required to screen potential CMV operators prior to employment through pre-employment drug testing.⁴⁰ Each year employers must conduct random testing for prohibited drug and alcohol use among their drivers. Testing must be done for alcohol on 10% and for drugs on 50% of the average number of driving positions in a given company. The percentage of drivers an employer is required to test is set by FMCSA and published in the Federal Register.⁴¹

Some commercial drivers will abuse illegal or

Drivers are subject to a mandatory period of disqualification for operating a CMV with a BAC of .04% or higher.



³⁸ FMCSA will not consider a driver taking medically prescribed marijuana to be medically qualified for the operation of a commercial motor vehicle. <http://www.fmcsa.dot.gov/rules-regulations/topics/medical/faqs.aspx?FAQTypeSub=1010&FAQQ=>

³⁹ 49 CFR 391.41(a)(12)(ii) (2010).

⁴⁰ CFR 382.301 allows for certain exceptions to the requirement of pre-employment testing, for instance, employee participation in a program that requires random drug screens.

⁴¹ 49 CFR 382.305 (2010).

prescription drugs to increase alertness, prolong wakefulness or mask chronic pain conditions. There are currently, however, no federal requirements for frequent, random, on-duty screens of commercial drivers.⁴² Most federal regulations are geared towards alcohol detection and on-duty-use of alcohol deterrence. Drivers may not report for duty with any measurable quantity of alcohol in their system pursuant to 49 CFR 392.5. Drivers are banned from CMV operation or the performance of any safety sensitive function within four hours of consuming any alcohol at all.⁴³ On-duty drivers are not permitted to consume any alcoholic beverages, with the same prohibition against employers knowingly allowing such use.⁴⁴ Drivers are subject to a mandatory period of disqualification for operating a CMV with a BAC of .04% or higher.⁴⁵ There is no such mandatory period of disqualification for a driver who tests positive for illegal or prescription drug use while on duty unless the driver is convicted of an impaired driving offense.⁴⁶ Employers are expected to abide by these restrictions and enforce them among their work force. Drivers are required to submit to alcohol and/or drug testing at the behest of their employers.⁴⁷

Background Check

In addition to assuring that all drivers to whom CDLs are issued are medically qualified and have the skills necessary to drive their classification of vehicles, the states must also check the driving history of applicants to screen for any offense that would

indicate an unsafe driver. Federal regulations require that before issuing, renewing, upgrading, or transferring a CDL to any person, the driver's state of record must check its own records.⁴⁸ Also, the state must require the driver to provide a list of all other states where the driver has held a driver's license of any type for the past 10 years. The issuing state must then request the applicant's driver record from each of those states.⁴⁹ Each state is required to check the CDLIS record of the applicant and send notification to CDLIS of all CDLs issued.⁵⁰

Multiple types of criminal convictions, even those unrelated to moving violations, can cause a CDL driver to become disqualified (felony drug offense committed in a vehicle, felony committed in a vehicle, DUI, etc.).⁵¹ Traffic safety professionals should be mindful that there is no requirement that a general criminal history of a CDL applicant be performed prior to licensing. It is incumbent upon prosecutors and the criminal court system to make sure that potentially disqualifying offenses are reported accurately and promptly to relevant licensing authorities (see section covering Prosecutorial Considerations). No assumption should be made that all relevant traffic and criminal offenses have been reported. Prosecutors who notice an offense on a criminal history that does not appear on a driver's record should notify the licensing authorities about the error. If prosecutors and court officials fail to report relevant convictions, dangerous drivers will be allowed to continue operating CMVs on public roads.

⁴² Prosecutors should not assume that truck or bus drivers are receiving regular drug testing as part of their employment. Cases involving the misuse or abuse of drugs (including alcohol) may require drug and alcohol testing as part of probation.

⁴³ 49 CFR 384.207 (2010).

⁴⁴ 49 CFR 382.205 (2010).

⁴⁵ 49 CFR 382.201 (2010).

⁴⁶ An employee testing positive for illegal drugs during a random employment based drug screen will have to abide by certain conditions prior to returning to work pursuant to 49 CFR 832.309.

⁴⁷ 49 CFR 382.211 (2010).

⁴⁸ 49 CFR 384.206 (2010).

⁴⁹ Any states receiving requests from another state's licensing authority must send the requested information within 30 days.

⁵⁰ 49 CFR 384.205 (2010).

⁵¹ 49 CFR 383.51 (2010).

SITUATIONS REQUIRING VALID CDL

The determination of whether or not a CDL (and what class) is required depends on the nature of the vehicle and/or load it is hauling. Trucks and passenger vehicles can require that a driver hold a CDL depending on their size and passenger capacity. Given the applicability of federal and state regulations, it may be sometimes difficult for law enforcement officers to determine who does and does not require a CDL. Familiarity with and adherence to the regulations makes handling CDL violations easier for officers and prosecutors. Generally, “every person who operates a commercial vehicle (CMV) in interstate, foreign, or interstate commerce” will require a CDL pursuant to 49 CFR 383.3 but some federal exceptions apply. Even if there is no federal regulation requiring a CDL, a state rule may be controlling. An official enforcing, prosecuting, or adjudicating CDL cases should make sure that all factors are considered. Any questions can be referred to state CDL authorities for clarification.⁵² Because larger vehicles, multiple connected vehicles, and certain types of load materials pose a more significant potential danger to the public than others, there are different types of CDLs issued.

CLASSES OF CDL

Federal regulations divide commercial vehicles into groups or “classes” based on size and type of load.⁵³ Each class of commercial vehicle demands a separate knowledge and skill set. The varying classifications of CDL require different levels of skill and knowledge testing prior to issuance. Any commercial driver’s license allows a driver to operate vehi-



cles only within his or her designated vehicle class or any of the lower levels of classification. There are three basic classifications of CDL: “A,” “B” and “C.”

A Class “A” CDL requires the most skill and knowledge testing and permits the holder to drive all vehicles allowed with the two lower classifications.⁵⁴ Similarly, a Class “B” CDL would entitle the holder to operate both Class “B” allowable vehicles and Class “C” allowable vehicles. A driver may only operate the vehicles allowed within his own classification and any lower classifications.⁵⁵

Generally, CDL classifications are based on the weight rating of the vehicle, the type of the vehicle and the type of load or number of passengers a vehicle is designed to carry. The Gross Vehicle Weight Rating (GVWR) is the value specified by the manufacturer as the maximum safe loaded weight of a single vehicle.⁵⁶ As such this is not an actual weight, which would be difficult to obtain at

⁵² In most states the Department of Safety or Department of Transportation is responsible for commercial driver licensing. Prosecutors should become familiar with the licensing authorities in their own states.

⁵³ 49 CFR 383.91 (2010).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ 49 CFR 390.5 (2010).

Federal regulations divide commercial vehicles into groups or “classes” based on size and type of load. Each class of commercial vehicle demands a separate knowledge and skill set.

roadside, but an estimated weight pre-determined by the manufacturer. Similarly, the Gross Combination Weight Rating (GCWR) is a value established by the manufacturer as the maximum safe loaded weight of a combination or articulated vehicle (this includes the vehicle and any trailer(s) it is hauling).⁵⁷ The three classes of commercial license, therefore, can be defined by weight rating and vehicle type and function.

Class A CDL—required for CMVs with a GCWR of 26,001 pounds or more including a towed vehicle with a GVWR of more than 10,000 pounds.

Class B CDL—required for CMVs with a GVWR of 26,001 pounds or more or any such vehicle towing a vehicle with a GVWR of 10,000 pounds or less.

Class C CDL—required for the commercial operation of a vehicle not meeting the definition of a Class A or Class B but designed to transport 16 or more passengers, or transporting hazardous materials required to be marked with a placard or carrying certain agents/toxins.

It is a violation of law in every state for a CMV driver to operate a vehicle without a valid CDL or outside his designated class of CDL or without the

appropriate endorsements. Violations of these prohibitions should be strictly enforced because these drivers are operating vehicles without the necessary training, testing, or screening. Failure to obtain a proper license, however, is not a defense to prosecution of moving violations while operating a CMV. A driver who should have held a CDL at the time of the violation may still be convicted for CDL violations.

Some disqualifying offenses apply both to drivers who held a CDL and those who should have held a CDL based on the vehicle they were operating when ticketed. Prosecutors should be aware that these drivers may still be cited and have that violation reported to licensing authorities. Driving a CMV without first obtaining a CDL, for instance, will cause a driver to become disqualified from CDL operation from 60 to 120 days.⁵⁸

Specialized Endorsements

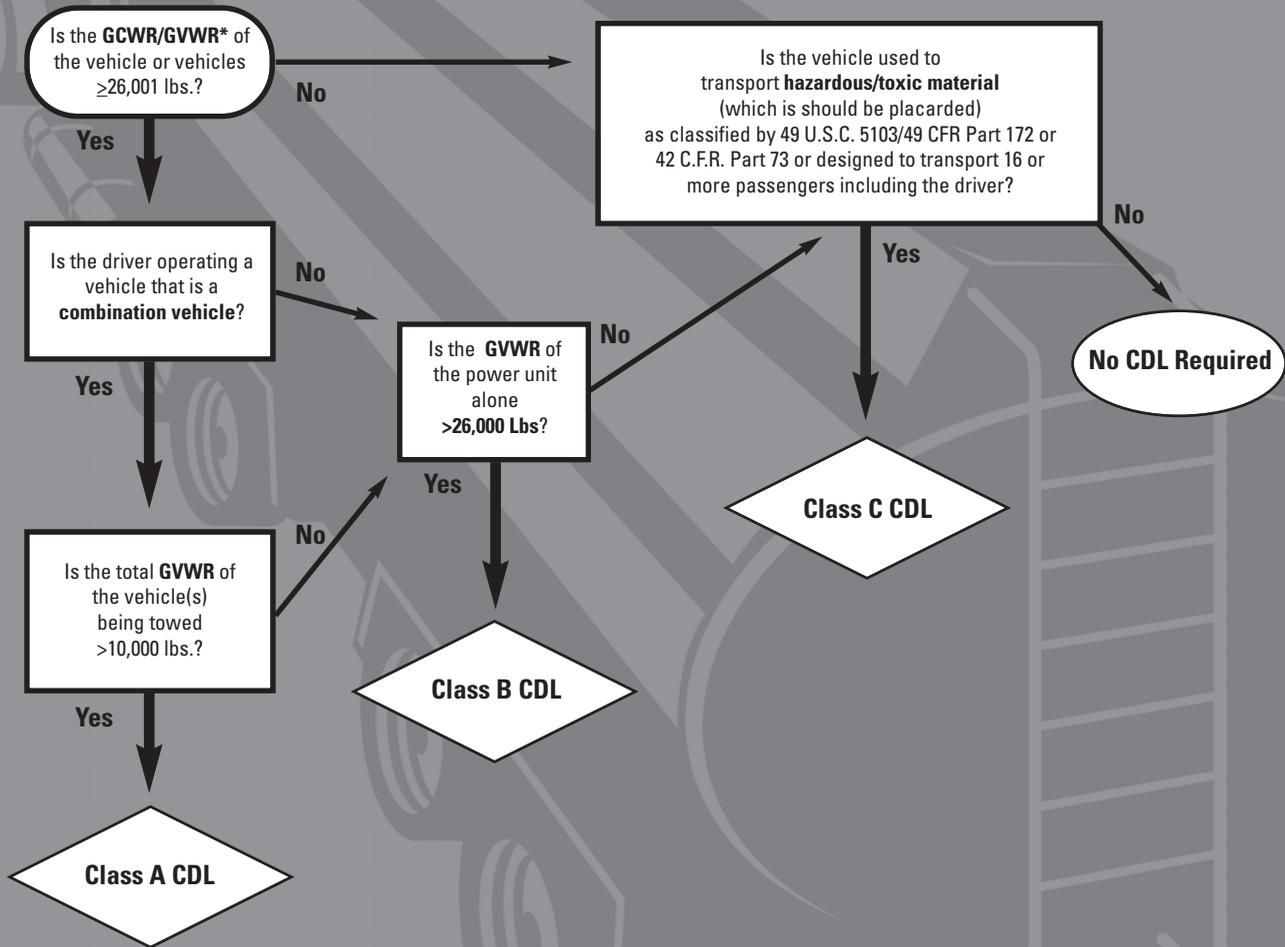
In addition to the three classes of CDL, operators must also obtain special “endorsements” allowing for the operation of specialized vehicles or transportation of dangerous materials.⁵⁹ Federal regulations set minimum standards for specially endorsed drivers, but states may require more stringent standards. In order to obtain specialized endorsements, CDL drivers must undergo additional testing or driver history screening. Drivers seeking to haul hazardous materials or tanker loads must receive training in addition to the standard CDL education

⁵⁷ Id.

⁵⁸ 49 CFR 383.51(c)(6) (2010).

⁵⁹ 49 CFR 383.93 (2010).

DOES THE DRIVER NEED A CDL?



*All terms in bold face type are defined in the appendix of this monograph.

pursuant to federal law.⁶⁰ Hazardous materials endorsements also require a security screening due to the potential threat of terrorism. The Transportation Security Administration screens CDL operators seeking hazardous materials endorsements. If a state receives notices from TSA that a driver has not passed this screening, they must revoke the endorsement.⁶¹ If granted, the following endorsements will appear on the CDL itself:

“T”—This designation allows the driver to haul double or triple trailers.

“P”—This allows the driver to operate passenger vehicles commercially.

“N”—This allows the driver to operate tank vehicles.

“H”—This endorsement is required for all drivers hauling hazardous material commercial loads.

“X”—This indicates a driver with combined “H” and “N” designations that permit the operation of tank vehicles containing hazardous materials.

“S”—This is a designation for drivers of school buses.

Restrictions

A CDL may also be issued with restrictions. Any CDL will limit a driver to the operation of vehicle types for which he has successfully tested. For instance, a driver may hold a Class B CDL permitting him to operate Class B commercial vehicles. When he goes in for his school bus endorsement, however, he tests only in a Class C bus. He will receive his school bus endorsement (“S” on his license) but the license will be issued with the restriction that he is only allowed to operate Class C passenger vehicles or school buses. Similarly, a driver may successfully

pass CDL testing in a vehicle without air brakes. He can receive a CDL, but his CDL will restrict him to the operation of CMVs without air brakes (a more complicated system of braking than on a standard vehicle). This method of restriction ensures that only drivers with a demonstrated skill level for operating a specific vehicle type will be on the road in that vehicle. Enforcing restriction violations is important to supporting this safety measure.

Exemptions to CDL Requirements

The size or nature of a vehicle does not always determine whether or not its driver needs a CDL for lawful operation. Vehicles used for recreational or non-business purposes, for instance, do not require a CDL under current federal regulations (state laws may be more restrictive). Also, some business operations receive waivers allowing their drivers to operate without a CDL (a valid driver’s license is still required). Farm vehicles (run by the farm owner) that are used to transport agricultural products or machinery to or from a farm, operating within a 150 mile radius of that farm, will generally not require a CDL for operation.⁶² Firefighters operating life-saving equipment that is well designated by emergency lights and sirens are not required by federal law to hold a CDL (state law may differ).⁶³ The State of Alaska may exempt certain CMV drivers.⁶⁴ Drivers employed by eligible units of government and working with that jurisdiction in order to sand or plow roads may be exempt from the CDL requirement in certain circumstances. Military personnel are never required by federal law to hold a CDL in order to operate a CMV if that operation is for military purposes. This exemption must be honored by all states.⁶⁵

In lieu of a full exemption, some drivers engaged in particular fields of employment may receive a

⁶⁰ 49 CFR 177.816 (2010).

⁶¹ 49 CFR 1572.13 (2010).

⁶² 49 CFR 383.3(d)(1) (2010).

⁶³ 49 CFR 383.3(d)(2) (2010).

⁶⁴ 49 CFR 383.3(e) (2010).

⁶⁵ 49 CFR 383.3(c) (2010).



‘restricted’ commercial driver’s license under the federal regulations. A restricted license may waive some of the licensing pre-conditions. For instance, some drivers working in agriculturally oriented jobs are not required to complete the same knowledge and skills testing as other drivers. It is important to remember that states may not give restricted CDLs to drivers who have poor driving histories. Restricted CDLs or CDL exemptions never function to allow drivers whose licenses are suspended, cancelled or revoked to drive CMVs. To receive a restricted CDL a driver must have a regular driver’s license in good standing. A determination of which drivers are exempted or waived from all or part of the CDL requirements depend largely on the drivers’ occupations, operating activities and state law, which may vary. Prosecutors should consult appropriate licensing authorities if they have questions regarding whether or not a CDL is required.

Learner’s Permit

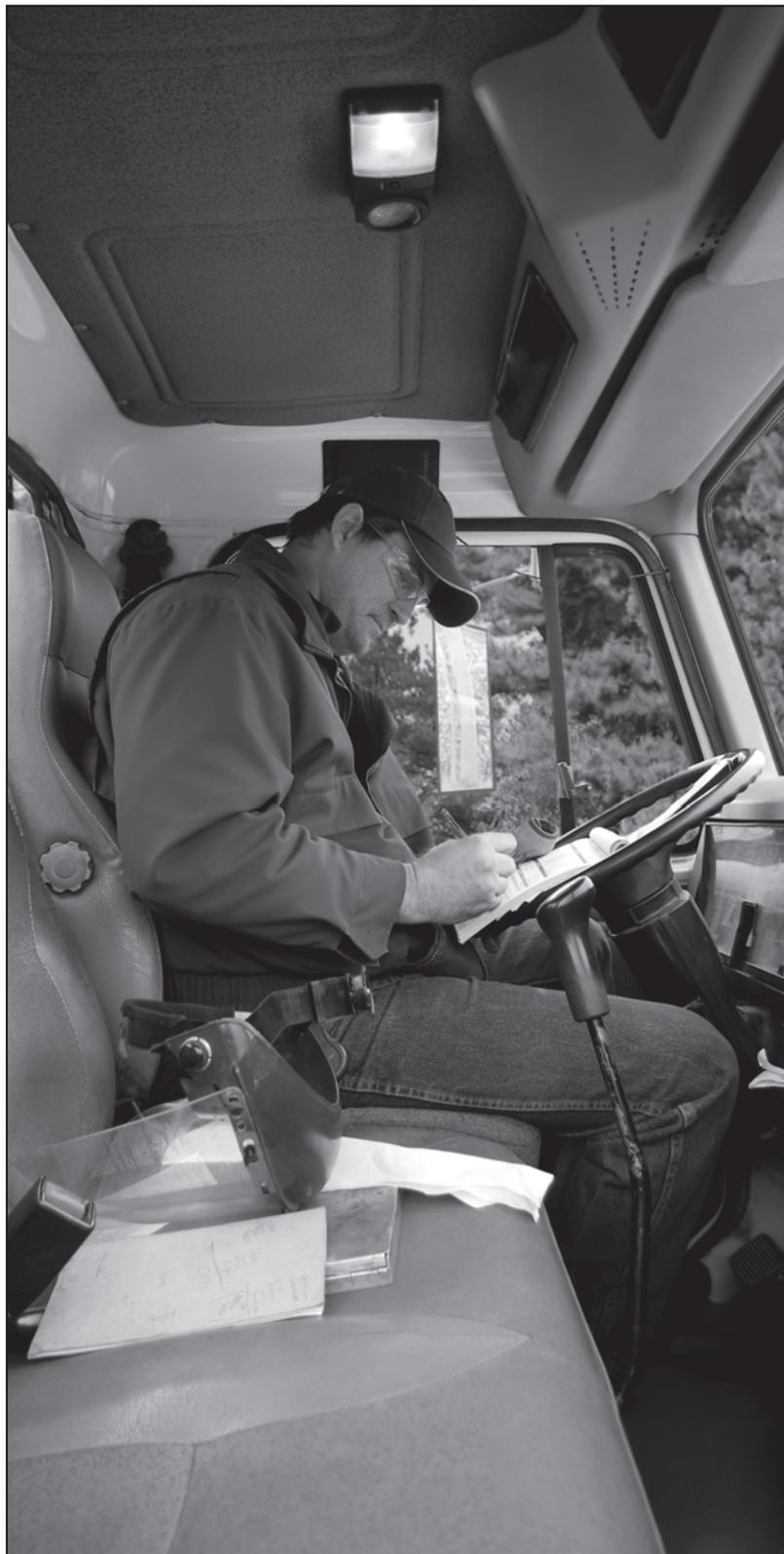
Under 49 CFR 383.23(c), non-CDL holders are allowed to operate CMVs with a learner’s permit. A

driver who holds a valid states driver’s license (or who has passed the applicable vision, knowledge and sign/symbol tests that are prerequisites for licensing in that state) may be eligible for a CDL learner’s permit. A driver holding a learner’s permit may only operate a CMV for the purposes of training and only when accompanied by a validly licensed CDL holder who is eligible for duty and present in the cab (not in the sleeper berth).⁶⁶ Drivers who operate CMVs with only a learner’s permit may not transport any hazardous material that requires a placard (as defined by 49 CFR 283.5).⁶⁷ The federal regulations, in 49 CFR 383.21, state that “no person who operates a commercial motor vehicle shall at any time have more than one driver’s license.” It may not currently be considered a violation of the one-license rule for a driver with a CDL learner’s permit to have a valid driver’s license from a different state, but the trend continues to be a movement towards restricting drivers to one driver’s license at a time. Regardless, once a CDL is received, the driver is required to surrender the license from the original state.

⁶⁶ 49 CFR 383.23(c) (2010).

⁶⁷ Most drivers are familiar with the diamond shaped placard affixed to some tankers and trailers but are not aware that this placard signifies that the driver is hauling hazardous materials.

Driver Responsibilities



CDL DRIVERS have a continuing duty to make sure that they and the vehicles they operate are fit for operation. This ongoing duty requires that they report illness, drugs/medication use, or any injuries that could impair their physical ability. Drivers must undergo a proper medical examination to make sure they are ready for the road. Similarly, drivers are required to ensure the safe condition of their vehicles.⁶⁸ Drivers should decline to operate any unsafe vehicle. In fact, there is nationwide motor carrier whistle-blower protection for CMV drivers. Drivers who file a complaint, begin a proceeding, or who offer testimony relating to a violation of commercial motor vehicle safety regulation are federally safeguarded against being fired, disciplined or discriminated against in terms of pay or privileges. This protection is also afforded to a driver who refuses to operate a CMV if that operation would have violated a federal health or safety regulation and if the driver (having reported an unsafe condition to an employer who refused to correct the problem) reasonably thought that the operation of that vehicle could have seriously injured or impaired himself or another. Federal law, 40 U.S.C. 31105, protects these drivers who refuse to violate safety regulations by prohibiting any retaliatory action of against them by their employers. The existence of this protection should be part of the training received by these drivers. To be certain that protected drivers are upholding their responsibility to check the condition of their vehicles, the federal government has created a roadside vehicle inspection program.

⁶⁸ Under both 49 CFR 392.7 and 49 CFR 392.8, drivers must inspect their vehicles' parts and accessories as well as the emergency equipment to legally operate those vehicles. CFR 383.21 (2010).

SAFETY INSPECTIONS

According to the Commercial Vehicle Safety Alliance, the North American Standard Inspection Program “focuses on commercial vehicle roadside inspection efforts on vehicle and driver safety requirements most often associated with commercial motor vehicle (CMV) crashes.”⁶⁹ Cooperating enforcement agencies agree to perform the inspections in accordance with the previously established standards. Trucks passing the inspection receive decals that will generally (in the absence of other factors) allow them to bypass similar inspections for three months. Decals, indicating that the vehicle has passed inspection are placed in the lower right corner of the windshield (on the outside). This system helps to prevent duplicate efforts by law enforcement and saves drivers and carriers valuable time.

The safety inspections focus on critical items including brake systems, coupling devices, exhaust systems, frames, fuel systems, lighting systems, securement of cargo, steering mechanisms, suspensions, tires, wheels, windshield wipers, certain components in engine and battery compartments and emergency exits. The safety inspection process is nationally standardized. These inspections are not only uniform within the United States but throughout all of North America.⁷⁰ If a safety inspection reveals vehicle defects, its driver can be cited and the vehicle may be placed out of service until it is repaired.

RECORDS

Drivers are also responsible for maintaining many different records relating to their vehicles, the load they are carrying, their CDL privileges and how long they have been on the road. State and local regulations also govern which documents must be maintained and produced upon demand by law enforcement. With certain exceptions, drivers are required to prepare a written report at the end of each shift that summarizes the functionality of the service brakes, parking brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, mirrors, coupling devices, wheels and rims, and emergency equipment. This report must be presented to their employers.⁷¹ The drivers are required to identify any mechanical defect they detected while operating the CMV. A driver taking over a CMV must review the inspection report prepared by the last driver of that vehicle before operating it. The report should be checked for corrective action on any previously noted defects and signed by the new driver prior to operation.⁷² Drivers may decline to operate any defective or dangerous CMV and are protected from retaliatory dismissal or punitive actions by their employers.⁷³

⁶⁹ Understanding the North American Standard Inspection Program. CVSA Publication.

⁷⁰ Prosecutors dealing with crash cases should determine if a recent inspection was performed on any CMV involved and if any problems were identified.

⁷¹ 49 CFR 396.11 (2010).

⁷² 49 CFR 396.13 (2010).

⁷³ The Surface Transportation Assistance Act (STAA), 49 USC Section 31105, prohibits retaliatory action by carriers against drivers who refuse to violate HOS or operate a CMV in a manner that violates federal regulations.

HOURS OF SERVICE

Generally, commercial motor vehicle drivers operating in interstate commerce are subject to Hours-of-Service (HOS) regulations set forth in 49 CFR Part 395. These rules govern when and how long CMV drivers may drive. Many states have enacted similar or identical regulations for allowable hours of service for drivers operating in intrastate commerce. The rules governing hours of service differ slightly depending on whether a driver is hauling a load of materials⁷⁴ or carrying passengers.⁷⁵ Factors such as consecutive days of service and rest periods are also considered in determining which drivers are too fatigued to operate a CMV safely. The FMCSA

provides the following table of hours-of-service guidelines.

It is important to look at the multiple exceptions to hours-of-service limitations allowed in the federal and state regulations. Severe weather, emergency conditions, the content or the load, or a short-haul operating radius may all provide exemptions to HOS statutes.⁷⁷ Each driver and situation must be examined on a case-by-case basis. Drivers required to abide by HOS statutes must keep accurate log books in their vehicles for inspection by law enforcement officers.⁷⁸

OUT-OF-SERVICE ORDERS

If a safety inspection or other investigation reveals a serious issue with either a vehicle or its driver, the inspector may issue an out-of-service order. Only an agent designated by FMCSA has the authority to issue an out-of-service order (but all law enforcement may enforce the driving prohibition). Law enforcement officers can obtain the authority to enforce federal safety regulations if certain requirements are met. These officers, who must work for jurisdictions that have adopted the federal regulations, receive specialized training regarding proper enforcement of the federal regulations. Some city or county law enforcement officers may have this authority but it is generally found in either federal inspectors or state commercial vehicle enforcement units. Officers who are not designated FMCSA agents may and should cite CMV drivers

HOURS-OF-SERVICE RULES⁷⁶

Property-Carrying CMV Drivers

11-Hour Driving Limit

May drive a maximum of 11 hours after 10 consecutive hours off duty.

14-Hour Limit

May not drive beyond the 14th consecutive hour after coming on duty, following 10 consecutive hours off duty. Off-duty time does not extend the 14-hour period.

60/70-Hour On-Duty Limit

May not drive after 60/70 hours on duty in 7/8 consecutive days. A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours off duty.

Sleeper Berth Provision

Drivers using the sleeper berth provision must take at least 8 consecutive hours in the sleeper berth, plus a separate 2 consecutive hours either in the sleeper berth, off duty, or any combination of the two.

Passenger-Carrying CMV Drivers

10-Hour Driving Limit

May drive a maximum of 10 hours after 8 consecutive hours off duty.

15-Hour On-Duty Limit

May not drive after having been on duty for 15 hours, following 8 consecutive hours off duty. Off-duty time is not included in the 15-hour period.

60/70-Hour On-Duty Limit

May not drive after 60/70 hours on duty in 7/8 consecutive days.

Sleeper Berth Provision

Drivers using a sleeper berth must take at least 8 hours in the sleeper berth, and may split the sleeper-berth time into two periods provided neither is less than 2 hours.

⁷⁴ The hours-of-service regulations have been the focus of industry-wide review and are subject to change. This chart is intended to demonstrate general principles of restricting the time a driver may drive and how much time, proportionally, he should rest. Prosecutors must check state and federal guidelines for the most recent HOS restrictions. See FMCSA's Proposed Rule changing the hours of service requirements in 49 CFR Parts 385, 386, 390, et al., issued January 4, 2010.

⁷⁵ 49 CFR 395.1 (2010).

⁷⁶ 49 CFR 395.8 (2010).

⁷⁷ 49 CFR 395.1 (2010).

⁷⁸ 49 CFR 395.8 (2010).



for standard traffic infractions such as speeding or failure to obey traffic control devices. Suspected violations of federal regulations should be referred to the proper authority for that state.

A driver who has been issued an out-of-service order is prevented from any operation of a CMV for any reason whatsoever.⁷⁹ Drivers will be placed out of service for critical safety violations such as driving over their legally allowable hours of service.⁸⁰ A driver's vehicle may also be placed out of service if a safety inspection reveals that a critical mechanical or loading flaw exists that could cause a crash or injury.⁸¹ Federal law requires regular compliance reviews of motor carriers to verify compliance with regulations and safety standards. When carriers receive an unsatisfactory inspection or when critical safety violations are discovered, an entire carrier may be placed out of service if those violations are not speedily corrected (for example, critical maintenance issues with fleet trucks that are not repaired appropriately).⁸²

Driving a CMV in violation of such an order will result in a 180-day to one-year disqualification for a first conviction (this period increases to 180 days to two years if the driver's violation involves the transport of placardable hazardous material or a vehicle

designed to carry 16 or more passengers including the driver). A second conviction of an out-of-service order results in a CDL disqualification of two to five years (this period increases to three to five years if the driver's violation involves the transport of placardable hazardous material or a vehicle designed to carry 16 or more passengers including the driver). For a third or subsequent conviction of an out-of-service order, the period of disqualification ranges from three to five years. To determine multiple violations of out-of-service orders, all violations within a 10-year period are counted.⁸³ When calculating whether violations of the FMCSRs fall within a certain time period, it is the dates of the offense and not the dates of the convictions that should be considered as the date of the violation.

In addition to disqualification, drivers and employers can also face steep civil penalties for violations of out-of-service orders. A first violation for driver will cost no less than \$1,100 and no more than \$2,750.⁸⁴ Employers will face civil penalties ranging between \$2,750 and \$11,000. The civil penalties and CDL implications serve as strong incentives for operators and drivers to obey out-of-service orders.



⁷⁹ 49 CFR 395.13 (2010).

⁸⁰ *Id.*

⁸¹ 49 CFR 396.9 (2010).

⁸² 49 CFR 385.13 (2010).

⁸³ 49 CFR 383.51 (2010).

⁸⁴ 49 CFR. 383.53 (2010).



INTERSTATE CARRIERS must register with FMCSA and receive authority to operate an interstate motor carrier business in the United States prior to transporting cargo or passengers. Once this operating permit is obtained, the government is able to monitor carriers and make sure that they are following all regulations. Employers are statutorily required to know and follow federal regulations pertaining to the safe operation of their businesses.⁸⁵ The federal regulations place multiple responsibilities and attendant penalties on employers who violate safety statutes. For instance, employers may not knowingly allow a driver to operate a CMV if that driver's state CDL has been suspended, revoked, or cancelled or that driver's CDL eligibility has been lost.⁸⁶ Employers also may not allow any driver with more than one CDL or who is an out-of-service order to operate a CMV. Carrier may not allow drivers to violate state or federal safety regulations pertaining to railroad highway crossings.⁸⁷ Violation of any of these regulations will bring strong penalties to carriers. Ultimately, carriers are responsible for their vehicles and for following all state and federal guidelines in hiring and supervising their drivers.

In addition to making sure that all of their vehicles are regularly inspected and properly maintained,⁸⁸ owners must also make sure that they have safe drivers working for them. Employers may only hire drivers who have successfully passed pre-employment drug-screening.⁸⁹ The applicant drug-screening process is not a foolproof method of

creating a drug-free workplace. If an applicant is denied due to a positive drug screen, the prospective employer is not legally required to keep a record of the test. The applicant may simply wait a few days and apply with another carrier. The next potential employer may never know about the prior positive drug screen. Employers are required, however, to keep records of the federally mandated testing of employees described previously in this text.

In addition to random testing in accordance with state and federal law, employers must also require an alcohol and drug test if a driver, while operating a CMV, is cited for involvement in an accident resulting in certain types of bodily injury.⁹⁰ This requirement also applies to crashes that cause damage to a vehicle to the extent it is disabled and must be towed away from the scene. In some cases, a test collected by law enforcement or other authorities may fulfill this requirement.

In general, a carrier must keep detailed records of its compliance with state and federal regulations. To assure compliance with this requirement, U.S. federal safety investigators conduct on-site compliance reviews examining a motor carrier's operations. These reviews may focus on the operator's HOS records, vehicle maintenance, CDL certifications, controlled substance and alcohol testing, financial responsibility and safety record. The investigation determines whether or not a carrier is satisfactorily complying with all regulations. Carriers who are found to be out of compliance may be prohibited from operations until corrective actions are taken.

⁸⁵ 49 CFR 390.3(e) (2010).

⁸⁶ 49 CFR 383.37 (2010).

⁸⁷ *Id.*

⁸⁸ 49 CFR 396.3 (2010).

⁸⁹ 49 CFR 382.301(2010).

⁹⁰ 49 CFR 382.303 (2010) requires chemical testing of drivers who are cited for accidents where a person is injured to the extent that treatment is needed away from the scene of the accident.

CDL drivers have a continuing duty to make sure that they and the vehicles they operate are fit for operation.



PROSECUTORS handling cases involving any defendant who holds a CDL should be aware that both state and federal laws may apply. These laws may affect CDL holders differently than non-CDL holders. This disparate treatment is warranted because CMVs can potentially cause greater damage than smaller, non-commercial vehicles. Both criminal and administrative consequences can stem from certain traffic and felony convictions. It is important to note that the term “conviction” as intended by Title 49 of the Code of Federal Regulations may have a different meaning from state definitions of the same term as it relates to criminal code or procedure.

Federal CMV regulations define conviction⁹¹ as “an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court, a plea of guilty or *nolo contendere* accepted by the court, the payment of a fine or court cost, or violation of condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.”

CDL VIOLATIONS AND CONSEQUENCES

Depending on the nature and severity of a traffic or criminal conviction, a defendant could become disqualified and barred from operating a CMV requiring a CDL. Federal regulations within FMCSRs establish the definition of disqualification as:

1. the suspension, revocation, or cancella-

tion of a CDL by the State or jurisdiction of issuance;

2. the withdrawal of a driver’s privileges as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or
3. the determination by FMCSA that a driver is not qualified to operate a commercial motor vehicle under 49 CFR Part 391.⁹² A disqualification renders the driver ineligible to obtain a CDL until that disqualification period terminates.

States are required to disqualify the CDL for these purposes but may impose disqualifications for other reasons. In many cases, the offense that led to the disqualification of the CDL privileges also requires a disqualification of all driving privileges (this is more commonly referred to as a suspension when regarding non-CDL licenses). Some states impose license suspension for non-driving offenses or actions such as a failure to pay child support or possession of illegal drugs. It is important to remember that a suspension of the underlying driving privileges also affects the CDL privileges even if the offense does not specifically require a suspension under federal regulations. Further, there are instances in which the federally-established minimum period of disqualification for the CDL exceeds the minimum period of suspension (according to state law) of the non-commercial privileges. Thus, a non-commercial suspension may be curable before the CDL disqualification is curable. In these instances, the state can reinstate the non-commercial privi-

⁹¹ 49 CFR 383.5 (2010).

⁹² *Id.*

TABLE 1- CDL DISQUALIFICATION FOR MAJOR OFFENSES⁹³

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV*	For a first conviction or refusal to be tested while operating a non-CMV*	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)*	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV*
(1) Being under the influence of alcohol as prescribed by State law.	1 year.	1 year.	3 years.	Life.	Life.
(2) Being under the influence of a controlled substance.	1 year.	1 year.	3 years.	Life.	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part.	1 year.	1 year.	3 years.	Life.	Life.
(5) Leaving the scene of an accident.	1 year.	1 year.	3 years.	Life.	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table.	1 year.	1 year.	3 years.	Life.	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year.	Not applicable.	3 years.	Life.	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.

**These convictions will count towards disqualification of any individual who held a CDL or who should have held a CDL at the time of the offense, regardless of actual CDL status.*

No driver may operate a CMV when any driving privilege is suspended, revoked, disqualified, denied, or cancelled.



leges but cannot reinstate the CDL privileges. To evaluate the differences in these two suspension periods, one must examine the table of disqualifications in the federal regulations (or the properly adopted CDL suspensions in state law) as compared to the minimum suspension periods for non-CDL privileges provided for in state law or regulation. A CDLIS status check is necessary to confirm the actual status of a driver's CDL.

No driver may operate a CMV when any driving privilege is suspended, revoked, disqualified, denied, or cancelled. Drivers may be disqualified from operating a CMV for up to one year for offenses committed while driving a non-CMV as well as while driving a CMV. These offenses include the first conviction of driving under the influence, driving with a BAC of .04% or more, refusing to submit to chemical testing at the direction of law enforcement (as required by jurisdictions DUI/DWI/implied consent laws), leaving the scene of an accident,⁹⁴ using a commercial vehicle in the commission of any felony, or causing a fatality through the negligent operation of a CMV.⁹⁵ If a CMV driver commits any of those violations while transporting hazardous materials that require a placard on the vehicle, that driver will be disqualified for three years. Subsequent violations for any of these offenses may result in CDL disqualification for life. To determine if it is a first or subsequent violation, convictions committed while driving both CMVs

and, in some instances, non-CMV convictions will be counted.⁹⁶

The CFR also mandates certain periods of CDL disqualification for serious moving violations. Under CDL standards, a serious moving traffic violation can include excessive speeding (15 mph or more above the posted speed limit), reckless driving (including driving a CMV with wanton, willful disregard for the safety of persons or property), improper or erratic lane changes, following too closely, or a violation connected to a fatal crash involving traffic control devices. Prosecutors can refer to 49 CFR 383.51 (also this monograph pages 29 and 31) to determine which offenses must occur in a CMV to cause disqualification and which may occur in either a CMV or non-commercial vehicle. Generally, two convictions for serious moving violations within three years will result in a 60-day disqualification. Three citations resulting in convictions within three years will receive in a 120-day disqualification. The three year time period should be measured from date of citation to date of next citation and not from the conviction dates.

Prosecutors should consult both state and federal regulations when prosecuting any CDL ticket because some states have adopted more stringent standards than required under the federal regulations. When reviewing a driver's status, a prosecutor should also review the criminal history to check for potentially disqualifying non-traffic related felony

⁹³ Table 1 to 49 CFR 383.51(b) (2010).

⁹⁴ The term accident is used because that is the term given within the language of the CFR. Prosecutors should remember that only unforeseeable consequences to actions are truly accidental. It is usually more accurate to refer to a traffic incident as a collision, crash or wreck.

⁹⁵ 49 CFR 383.51 (2010).

⁹⁶ 49 CFR 383.51(a)(4) (2010).

TABLE 2- CDL DISQUALIFICATION FOR SERIOUS OFFENSES⁹⁷

If the driver operates a motor vehicle and is convicted of:	2nd conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a CDL holder* must be disqualified from operating a CMV for . . .	2nd conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	3rd or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	3rd or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit	60 days	60 days	120 days	120 days.
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	120 days	120 days.
(3) making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days.
(4) following the vehicle ahead too closely	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days.
(6) driving a CMV without obtaining a CDL	60 days	Not applicable	120 days	Not applicable.
(7) driving a CMV without a CDL in the driver's possession*	60 days	Not applicable	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported	60 days	Not applicable	120 days	Not applicable.
(9) violating a state or local law or ordinance on motor vehicle traffic control prohibiting texting while driving	60 days	Not applicable	120 days	Not applicable.

**Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.*

TABLE 3- CDL DISQUALIFICATION FOR RAILROAD-HIGHWAY GRADE CROSSING OFFENSES⁹⁸

If the driver is convicted of operating a CMV in violation of a Federal, state or local law because:	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period a person required to have a CDL and a CDL holder must be disqualified from operating CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and CDL holder must be disqualified from operating a CMV for
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train	No less than 60 days	No less than 120 days	No less than 1 year
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear	No less than 60 days	No less than 120 days	No less than 1 year
(3) The driver is always required to stop, but fails to stop before driving onto the crossing	No less than 60 days	No less than 120 days	No less than 1 year
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping	No less than 60 days	No less than 120 days	No less than 1 year
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing	No less than 60 days	No less than 120 days	No less than 1 year
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance	No less than 60 days	No less than 120 days	No less than 1 year

convictions. Felony convictions that would cause disqualification fall within the ‘major offenses’ framework. Other offenses are considered ‘serious’ rather than ‘major’. These offenses include speeding, improper lane change, or even driving a CMV without first obtaining a proper CDL. Serious offenses may still act to disqualify CDL holders for shorter periods of time as seen in the following chart.

There are also disqualifications for other violations of safety regulations. Drivers of CMVs are required to observe certain safety practices at railway crossing.

Also, drivers who disregard out-of-service orders relating to themselves or their vehicles will face mandatory penalties.

Regardless of the offense, reporting the conviction is mandatory. If the defendant is convicted of

any violation of law that has potential CDL implications, it is imperative that the authorities in the state that holds the license are aware of the conviction so that they may take appropriate action on the license if required. The prosecutor should never assume this is being done; he should make sure it is done. The judgment documents should reflect when a felony or traffic-related offense is committed with any motor vehicle and clerks must forward those documents to the appropriate state licensing authorities (see Criminal Charges section below). Prosecutors should be aware of the reporting procedures in their jurisdictions. They should be prepared to assist with the completion of the reporting documents (judgments, suspension orders, etc.). Finally, prosecutors must make sure that all convictions are reported as soon after the conviction as possible.

⁹⁷ Table 2 to 49 CFR 383.51(c) (2010).

⁹⁸ Table 3 to 49 CFR 383.51(d) (2010).

TABLE 4- CDL DISQUALIFICATION FOR VIOLATING OUT-OF-SERVICE ORDERS⁹⁹

If a driver operates a CMV and is convicted of...	For a first conviction while operating a CMV a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...
(1) Violating a driver or vehicle out-of-service order while transporting non-hazardous materials	No less than 180 days nor more than 1 year	No less than 2 years or more than 5 years	No less than 3 years or more than 5 years
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title (49), or while operating a vehicle designed to transport 16 or more passengers, including the driver	No less than 180 days nor more than 2 years	No less than 3 years or more than 5 years	No less than 3 years or more than 5 years

CRIMINAL CHARGES

In addition to traffic citations involving commercial vehicles, prosecutors may also see crimes that directly or indirectly relate to CDL holders. Many states have, for instance, incorporated the .04% BAC limit for CMV drivers under the federal regulations into the state criminal code. CMV drivers, therefore, can be found guilty of a DUI, DWI or OWI offense at a much lower per se level than drivers of non-commercial vehicles. These differing standards may also apply to cases involving commercial vehicle crashes. Some jurisdictions consider commercial drivers to have a greater legal duty-of-care to the public and charge CMV operators who cause crashes with negligent or reckless driving. Finally, a national trend towards more focused traffic enforcement is leading to increased felony charges involving the use of a CMV to commit the crime. These felonies can include serious offenses such as transporting illegal substances (including drugs and stolen goods) or even trafficking human beings across the country for various illegal purposes.

All prosecutors should be aware of the CDL implications of certain criminal convictions. A prosecutor handling drug cases, for instance, may find that by reporting convictions to the licensing authorities, he is able to disqualify a defendant from CMV operation and thus limit that defendant's abil-

ity to transport large quantities of drugs across the country. Many prosecutors are unaware that being convicted of any felony (kidnapping, felony assault, etc.) committed in any type of motor vehicle will disqualify a CDL holder for at least a year and possibly for life.¹⁰⁰ While the disqualification of a CDL does not automatically result in the revocation of the driver's non-commercial driving eligibility, some states will revoke a non-commercial license upon conviction for any felony committed with a motor vehicle.¹⁰¹ Reducing the mobility of certain offenders may go a long way towards impeding their ability to commit new offenses. An understanding of CDL violations and penalties can become another tool for prosecutors handling serious offenses. Because traffic codes and the penalties for traffic violations vary by state, prosecutors should consult their own criminal codes regularly to determine how their states have adopted or included federal regulations. It is important to remember that as new research and traffic safety trends emerge, traffic safety codes may also be changing. Prosecutors should consult their state's code regularly to maintain an accurate understanding of the state of the law.

⁹⁹ Table 4 to 49 CFR 383.51(e) (2010).

¹⁰⁰ 49 CFR 383.51 (2010).

¹⁰¹ Tennessee mandates the year-long revocation of driving privileges for any driver conviction of a felony committed with a motor vehicle in T.C.A. §55-50-501(2009).

Masking and Reporting



IT IS ESSENTIAL for all professionals in the criminal justice system to work together to ensure that only safe and responsible CDL drivers are licensed and allowed to operate large vehicles. Submitting high quality and timely data to licensing authorities helps keep unsafe drivers from obtaining or renewing CDLs. Clearly the proper operation of a CMV is more difficult and, arguably, even more important than driving a passenger vehicle safely. Some in the criminal justice system, however, adopt a “give the working man a break” mentality. This mentality is well-meaning but it may endanger lives. Law enforcement officers, prosecutors, or judges may feel that commercial drivers deserve

“another chance” after violating traffic laws (this can result in multiple violations without serious consequence). Defense attorneys argue that penalties for CDL traffic violations unfairly affect commercial drivers and assert that CDL holders should receive a reduction, dismissal, or deferral of a charge or penalties. That argument, however, is illogical when considered in terms of the increased likelihood of a serious injury or death occurring if one of those drivers is involved in a crash while behind the wheel of a commercial vehicle. Logic dictates that commercial drivers, with their extensive training and experience, fully understand the potential consequences that violating the law by driving dangerously in any



vehicle can have on their CDLs. CDL holders do not deserve multiple chances to break the law. Commercial motor vehicles may be hauling hazardous materials, multiple trailers, or even numerous passengers. These drivers are operating huge vehicles at significant speeds and they, therefore, have an increased duty to the public with whom they share the roads.

MASKING

When prosecutors or judges treat CDL holders differently, allowing their convictions to be deferred, dismissed, or to go unreported, this may be considered masking which is prohibited by the FMCSRs and some state statutes. The federal government recognizes the vital role that state and local authorities play in safe-guarding the nation's roads and has even passed legislation intended to guarantee that every jurisdiction fulfills that duty equally. This legislation is intended to support CDLIS and the accuracy of its records. To help maintain that accuracy, effective September 30, 2002,¹⁰² CDL holders were no longer eligible for deferral of moving violations under the federal statutory structure. The code forbids any masking of convictions by state authorities (court systems, licensing authorities, etc.). The code is explicit in the prohibition and 49 CFR 384.226 states:

The State must not mask, defer imposition

of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the CDLIS driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or in another State

This prohibition carries penalties that can be assigned to states failing to abide by the no masking rule. The Motor Carrier Safety Improvement Act of 1999¹⁰³ required the agency to withhold Motor Carrier Safety Assistance Program grant funds from the states if they did not comply with the regulations.¹⁰⁴ Further, the Act allows federal authorities to withhold certain portions of a state's federal-aid highway funds, potentially amounting to millions of dollars, for non-compliance. Additionally, the federal government retains the right to prohibit states falling out of compliance with federal safety regulations from issuing valid CDLs. It is the in every state's best interest to follow all federal mandates relating to CDLs. Some states have gone so far as to adopt the anti-masking language exactly or very closely in their own state codes.¹⁰⁵

While the prohibition is clear, the complexity of some cases makes it difficult for prosecutors to know whether or not a potential disposition would be considered masking. To that end prosecutors

¹⁰² 49 CFR 384.226 (2010).

¹⁰³ Motor Carrier Safety Improvement Act of 1999, Pub. L. No.106-159, 49 U.S.C. §113. The stated purposes of the Act was to (1) establish a Federal Motor Carrier Safety Administration and (2) reduce the number and severity of large-truck involved crashes through more CMV and driver inspections and carrier compliance reviews, stronger enforcement, expedited completion of rules, sound research, and effective CDL testing, record keeping, and sanctions.

¹⁰⁴ 49 CFR 384.401 (2010): First year of non-compliance: 5% of the federal-aid highway funds; second year of non-compliance: up to 10% of federal-aid highway funds

¹⁰⁵ Minnesota (MINN.STAT.ANN. § 171.163); Colorado (COLO.REV. STAT.ANN. § 42-4-1719); Kansas (KAN.STAT.ANN. §8-2, 150).

MASKING SCENARIOS

DRIVER CHARGES	PROSECUTOR ACTIONS	COURT ACTIONS	MASKING?
Failure to Yield	NONE	Court convicts but allows Traffic School in lieu of reported conviction	YES
DUI	Dismisses case	NONE	NO
Reckless Driving	NONE	Court accepts defendant's plea of 'no contest', removes the case from the docket for 6 months and then dismisses citation based on driver's clean history.	YES
Speeding 20 mph over the limit while in a CMV	Driver agrees to pay speeding fine and costs.	Court collects fines then dismisses case and does not report as a conviction to the state licensing authority	YES
Driving while Suspended	Driver pleads to charge	Allows withdrawal of Guilty plea	NO

struggle with what they can and cannot do when dealing with persons that hold commercial drivers' licenses. Masking, at its core, is allowing a conviction that will affect a CDL holder's (or a driver of a CMV who should have held a CDL at the time of his offense) driving history to be deferred or diverted so as not to be reported.

Generally, masking as contemplated by 49 CFR 384.226, requires adjudication or, at least, factual finding of guilt followed by some action that intends to avoid the record or mandated consequences of conviction. The anti-masking provision does not prevent plea bargaining or dismissal of charges. Prosecutors should consider carefully the purpose of entering into a plea agreement or allowing any type of diversion. Prosecutorial discretion may always be exercised in support of due process or constitutional rights. Sometimes, the state's case is factually or practically weak on some point. Reducing CDL violations for the sole reason of

avoiding potential impact on a driver's license, however, acts to contravene the intent and function of state and federal safety regulations. The purpose of the anti-masking federal and state rule is to ensure that licensing authorities have an accurate picture of a CDL holder's driving history. The increased penalties for multiple violations work to disqualify unsafe drivers. The only tool courts and prosecutors have to determine how serious a driver's pattern of traffic violations has been is the official driver's history. If that history is artificially preserved one time, or over and over again, the next prosecutor or judge has no way to know.

When confronted with defense counsel arguing against the imposition of penalties or the reporting of convictions, prosecutors should keep in mind the anti-masking prohibition is not an arbitrary rule. This legislation was passed strictly as a safety measure intended to keep the most dangerous offenders off the roads. A 2007 study assessed which

factors played a role in CMV crashes.¹⁰⁶ Up to 87% of the studied attributable factors in fatal crashes were driver related. Most involved failure to correctly assess the situation or poor driving decisions. The most common associated factors recorded included driver-based factors such as legal drug use, traveling too fast for conditions, lack of familiarity with the roadway, inadequate surveillance, fatigue, and feeling under pressure from motor carriers. The propensity to commit traffic violations has been shown as a good predictor of which drivers will cause crashes. A 2005 study by the American Transportation Research Institute found that violations from speeding (more than 15mph over) to reckless driving correlate to an increased chance of future crash involvement. The chance of future crash involvement increases significantly for traffic violators and can go up by as much as 56% to 325%.¹⁰⁷ The research clearly shows that enforcement of CDL violations is critical to identifying and removing the drivers who pose the most potential danger from the road.

If a defense attorney raises any type of equal protection argument by asserting that the imposition of harsher penalties on CDL holders is constitutionally prohibited, a prosecutor can rely on multiple cases addressing that argument. The most frequent appeals based on this equal protection argument have come from states that treat CDLs differently than a non-commercial license when the holder is convicted of impaired driving. These states permit a restricted or probationary license for a non-CDL but do not extend the same privilege to a driver's CDL. Multiple courts have examined and

upheld these different standards for commercial vs. non-commercial drivers. Virginia's appellate court (*Russell Lee Lockett v. Commonwealth of Virginia*, 438 S.E.2d 497(Va. App. Ct. 1993) upheld a state's authority to refuse to issue a restricted CDL to an offender convicted of DUI, even if a non-commercial driver could get a restricted license. The California Court of Appeals (*Peretto v. Dep't of Motor Vehicles*, 235 Cal. App. 3d 449 (App. Ct. 1991)) upheld differing periods of license suspension for CDL vs. non-CDL holders

Essentially, these courts are finding no equal protection violation in differences of penalties for commercial vs. non-commercial drivers as long as there is a rational basis for the discrepancy. That rationale can logically be extended to differences in CDL driver qualifications, hours-of service requirements and testing. Because of the greater size, weight and potential danger of their vehicles as well the CMVs more complicated operating systems, these drivers can be legitimately held to higher standards.

REPORTING

Consistently reporting convictions serves many purposes. Drivers may be affected by multiple sources of pressure and influence to move faster and perhaps cut-corners in terms of equipment or operational safety. If law enforcement does not enforce regulations and the court systems do not hold drivers responsible for violating them, then the entire framework of state and federal safety

¹⁰⁶ The Large Truck Crash Causation Study (LTCCS) was based on a three-year data collection project conducted by the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation (DOT). LTCCS was the first-ever national study to attempt to determine the critical events and associated factors that contribute to serious large truck crashes allowing DOT and others to implement effective countermeasures to reduce the occurrence and severity of these crashes.

¹⁰⁷ RONALD R. KNIPLING, PH.D., SAFETY FOR THE LONG HAUL: LARGE TRUCK CRASH RISK, CAUSATION & PREVENTION 105 (2009).



regulations is ineffective. Conversely, strong enforcement can serve as the balancing influence that provides the incentive for CDL drivers to operate within the bounds of the law.

Prosecutors who avoid masking and always report CDL convictions are supporting other prosecutors and law enforcement officers across the country who may deal with the same offender in the future. It is important to report all relevant convictions including drug trafficking or any felony committed in any vehicle if the defendant holds or should have held a CDL. Without a clear picture of a driver's history, a prosecutor, judge, or even a perspective employer will be unable to determine the threat posed by that driver and what remedial actions should be taken to correct his poor driving. Drivers' histories are also used by traffic prosecutors who handle impaired driving cases as well as the serious or fatal crashes caused by impaired or reckless

driving. Those prosecutors may rely on a driver's history at a bond or sentencing hearing.

The bottom line for prosecutors is that allowing convicted traffic offenders to "modify" a conviction or keep it off their record in an attempt to circumvent driver license action is masking. While there may be very good reasons to amend or plea bargain to a lesser charge, all prosecutors are subject to an ethical obligation to follow the law and avoid any perception of a failure to do so. Moreover, it is impossible to predict with 100% accuracy which offender may go on to commit a more serious offense or guess which traffic violations will receive scrutiny from higher authorities or media interest. In such cases, a prosecutor who has documented his reasons for any reduction, deferral, or dismissal of a CDL-related violation will be in the best position to explain his decision.

All commercial drivers, no matter their point of origin, must have a CDL considered valid under federal regulations to operate a CMV in the Unites States.



PROSECUTORS HANDING CDL CASES may occasionally have a case involving a driver who is domiciled in a foreign country (outside the 50 states and the District of Columbia). All commercial drivers, no matter their point of origin, must have a CDL considered valid under federal regulations to operate a CMV in the United States. Currently, there are four types of CDL considered acceptable (with some restrictions) for the operation of CMVs within the United States. The four acceptable commercial license types are as follows:

- 1.) Any CDL issued by one of the 50 states and the District of Columbia,
- 2.) Valid Mexican CDLs issued by Mexico's Secretariat of Communications and Transportation called *Licencia Federal de Conductor*.
- 3.) Valid Canadian CDLs issued by one of the Canadian Provinces or Territories.
- 4.) Valid U.S. Nonresident CDLs issued by a state or the District of Columbia to drivers temporarily residing in the United States, but domiciled in a foreign country.

If there are no restrictions, a CDL issued by any of the 50 states or the District of Columbia will be considered valid anywhere in North America. Puerto Rico and the U.S. Territories are not included in the definition of a state in section 12016 of the CMVSA (49 U.S.C. §31301(13)); they are treated as foreign countries for purposes of the CDL requirements. A person domiciled in a foreign country is not required to surrender his or her

foreign license in order to obtain a nonresident CDL by federal law. This practice is not considered a violation of the one-license, one-record rule.¹⁰⁸ There are two reasons for permitting this dual licensing to a person domiciled in a foreign country: (a) There is no reciprocal agreement with foreign countries (other than Canada and Mexico) recognizing their testing and licensing standards as equivalent to the standards in part 383, and (b) the



Nonresident CDL may not be recognized as a valid license to drive in a foreign country.

The North American Free Trade Agreement focused on trade between Mexico, the United States, and Canada. Because transportation, specifically trucking, is necessary for efficient trade, the agreement naturally considered the idea of commercial drivers being able to move freely between North American countries. By 1992,

¹⁰⁸ 49 CFR 383.21 (2010).

agreements with Canada and Mexico established a policy of mutual CDL reciprocity. Generally, North American CDL holders are able to operate within the United States as part of international cooperation. This cooperation works because of the similar testing, licensing and safety standards adopted by all three countries. Both Canada and Mexico have established strict licensing requirements and safety measures. For instance, to assist commercial motor vehicle drivers and operators, Canada developed the National Safety Code for Commercial Motor Vehicles (NSC). As a result, a final rule was issued in the *Federal Register* (54 FR 22285) on Tuesday, May 23, 1989 in the Rules and Regulations section. This ruling, determined by the Federal Highway Administrator, stated that a commercial driver's license issued by Canadian provinces and territories under the Canadian National Safety Code meets the commercial driver testing and licensing standards contained in 49 CFR Part 383 (see also 54 FR 22392). Such a license is considered valid for operating CMVs in the United States. Every province and territory in Canada has implemented some local variations of the National Safety Code license classification system. Canada does not issue a separate CDL. Instead, Canadian drivers are issued a "Classified" driver's license that defines what "class" of vehicle may be driven and substantiates that the driver has met requirements similar to those met by U.S. CDL holders. As such, a Canadian license with the appropriate "class" is functionally the same as a single driver's license for operation in the United States by Canadian commercial drivers. Abiding by their own one-license, one-record rule, Canadian commercial drivers are prohibited from obtaining any driver's license from a state. Similarly, no state may issue a CDL to a Canadian or Mexican CMV operator.

INTERNATIONAL DRIVER'S PERMIT/LICENSE

A prosecutor may occasionally encounter a reference to an international driver's license being used by foreign citizens driving in the United States. There is NO such thing as an International CDL or even a true International Driver's License. This reference is to a certificate that may be issued by a state DMV in English or may have been obtained in the country of origin. The purpose of the document is only to serve as a companion to a valid driver's license (from a country other than the USA) and perhaps translate the language of the actual driver's license to English. Americans can get the same type of document from AAA or other private sources if they are preparing to travel abroad. It has no legal status at all and does not bestow any driving authority or privilege on the holder. These are usually seen with tourists or other visitors and not CMV drivers.

Mexican CDL holders with a valid Licencia Federal de Conductor are also permitted to operate commercial motor vehicles within the boundaries of the United States. This agreement is the result of negotiations between representatives from the United States and the government of the United Mexican States that culminated in a Memorandum of Understanding (MOU) on the issue of driver's license reciprocity. The MOU was signed on November 21, 1991, and a final rule was issued in the *Federal Register* (57 FR 31454) on Thursday, July 16, 1992, in the Rules and Regulations section. The ruling recognized the commercial driver's license issued by Mexico's Secretaría de Comunicaciones y Transportes (SCT) Dirección General de

Autotransporte Federal (DGAF), the Licencia Federal de Conductor, as being comparable to a U.S. commercial driver's license. Even though the NAFTA provisions for allowing cross border for-hire commercial traffic have not yet been fully implemented, U.S. enforcement officers may encounter Mexican drivers with a Licencia Federal de Conductor legally operating a CMV in the United States. Mexican drivers who hold the Licencia Federal de Conductor issued by the Mexican Federal Government have met requirements similar to those met by U.S. CDL holders and may operate in the U.S. on the same terms as persons who hold CDLs.

The Licencia Federal can be recognized by the medallion in the upper left-hand corner containing the Mexican national symbol of an eagle with a serpent. The words "Licencia Federal de Conductor" and logo "Secretariat of Communication and Transportation (SCT) are also on the front of the license.¹⁰⁹ Mexico extends similar reciprocity to holders of CDLs issued by the United States and the District of Columbia. The one-CDL-only rule applies to Mexican drivers. A Mexican driver holding a Licencia Federal de Conductor is prohibited from obtaining any driver's license from a state or the District of Columbia. Prior to April 1992, some Mexican drivers were issued nonresident CDLs by the U.S. These drivers could continue to operate in the U.S. until he obtains a Licencia Federal de Conductor or their nonresident CDL expired. These licenses are not currently valid. The Mexican Licencia Federal de Conductor must show the class of license. The SCT issues the federal license in six categories. While the classifications are based on similar size and type of vehicle descriptions, they are not exactly the same as U.S. CDL classifications. The definitions are as follows:

Category "A"—Authorizes the holder to operate commercial charter and passenger buses; i.e., intercity buses, charter buses, and tour buses. This is roughly comparable to a U.S. Class "B" CDL with a passenger endorsement.

Category "B"—Authorizes the holder to operate different types of commercial freight trucks, including combination vehicles; i.e., tractor-trailer, truck trailers, double and triple trailers (excluding hazardous and hazardous waste materials). This is roughly comparable to a U.S. Class "B" CDL with endorsements for tanks and double or triple trailers.

Category "C"—Authorizes the holder to operate commercial trucks with two or three axles; i.e., single unit vehicles (excluding hazardous and hazardous waste materials). This is roughly comparable to a U. S. Class "B" CDL with a tank endorsement.

Category "D"—Authorizes the holder to operate automobiles and small buses which do not exceed 7,716 pounds (3,500 kg) or have a capacity to carry no more than 13 passengers (including the driver who also serves as a tour guide) for the purpose of tourism. There is no equivalent U.S. CDL classification.

Category "E"—Authorizes the holder to operate vehicles that transport hazardous and hazardous waste materials. This is similar to a U.S. Class "A" CDL with endorsements for hazardous materials, tanks and double or triple trailers.

Category "F"—Authorizes holder to operate taxis from any airport or seaport in Mexico. This is because airports and seaports are federal and require a federal license similar to driving commercially on

¹⁰⁹ The new version of this document may have variations of the SCT logo that may be plainly visible or may require ultra-violet illumination. Also, they may be omitted entirely.



a federal road. There is no comparable U.S. CDL.

Mexican drivers and carriers are subject to the same safety inspections, regulations, and reviews as domestic operators.¹¹⁰ Canadian CDLs are issued by the provincial governments and Canada has its own system of CDL classifications. The Ontario licensing authority, for instance, requires a Class A license for “(a)ny tractor-trailer or combination of motor vehicle and towed vehicles where the towed vehicles exceed a total gross weight of 4,600 kilograms” or a Class C for “any regular bus with designed seating capacity for more than 24 passengers.”¹¹¹

Persons domiciled in foreign countries that do not have a reciprocal license agreement but who wish to drive a CMV in the United States may obtain a nonresident CDL. A nonresident CDL must be issued in accordance with the licensing standards contained in 49 CFR Part 383. Each state complies with the testing and licensing standards determined by that regulation. Because of the current reciprocity allowing Canadian and Mexican CDL holders to operate in the United States, the one-license, one-record provision of 49 CFR 383.21 applies to all North American CDL holders. A

driver holding a commercial driver’s license issued under the Canadian National Safety Code or a *Licencia Federal de Conductor* issued by Mexico is prohibited from obtaining a nonresident CDL, or any other type of driver’s license, from any state or the District of Columbia. Any state that issues a nonresident CDL will keep the same driver’s history on that holder as it would for any other CDL driver.

Generally, prosecutors and law enforcement officers should be aware that North American CDL holders (from Mexico or Canada) and nonresident CDL holders from other countries (including U.S. protectorates such as Puerto Rico) may be legally operating commercial vehicles on American interstates. Foreign or nonresident status does not relieve these drivers from obedience to federal and state statutes. These drivers should possess and be able to produce documentation regarding their vehicles, their loads, and their own CDLs. When dealing with international commercial drivers, a prosecutor may seek assistance from either the local commercial vehicle enforcement authority or the regional office of the FMCSA.¹¹²

¹¹⁰ 49 CFR 385.103 (2010).

¹¹¹ Ontario Ministry of Transportation <http://www.mto.gov.on.ca/english/dandv/driver/classes.shtml>

¹¹² Prosecutors can locate the correct FMCSA office and its contact information by visiting the FMCSA website at <http://www.fmcsa.dot.gov/about/contact/offices/displayfieldroster.asp>.



Commerce means (a) any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside of the United States and (b) trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (a) of this definition.

Commercial Driver's License (CDL) means a license issued by a state or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes the individual to operate a certain class of a commercial motor vehicle.

Commercial Driver's License Information System Driver Record means the electronic record of the individual CDL driver's status and history stored by the state-of-record as part of the CDLIS established under 49 U.S.C. 31309.

Commercial Driver's License Information System (CDLIS) means the information system established by FMCSA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986 and operated by the American Association of Motor Vehicle Administrators (AAMVA).

Commercial Motor Vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle (a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or (b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or (c) Is designed to transport 16 or more passengers, including the driver; or (d) Is of any size and is used in the transportation of hazardous materials as defined in this section.

Commercial Motor Vehicle Safety Act of 1986 (CMVSA) is a law passed by the United States Congress that requires ALL the individual states to comply with certain standards in regard to the licensing of commercial motor vehicles (CMV) drivers.

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

U.S. Department of Transportation (DOT) was established by Congress in October 1966 to oversee all facets of transportation in the USA through its operating administrations and bureaus which include, among others, the Federal Aviation Administration, the National Highway Safety Administration, the Federal Highway Administration, and the Federal Motor Carrier Safety Administration.

Disqualification means any of the following three actions:(a) The suspension, revocation, or cancellation of a CDL by the state or jurisdiction of issuance.(b) Any withdrawal of a person's privileges to drive a CMV by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), (c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

Endorsement means an authorization to an individual's CDL required to permit the individual to operate certain types of commercial motor vehicles.

Federal Highway Administration (FHWA) operates within the USDOT and is tasked with ensuring the safety and technological modernity of America's roads and highways. This goal is largely accomplished by providing financial and technical support to state, local and, tribal governments for use in constructing and improving the U.S. highway system.

Federal Motor Carrier Safety Administration (FMCSA) was established as a separate administration within the USDOT on January 1, 2000, and is tasked improving the safety of CMVs and saving lives. The primary mission of the



agency is to reduce crashes, injuries and fatalities involving large trucks and buses.

Gross combination weight rating (GCWR) means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

Hazardous Materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

Longer Combination Vehicles (LCVs) are tractor-trailer combinations with two or more trailers. These vehicles may exceed 80,000 pounds gross vehicle weight (GVW) and, due to concerns over road damage, power capability on steep grades, and other safety issues, are not allowed in many states.

Motor Carrier Act of 1935 was legislation through which Congress first gave the ICC power to regulate drivers and motor carriers engaged in the business of interstate commerce. The act provided authority to control operating permits, approve trucking routes, and to set tariff rates.

Motor Carrier Act of 1980 or, more properly, the Motor Carrier Regulatory Reform and Modernization Act served to deregulate the trucking industry. The intent of this law was to increase efficiency by allowing carriers/drivers to set their own rates and to increase competition, thus, lowering the cost of consumer goods. This act caused new carriers/drivers to enter the system.

Motor Carrier Safety Act of 1984 (MCSA) this legislation directed the U.S. Secretary of Transportation to establish a procedure by which to determine how safely motor carriers operate. Currently, the U.S. Department of Transportation, through the FMCSA, uses a system for determining how

safely a motor carrier operates that does not place sufficient emphasis on driver or vehicle qualifications.

Motor Carrier Safety Assistance Program is a federal mandated program that provides financial assistance to states with the aim of reducing the number and severity of commercial vehicle involved crashes and/or hazardous materials incidents.

Motor Carrier Safety Improvement Act of 1999 (MCSIA) created FMCSA and worked to reduce the number and severity of large-truck involved crashed through the use of CMV inspections, carrier compliance reviews, enforcement, and more effective licensing standards.

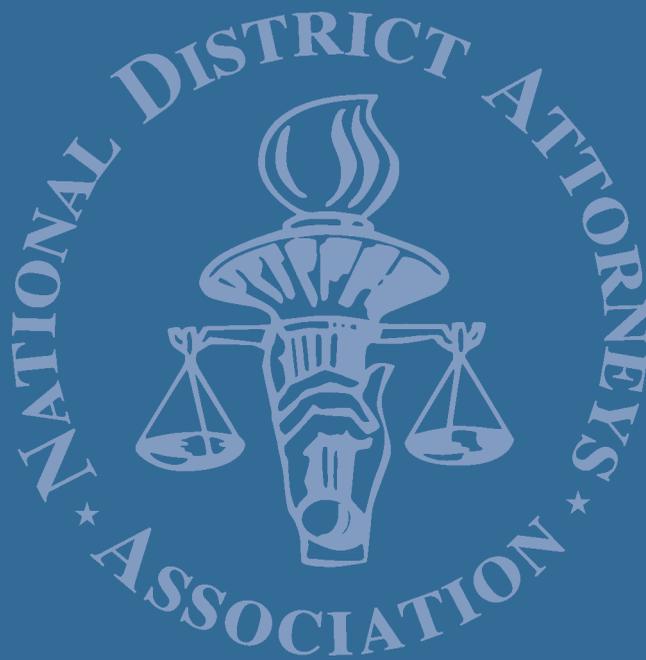
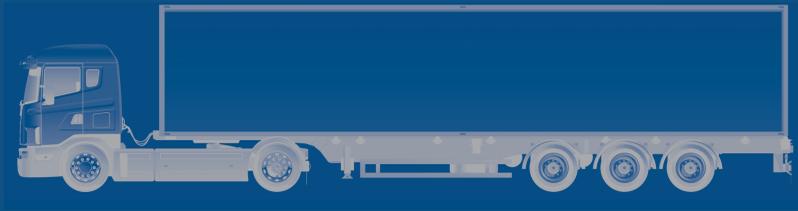
Out-of-Service Order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a CMV, or a motor carrier operation, is out-of-service pursuant to §§386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American Uniform Out-of-Service Criteria.

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

Vehicle group means a class or type of vehicle with certain operating characteristics.

Vehicle Miles Traveled (VMT) means the estimated number of vehicle miles traveled on designated roadways. The federal government collects this data from each state. A state may set up numerous monitoring sites on designated roads then use that data along with other vehicle records to estimate an average of the miles drivers are traveling for a given period of time.



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