

# TRANSTRENDS

THE TRANSLAW GROUP, INC.

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## **OOIDA'S DATA Q LAWSUITS CONSOLIDATED, READY TO MOVE FORWARD**



Two lawsuits filed by OOIDA challenging the Federal Motor Carrier Safety Administration’s (FMCSA) handling of challenged driver data used in the Pre-Employment Screening Program have been combined and are now ready to move forward.

The Owner-Operator Independent Drivers Association launched a pair of lawsuits in 2012 and 2013 against FMCSA challenging the agency’s data correction procedures on driver records.

The agency maintains inspection and crash records on drivers, stored in the Motor Carrier Management Information System. Both the Pre-Employment Screening Program – PSP for short – and the Compliance, Safety, Accountability Program use those driver records. The PSP program is available to motor carriers to screen compliance records of drivers before hiring them. CSA is the agency’s compliance measurement program used for enforcement on motor carriers and drivers.

Drivers involved in both of OOIDA’s lawsuits all had violations found during roadside inspections and fought the accompanying citations in court. All of the plaintiffs had the citations dismissed in

court. However when they attempted to have the corresponding violations removed from driver records maintained by FMCSA, they were denied.

Currently when driver, and motor carrier, violation records are challenged through the agency's Data Q process, the agency defers to the jurisdiction that issued the violation. And, generally the issuing officer makes the decision covering the appeal.

OOIDA filed its first lawsuit in the U.S. District Court for the D.C. Circuit in July 2012.

### **PROPOSED FEDERAL RULE MAY AUTHORIZE E SIGNATURES**



A proposed federal rule would establish parity between paper and electronic documents and signatures and expand the ability of motor carriers to use electronic methods to comply with federal regulatory requirements.

The new Federal Motor Carrier Safety Administration proposal published in the Federal Register on April 28, would permit the use of electronic methods to sign, certify, generate and exchange or maintain records as long as the documents accurately reflect the information in the record and can be used for their intended purpose, the agency said.

Previously the federal motor carrier safety administration made determinations on a case-by-case basis as to whether certain categories of documents could be generated, signed or stored electronically.

Modern technologies and evolving business practices, however, have rendered the distinction between paper and electronic documents and signatures obsolete.

The proposed rule would apply only to those documents that the Federal Motor Carrier Safety Administration regulations obligate entities or individuals to retain. It would not apply to the forms or other documents that must be submitted directly to the Federal Motor Carrier Safety Administration, the agency said. The agency is accepting comments on the proposal through June 27.

### **SCHNEIDER LOGISTICS SETTLES CLASS ACTION LAWSUIT FOR \$21 MILLION**

A major player in the logistics industry, Schneider Logistics serves as a subcontractor for Walmart. Schneider has agreed to pay \$21 million to settle a class action lawsuit filed on behalf of warehouse workers at three distribution centers in California.

Theresa M. Traber of the law firm, Traber & Voorhees stated on Thursday, May 15, that this is a major victory for the 1,800 workers who worked at Schneider's distribution centers in California, loading and unloading goods solely for Walmart.

Traber said she isn't sure exactly how much Walmart will pay as part of the settlement since the terms of their settlement have not been made public.

**21 MILLION X**



“Since we are settling a federal lawsuit against massive international companies like Walmart and Schneider, we think the impact of the settlement will be felt across the country,” she said.

Workers filed the lawsuit in October 2011, alleging they were forced to work as many as 16 hours per day, sometimes working seven days per week, and didn't get their mandatory rest breaks. They also claimed they were not paid overtime and were paid less than minimum wage for hours they worked. The class action lawsuit includes those who worked at the distribution centers from 2001 to 2013.

### **ELECTRONIC LOGGING DEVICES**

Truckers and stakeholders wishing to file comments on the FMCSA's proposal that could one day mandate electronic logging devices now have until June 26 to file them. The Federal Motor Carrier Safety Administration granted a month long extension this week at the urging of stakeholder groups.



The proposal, which is a supplemental notice of proposed rulemaking, would amend the federal regulations to establish minimum performance standards for electronic

logging devices, require the devices for all drivers who are required to log their Record-Of-Duty Status (RODS), and take measures to ensure the devices are not used by carriers or others to harass drivers.

### **FMCSA'S COERCION PROPOSAL INCLUDES SHIPPERS, RECEIVERS AND BROKERS**

It would be rare to hear the words “shipper,” “receiver” and “broker” in the same sentence as “accountability” when it comes to trucking safety, and that's mainly because the enforcement actions related to crashes and violations remain with motor carriers and vehicle operators and hardly ever cross over.



There's a possible game-changer on the horizon, one that would broaden the scope of trucking compliance and the safety regulations to include the very entities that put pressure on drivers to drive when tired or to operate an unsafe piece of equipment.

That pressure is known as coercion, and the Federal Motor Carrier Safety Administration has a proposed rulemaking in the works to address it.

Say a driver is forced or threatened with punishment or termination for refusing to drive a truck with bad brakes or is held up at the docks and then forced to operate beyond his or her allotted drive time. The entity making the threats could be fined or have its operating license revoked under the proposal that appeared Tuesday, May 13, in the *Federal Register*.

“When a shipper, receiver, or transportation intermediary directs a driver to complete a run within a certain time, it has assumed the role normally reserved to the driver’s employer. As such, it may commit coercion if it fails to heed a driver’s objection that the request would require him/her to break the rules,” the FMCSA states in the proposal. TRANSLAW can see additional exposure to liability lawsuits in the event of an accident involving a vehicle that a shipper, or broker or receiver had some hand in the coercion. The courts may very well find that they share liability for resulting damages. Think about the C. H. Robinson case!

To date, the FMCSA’s jurisdiction is over motor carriers. The agency has never had jurisdiction over shippers, receivers, brokers and freight forwarders. “This necessarily confers upon FMCSA the jurisdiction over shippers, receivers, and transportation intermediaries necessary to enforce that prohibition,” the administration states. These entities are often the source for many carriers to violate HOS rules. If this regulation has teeth it may be the way to begin assessing shippers for detention time.

The prohibition of coercion is one of the many mandates for the FMCSA to pursue as part of the 2012 highway law MAP-21, *Moving Ahead for Progress in the 21st Century*. “Economic pressure in the motor carrier industry affects commercial drivers in ways that can affect safety adversely,” the FMCSA stated. “For years, drivers have voiced concerns that other parties in the logistics chain are frequently indifferent to the operational limits imposed on them by the [safety regs].”

If and when the proposal becomes a final rule, commercial drivers will be provided with an avenue to report coercion that includes whistleblower protections. Driver making a complaint would supply personal information, list the regulations that he or she was pressured to violate, and provide a “concise but complete statement of the facts relied upon to substantiate each allegation of coercion, including the date of each alleged violation.”

Under the proposal, the FMCSA would be able to levy a civil penalty of up to **\$11,000** per occurrence of coercion. The FMCSA has been very aggressive when it comes to levying fines that are available to them as a tool to get the attention of carriers and drivers alike. Now, shippers and intermediaries will face the same treatment. The FMCSA initiated a 60-day comment period that lasts through July 12, 2014.

### **CDL HOLDERS BEWARE**

The 1999 legislation affecting Commercial Driver License (CDL) qualification has had a substantial effect on CDL eligibility for Commercial Motor Vehicle (CMV) drivers, including requiring the disqualification of CDL privileges for serious or major offenses committed while operating non-commercial motor vehicles.

In addition to the penalties already in existence for offenses occurring while operating a CMV, the

regulations create CDL consequences for major offenses or serious traffic violations that occur while drivers are operating non-CMV. For example a first conviction for a major offense while operating any motor vehicle will result in CDL disqualification for one year. A first offense occurring while a driver was transporting hazardous materials will result in CDL disqualification for three years. A second conviction for a major offense in any vehicle results in a lifetime disqualification. Major offenses include: operating while intoxicated, operating under the influence of a controlled substance, refusal to test for intoxication, and leaving the scene of an accident. The new legislation also adds two new major offenses: operating a CMV while the CDL is disqualified, revoked, suspended, or canceled and causing a fatality through negligent or criminal operation of a CMV.

Along with major offenses, the rules also create CDL consequences for serious traffic violations occurring while a driver was operating a non-CMV. A non-CMV conviction for a serious traffic violation will result in a CDL disqualification of 60 days if there are two serious violations within three years, and 120 days if there are three serious violations within three years. If the conviction results in revocation, suspension, or cancellation of a CDL or regular driver's license or a CDL or non-CMV driving privileges. Serious traffic violations include: speeding 15 miles per hour or more over the speed limit, reckless driving, passing illegally, improper or erratic lane changes, following too closely, and moving violations arising from a fatal accident. The new legislation also adds three new serious traffic violations: operating a CMV without obtaining a CDL, operating a CMV without having a CDL in immediate possession (with an exception for an individual who can provide timely proof of CDL licensure), and driving a CMV without the proper class of CDL or without the required endorsement.



The regulations also give the Secretary of the Federal DOT the authority to disqualify a state's CDL driver if the driver poses an "imminent hazard." An "imminent hazard" is defined as "the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding." A hearing is not required for a disqualification for 30 days or less, but a disqualification over 30 days requires notice and a hearing.

The legislation also prohibits the issuance of an occupational or other special license allowing the operation of a commercial vehicle. The following table is a quick guide that will give you the answers you may have to questions concerning any violations and the affect those violations will have on a CDL license. Feel free to call the office for further clarification.

The legislation also prohibits the issuance of an occupational or other special license allowing the operation of a commercial vehicle. The following table is a quick guide that will give you the answers you may have to questions concerning any violations and the affect those violations will have on a CDL license. Feel free to call the office for further clarification.

**383.51 Disqualification of drivers.**

(a) General .

(a)(1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(a)(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(a)(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(a)(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(a)(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to 383.51 ) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to 383.51 ) must not be reinstated.

(b) Disqualification for major offenses .

Table 1 to 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

Table 1 to Sec. 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested 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 first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for	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), a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	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, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	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, a CDL holder must be disqualified from operating a CMV for
(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	1 year.	1 year.	3 years.	Life.	Life.

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested 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 first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for	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), a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	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, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	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, a CDL holder must be disqualified from operating a CMV for
commit a felony, other than a felony described in paragraph (b)(9) of this table.					
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or cancelled 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.

(c) Disqualification for serious traffic violations. Table 2 to 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

**THIS TABLE IS APPLICABLE TO OTHER TYPE OFFENSES**

Table 2 to Sec. 383.51

If the driver operates a motor vehicle and is convicted of	For a second 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	For a second 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	For a third 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	For a third 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	60 days.	60 days.	120 days.	120 days.

If the driver operates a motor vehicle and is convicted of	For a second 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	For a second 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	For a third 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	For a third 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
more above the posted speed limit.				
(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\1.	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.

\1\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.

(d) Disqualification for railroad-highway grade crossing offenses. Table 3 to 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

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