

New and Emerging Ignition Interlock Technologies

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Using this feature, monitoring authorities would be notified, usually by email, of events as they happen.

What else may the future hold? The Automotive Coalition for Traffic Safety (ACTS) and the National Highway Traffic Safety Administration (NHTSA) are working together to fund a 5-year research program to explore the use of in-vehicle technology to prevent impaired driving. This jointly funded 10 million dollar project is called Driver Alcohol Detection System for Safety (DADSS). Their focus appears to be away from ignition interlock devices because the new technology needs to be passive to allow someone who is not drinking to easily start their vehicle.

Some of the technology they are researching is:

Tissue Spectrometry which estimates a person's BAC level by measuring light absorption from a beam of Near-Infrared reflected from the subject's skin. Data could be accessed through the steering wheel, the gear shift or a touch key ignition.

Distant Spectrometry uses a "sniffer" to measure alcohol concentration through breath exhaled in the vehicle. This technology would be placed near the driver.

In 2007, Nissan Motor Company displayed a concept vehicle equipped with early versions of these technologies. Nissan is also working on a camera that monitors eye movements.

Ignition interlocks are an important tool in the fight against drinking and driving. New technology will probably encourage courts to use interlock devices and to see the effects such devices have on DWI recidivism rates. In turn we will probably save many lives.

Editor's note: SmartStart is a provider of Ignition Interlock Devices.

Dispositions in Commercial Driver's License Cases

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Did you know that Commercial Driver's License (CDL) holders who have been convicted of driving under the influence (DUI) are not allowed to operate a commercial motor vehicle¹ (CMV) for 1 full year, even if the vehicle is equipped with an Ignition Interlock Device (IID)? In fact, whenever a person's CDL or noncommercial driving privilege is disqualified (revoked, suspended or cancelled) for any reason, that driver may not operate a CMV.

Did you also know that states must enforce a lower threshold for the presumption of driving under the influence of alcohol when someone is operating a CMV? States must have laws that define driving under the influence of alcohol for anyone found to be operating a CMV with a blood alcohol concentration (BAC) of 0.04 or greater. Although states are not required to define 0.04 BAC as a criminal offense, a minimum 1 year disqualification of CDL privileges must be enforced.

These provisions, along with many other requirements, are outlined in the Federal Motor Carrier Safety Regulations² (FMCSRs) and impact the disposition of all cases involving a CDL or a CMV.

What is the Federal Motor Carrier Safety Administration (FMCSA)?

The FMCSA, an agency within the U.S. Department of Transportation, focuses on reducing crashes, injuries, and fatalities involving large trucks and buses. One method of achieving this goal is by using its authority, as granted by Congress, to regulate the states' issuance of CDLs and the disqualification of CDL holders.

How Do I Know Whether My State Laws Are Compatible With The FMCSRs?

Ultimately, the success of the national CDL program relies upon the participation of each state. Today, all 50 states and the District of Columbia issue interstate CDLs according to FMCSA requirements. In doing so, these jurisdictions have agreed to

comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) and all amending legislation.³ As part of an FMCSA compliance review, each state's laws, administrative regulations, and business procedures are evaluated to determine whether they meet Federal standards on CDL testing, issuance, disqualification, revocation and related requirements.

What Specific Actions Should I Be Taking?

At minimum, the key here is *awareness* as to whether the case before you involves a CDL holder, or a driver who has operated a CMV that requires a CDL. Some courts conduct CMV/CDL cases separately to ensure that the distinct issues of these case types receive the appropriate application of CMV/CDL laws. Ideally, the traffic citation will contain all of the critical data related to the CDL and CMV. However, the law enforcement officer and the attorney representing the state should be encouraged to carefully examine the citation for CDL and CMV data and then preserve the data as part of the case file and court record.

All CMV/CDL convictions must be sent to the jurisdiction's state Driver Licensing Agency (DLA), either for posting to the record or forwarding to the state of licensure within 10 days.⁴ States can impose the required licensing sanctions only if all relevant data that appear on the traffic citation are accurately and completely transmitted to the DLA. This includes the following data:

Whether the violation was committed by a CDL holder (including violations in a non-CMV), or by anyone who is required to possess a CDL based on the type of CMV being operated at the time of the violation.

Whether the vehicle was transporting hazardous materials at the time of the violation.

After the state DLA receives the conviction, the required sanctions will be entered on the driver history record (DHR) based upon state law (which should be compliant with 49 CFR 383.51). The required sanctions are organized within four tables of the CDL regulations.⁵

The tables include:

- 1) Major offenses (including alcohol and

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Two New DWI Cases of Note in the West

Hon. Peggy Fulton Hora (Ret.), Walnut Creek CA, Region 9 Judicial Outreach Liaison

Partition Ratio Evidence

In July, the California Supreme Court joined Vermont¹ and Arizona² in holding that evidence of blood/breath partition ratios are admissible for some counts of driving while impaired (DWI). As in many states, California has two DWI statutes, one "generic," and one *per se*. The first prohibits driving while impaired by alcohol or other drugs and the second prohibits driving while having a blood alcohol concentration (BAC) of .08 or higher. Prior to *People v. McNeal*³ it was well established that partition ratio evidence was irrelevant to *per se* cases of DWI, but *McNeal* held that evidence of both an individual's ratio as well as general expert testimony about variances in the ratio may be

admitted into evidence in a generic DWI trial.

The Court reasoned that in the *per se* statute the BAC itself defines the offense, and the law specifically adopts the national standard of 2100:1 breath to blood ratio.⁴ Thus, "a conversion from breath to blood-alcohol concentration is no longer required to establish guilt" when prosecuting the *per se* statute, and testimony about variances among people or in an individual at particular times of day or under different circumstances is not relevant. *Id.*

By contrast, the generic statute concerning driving while impaired has a companion statute which provides a rebuttable presumption based on the BAC. "By statute, if a chemical test within three hours of driving measures a driver's **blood** (emphasis added) alcohol at 0.08 percent or more, the driver is presumed to have been driving 'under the influence' of alcohol." This fact, if proven, is among the many factors the jury may consider (driving, physical appearance, speech, performance on Standardized Field Sobriety Tests, etc.) in determining

whether the defendant was driving while impaired.

The Supreme Court discussed the wide variances in partition ratios and said 30% of the population has a ratio different from 2100:1. In one study, it varied from 1550 to 2700 and in another, 1706 to 3063. Most people, according to the Court, have a ratio of about 2300:1 and, therefore, the conversion rate of 2100:1 actually underestimates the true BAC.

The Court pointed out that the statutory presumption specifically talks about blood in contrast to the *per se* statute. Since the statute giving rise to the presumption specifies blood, a defendant may rebut the presumption using evidence of either a personal variance of the ratio or the defendant may introduce general evidence of variances of partition ratios. However, the Court pointed out, while the defendant may rebut the presumption, the defendant may not argue that the presumption is void because a

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some criminal offenses)

- 2) Serious offenses
- 3) Rail-road highway grade crossing violations
- 4) Violations of out-of-service orders

Why Are CDL Holders Different?

The practitioners of any licensed profession must maintain their distinct skills and abide by legal (and often ethical) requirements not incumbent upon laypersons. In meeting those requirements, the licensed professional demonstrates his or her authority to continue practicing the specific occupation in a way that protects society from abuse or fraud.

Attorneys for example, must first pass the bar exam and are further obligated to maintain their skills through enrollment in courses offering continuing legal education credits. By comparison, those who are required to hold a CDL are held to a higher standard than those who are not engaged in professional CMV operation. In fact, we entrust our lives to those who operate CMVs on our nation's highways in the expectation that they will do so safely and responsibly.

Where Can I Get More Information?

The FMCSA is continuing its development of a Judicial Outreach Program (JOP) to help raise awareness among all agencies involved in identifying, adjudicating, and processing CDL and CMV traffic offenses. The FMCSA's JOP efforts include outreach to Law Enforcement Officers, Prosecutors, Traffic Court Judges, Administrative Law Judges, Clerks and state DLAs.

For the nation's Traffic Court Judges, Magistrates and Administrative Law Judges, the National Judicial College (NJC)

in Reno, Nevada offers a fully funded workshop (including tuition, round-trip transportation, lodging and meals).

The 4-day course is entitled: Commercial Driver's Licensing Laws: A Faculty Development Workshop. The next two course dates are October 26-29, 2009 and March 30-April 2, 2010. In addition to enrollment information, the NJC web site also provides a number of excellent resources ranging from the FMCSRs through State-specific CMV/CDL case law and links to other CMV/CDL issues. Visit <http://www.cdresources.org/resources.html>

The CDL Division of FMCSA considers safety to be its highest priority and would be happy to answer any questions you may have on this or related issues.

Visit us at www.fmcsa.dot.gov

ENDNOTES

- ¹ A CMV (for the purpose of the issues discussed in this article) is defined as one that requires a CDL to operate, as defined in 49 CFR Part 383.5.
- ² Disqualifications codified in 49 USCS § 31310, are enforced through the FMCSRs
- ³ CMVSA Title XII, Public Law 99-570 (1986), MCSIA Public Law 106-159 (1999). See also, Amendments to Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation System: A Legacy for Users (SAFETEA-LU); Final Rule, FR Vol. 72, No. 128, July 5, 2007, pp 36760-36791.
- ⁴ 49 CFR 384.225 for updating a driver's record if the driver is licensed in the state, and 384.209 for sending violations to the State of licensure, for out of state drivers.
- ⁵ 5 49 CFR 383.51(b-e)