



Commercial Motor Vehicle Safety Knowledge and Regulation Enforcement

A Toolkit for Tribal Courts

The National Tribal Judicial Center

at

The National Judicial College

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Data Collection Tool for Tribal Courts

Section A: Driver Information					
Driver Name:		Driver DOB:			
Driver Gender:		Race/Ethnicity:			
Enrolled Member?		Eligible to Enroll?			
DL #/State:		CDL:			
DL Class:		Endorsements:			
DL Status:		Restrictions:			
Prior Driving Convictions:					
Section B: Citation Information					
Incident Date:		Hearing Date:			
Case Number:		Drug Screen:	Positive	Negative	N/A
Incident Type:		Alcohol Screen:	Positive	Negative	N/A
Source(s) of Law:	Tribal	Local	State	Federal	BAC:
Offense Code(s):	1 st : 	2 nd : 	3 rd : 	4 th : 	
Section C: Vehicle Information					
Vehicle Type:		GCWR (Max allowed):			
VIN:		Vehicle Weight:			
Endorsements Required for Vehicle Operation:	<input type="checkbox"/> H – Hazardous Material <input type="checkbox"/> N – Tanker Vehicle <input type="checkbox"/> P – Passenger (e.g. bus)		<input type="checkbox"/> S – School Bus <input type="checkbox"/> T – Triple Trailer <input type="checkbox"/> X – Hazmat Tanker		
Inspections Up to Date:	Yes	No	Unsure	Hazardous Materials:	Yes No Unsure

Section D: Collision Information				<input type="checkbox"/> N/A – Skip this section			
Injuries:	Yes	No	Unsure	Fatalities:	Yes	No	Unsure
Property Damage:	Yes	No	Unsure	Estimated Cost:	\$		
Crash Factors:	<input type="checkbox"/> Weather		<input type="checkbox"/> Opioids (non-Rx)		<input type="checkbox"/> Distracted Driver		
	<input type="checkbox"/> Wind		<input type="checkbox"/> Opioids (Rx)		<input type="checkbox"/> Drowsy Driver		
	<input type="checkbox"/> Construction		<input type="checkbox"/> Non-opioids (non-Rx)		<input type="checkbox"/> Improper Use of Restraints		
	<input type="checkbox"/> Alcohol		<input type="checkbox"/> Non-opioids (Rx)		<input type="checkbox"/> Unknown		
Section E: Disqualification Information*				<input type="checkbox"/> Citation did not involve CDL <u>or</u> CMV			
<u>Any Vehicle:</u>				<u>If Operating a CMV:</u>			
<input type="checkbox"/> Driving Under the Influence <input type="checkbox"/> Refusing Alcohol Test <input type="checkbox"/> Leaving the Scene of an Accident <input type="checkbox"/> Using the vehicle to commit a felony <input type="checkbox"/> Using the vehicle to commit a felony involving manufacture, distribution, or dispensing of controlled substance**				<input type="checkbox"/> Operating a CMV without physical possession of CDL <input type="checkbox"/> Operating a CMV without a valid CDL <input type="checkbox"/> Operating a CMV without proper class/endorsements <input type="checkbox"/> Violating local laws prohibiting texting or device usage while driving <input type="checkbox"/> Negligent operation of CMV resulting in fatality <input type="checkbox"/> Using a CMV to commit a felony involving severe forms of human trafficking**			
<u>Disqualifying (2nd + Offense within 3 years):</u>				<u>Additional Disqualifying Offenses</u>			
<input type="checkbox"/> Excessive Speeding (15+ mph over) <input type="checkbox"/> Reckless driving <input type="checkbox"/> Improper/erratic lane changes <input type="checkbox"/> Following too closely <input type="checkbox"/> Law violations in connection with fatal accident				<input type="checkbox"/> Failure to slow/check safety at a railroad crossing <input type="checkbox"/> Failure to stop (if required) at railroad crossing <input type="checkbox"/> Other unsafe railroad crossing (e.g., insufficient space, failure to obey traffic control device, insufficient undercarriage clearance) <input type="checkbox"/> Violating out of service orders (Non-Hazmat) <input type="checkbox"/> Violating out of service orders (Hazmat)			
<input type="checkbox"/> <u>None of these</u> – Incident did not involve a disqualifying offense							

*Disqualification periods vary depending on the type of vehicle and driver history. For full disqualification rules, see FMCSR § 383.51

**Trafficking of drugs or humans using a CMV results in a lifetime disqualification for CDL holders, and the driver is NOT eligible for 10-year reinstatement.

Data Form Instructions

The data collection form above is for information review purposes. It contains 5 sections:

Section A: Thorough data collection for this section will tell you who is receiving citations within your jurisdiction (by demographics) and could serve as an additional way to identify repeat offenders.

This section contains questions about the driver who received the citation. If you have more than one cited driver in an incident (for example, in a collision where the driver of vehicle A was driving unsafely for the conditions, and the driver of vehicle B was following vehicle A far too closely, both might be cited for the same incident).

Section B: Thorough data collection for this section will tell you what citations drivers are receiving, and help you to identify if a citation might require a suspension.

This section contains questions about the citation that was received, including additional information that might not otherwise be captured, such as the source of the law being applied.

Section C: Thorough data collection for this section will tell you about the vehicle that was driven, which can help you determine whether driver disqualification penalties could apply under federal regulations.

This section contains questions about the vehicle being operated by the driver who received the citation. Information in this section can help you identify several important trends involving commercial vehicles, such as what types of commercial vehicles are receiving citations and whether the vehicle in questions should be classified as a CMV under federal regulations. Comparing the endorsements required for operation of the vehicle to the endorsements for which the driver is qualified can help you identify whether any additional violations need to be considered (i.e. driving without the proper endorsements, or enhanced penalties for violations while transporting Hazardous Materials.)

Section D: Thorough data collection in this section will tell you about the harm to your community caused by the violation. If no collision occurred, this section can be skipped.

This section contains questions about damage caused in the event of a collision. This might include injuries, fatalities, and property damage, which could help you identify harms to your community from CDL holders and/or CMV operation. The ability to quantify harms to your community from irresponsible CDL holders is essential for addressing problem areas and driving future policy.

Section E: Thorough data collection in this section will help you identify whether disqualifications are appropriate in this case under federal guidelines. If the citation did not involve a CDL or CMV, this section can be skipped.

This section contains summary options from FMCSR § 383.51. If any of these options apply, disqualification may be warranted under federal, state, or local laws. If disqualifying offenses occurred in a given case, plea agreements should be examined with additional scrutiny, to ensure that disqualifying offenses are not being “masked” as lesser offenses, thus permitting unsafe drivers to retain driving privileges.

Frequently Asked Questions from FMCSA

FMCSA provides further guidance for interpreting the disqualification regulations. The following questions and answers appear at <https://www.fmcsa.dot.gov/regulations/title49/section/383.51>. Your state laws and driver licensing agency policies may provide further guidance. The following questions were pulled from the FMCSA website, in full, and may be of particular interest for tribal courts.

If a CDL holder commits an offense that would normally be disqualifying, but the CDL holder is driving under the farm waiver, must conviction result in disqualification and action against the CDL holder?

Guidance: Yes. Possession of the CDL means the driver is not operating under the waiver. In addition, the waiver does not absolve the driver from disqualification under [part 391](#).

May a State issue a "conditional," "occupational" or "hardship" license that includes CDL driving privileges when a CDL holder loses driving privileges to operate a private passenger vehicle (non-CMV)?

Guidance: Yes, provided the CDL holder loses his/her driving privileges for operating a non-CMV as the result of a conviction for a disqualifying offense that occurred in a non-CMV. A State is prohibited, however, from issuing any type of license which would give the driver even limited privileges to operate a CMV when the conviction is for a disqualifying offense that occurred in a CMV.

Source: <https://www.fmcsa.dot.gov/regulations/title49/section/383.51>

Vehicle Class Information

Class A CDL:

Vehicles or vehicle combinations with a gross combined weight rating (GCWR) of 26,001 lbs. (11,794 kg) or more, and vehicles with towed units of 10,000 lbs (4,536 kg) or more.

Class B CDL:

Any single vehicle with a gross vehicle weight or a gross vehicle weight rating (GVWR) of 26,001 lbs. (11,794 kg) or more, including vehicles towing a vehicle with a GVWR less than 10,000 lbs. (4536 kg).

Class C CDL:

Any single vehicle or combination of vehicles designed to transport 16 or more passengers (including the driver) which does not meet the definition of Class A or B.

Any vehicle that is transporting material classified as hazardous (see 49 U.S.C. 5103) that is required to be placarded (see subpart F of 49 CFR Part 172).

Any vehicle that is transporting materials listed as a select agent or toxin in 42 CFR Part 72, regardless of quantity.

CDL Endorsement and Restriction Information¹

Available Class A CDL endorsements:

- H endorsement (Hazardous Materials)
- N endorsement (Tanker Vehicles)
- P endorsement (Passenger Vehicles)
- S endorsement (School Bus Transport)
- T endorsement (Double and Triples)
- X endorsement (Combination endorsement covering both Tanker and Hazardous Materials)

Available Class B CDL endorsements:

- H endorsement (Hazardous Materials)
- N endorsement (Tanker Vehicles)
- P endorsement (Passenger Vehicles)
- S endorsement (School Bus Transport)
- X endorsement (Tanker and Hazardous Materials)

Available Class C CDL endorsements:

- H endorsement (Hazardous Materials)
- P endorsement (Passenger Vehicles)
- S endorsement (School Bus Transport)

CDL Restrictions

- E Restriction (May not operate manual transmission CMV)
- K Restriction (Intrastate only: May not operate in a state different than that which issued CDL)
- L Restriction (May not operate CMV with full air brake system)
- M Restriction (Class A License: May not operate Class A passenger vehicle, Class B and C allowed)
- N Restriction (Class B License: May not operate Class A or Class B passenger vehicle, Class C allowed)

¹ These are the most common endorsements and restrictions issued. This list is provided for informational purposes only. Please refer to your state DVM for a full list of current restriction codes applicable in your state.

- O Restriction (May not operate CMV with a fifth-wheel connection such as a tractor-trailer)
- V Restriction (Driver has medical variance, e.g., Diabetes, Hearing or Eyesight impairment, Seizures)
- Z Restriction (May not operate CMV with full air brake system)

Further Resources for Endorsements and Restrictions

<https://www.fmcsa.dot.gov/registration/commercial-drivers-license/drivers>

<https://cdltrainingspot.com/8-most-common-cdl-restriction-codes-and-what-they-mean/>

Jurisdiction and Case Processing

Jurisdiction over cases involving commercial motor vehicles and commercial driver licenses can be complicated for tribal courts. When a traffic violation comes into tribal court, the court administrator or clerk should check to see if the case involves a CDL (checking for commercial endorsements on the driver's license) or a CMV (by checking the make and model of the vehicle(s) involved). If a case involving a CDL or CMV makes it to tribal court, there are several questions which will likely need to be addressed in order to answer the question of jurisdiction:

- Where did the violation occur?
- Was this a civil or criminal violation?
- Is the driver Native American? Are they an enrolled member of your Nation?
- Does the tribal code address CMV or CDL violations, broadly?
 - If yes, is this specific violation addressed?
 - If no, does the tribal code allow or disallow reaching to other sources of law (e.g., state law) for guidance on how to handle this violation?
- Who is the officer who issued the citation, and are they cross-deputized?
- Does the judge have sufficient training in CMV and CDL regulations, to make an informed decision about plea offers and the charges applied for the violation?
- Does the Nation have an agreement with the state to promote data sharing?
 - How can the tribal court report convictions to the licensing agency?

Where did the violation occur?

Many reservations cover large swaths of land that are intersected by state and federal highways, and the arrangements between tribal, local, state, and federal governments are increasingly complex. Reservations may border multiple counties, and their relationships with each border county can vary drastically. Some reservations are in a checkerboard pattern, which could encourage challenges based on the ambiguity of the exact location of the violation. Finally, there might be special considerations if a reservation is partially or wholly located in a PL-280 state.

Civil or Criminal?

Major offenses that can lead to driver disqualification if convicted are criminal offenses. These include:

- Driving under the influence of alcohol and other substances
- Refusing to test for substances
- Leaving the scene of an accident
- Negligent operation resulting in homicide
- Driving a CMV with a suspended, revoked, or disqualified CDL
- Using a CMV for trafficking persons or drugs

However, serious civil traffic violations may also result in disqualification (see CDL Bench Card or CFR §383.51), and some serious traffic violations may be codified as either civil or criminal violations, depending on the governing law. Serious traffic violations resulting in disqualification may require more than one conviction before the driver is disqualified:

- Excessive speeding
- Reckless driving
- Erratic lane changes
- Following too closely
- Violation of traffic laws in connection with a fatal accident
- Driving a CMV without a valid CDL, or without physical possession of the CDL
- Driving a CMV without the proper endorsements
- Texting or using a handheld device while driving (in violation of local laws)

Two additional offense categories can result in disqualification for commercial drivers:

- Railroad crossing offenses
- Violating out-of-service orders

Is the driver a Native American, or an enrolled Member?

Most tribal courts will not be able to process criminal CMV/CDL convictions for non-Native offenders unless the conviction would somehow be covered under the VAWA reauthorization. The more likely situation is that tribal courts would only hear civil cases when they involve Non-Native American drivers. This could mean applying a civil remedy for a criminal offense, or it could mean referring criminal cases to federal or state courts.

Does the tribal code address CMV and CDL violations?

Most states in the U.S. have adopted laws that mirror federal guidance regarding the disqualification of commercial drivers. This is, in part, because failure to comply with those

regulations can disqualify states from receiving federal highway funding, and so states have an incentive to comply. Depending on how your tribal code is written, you may or may not have violations in your tribal code that match federal regulations for disqualifying commercial drivers. Some tribal codes explicitly forbid applying state laws through tribal courts, while other Nations permit their courts to reach to other sources of local law. Some violations that could lead to disqualification for a commercial driver may lead to nothing more than a fine for a civilian driver, and so it is important that judges be well informed on how their tribal codes might be applied in a case involving a CMV or CDL.

Who is the officer that issued the citation or made the arrest in this case?

Police for many Native Nations may be cross-deputized, and may therefore exercise jurisdiction on behalf of multiple entities, including municipalities, counties, or states. States will typically only accept citations in formats consistent with the state's required citation forms, and so most of the information that is required under state law will be present on these citations. However, if the forms for tribal courts are not the same as the state forms, then the information captured for tribal court citations might not include all of the pertinent information about CDLs or CMVs.

Officers should note in their reports whether the driver has a CDL, whether the CDL is valid, and whether the endorsements on the license match the class and cargo for the vehicle they were operating (if in a CMV), regardless of where the case is sent.

Does the Nation have a data sharing agreement?

In conversations with tribal court judges from around the country, we learned that many tribal courts are hesitant to share convictions with the state for multiple reasons:

- Concerns about data sovereignty
- Concerns about profiling of Native Americans
- Concerns that the convictions will not be accepted by the state as valid
- Lack of process for data sharing
- Lack of reciprocity in data sharing

In order for CMV and CDL convictions to be meaningful, they must be recorded against the driver's license through the state driver licensing agency, or SDLA. When a CDL holder is convicted of a disqualifying offense, the court should send the conviction to the SDLA, so that they can revoke the convicted person's driving privileges. Properly recorded convictions follow the driver from one state to the next, so that they cannot simply apply for a new license in a new state, and bypass the disqualification period.

There are multiple ways that courts transmit convictions, depending on the technology that they have available. While large, well-funded courts may be able to transmit convictions directly to

the SDLA, smaller (often rural) courts may still mail or hand deliver convictions. Federal guidelines require that convictions be transmitted within 15 days from the date of the decision.

Plea Offers and the Risk of Masking

When a commercial driver violates the law in a manner that should result in a disqualification, they should be charged with the appropriate offense. The majority of criminal and traffic cases across the U.S. are disposed through plea agreements, and judges should understand what is and is not allowed with regard to plea bargains for cases involving CMVs and CDLs. “Masking” is the practice of offering charges that do not result in a disqualification when the appropriate disqualifying offense(s) could be substantiated. Unfortunately, many judges are not well-trained to spot masking. Judges who handle CMV and CDL cases in any capacity should be familiar with regulations regarding masking. In tribal courts, this might look a bit different depending upon jurisdictional issues and data sharing concerns, as well as differences between the tribal and state codes. However, the imperative to learn about and recognize masking is not merely a matter of regulatory compliance. Masking allows drivers to continue operating dangerous vehicles in the community, by hiding a pattern of dangerous behavior behind a series of minor convictions.

Employment Considerations

Tribal courts typically operate under a different philosophy of justice than U.S. state courts. For non-Native Americans who have never experienced tribal justice, this can be difficult to understand. The concern that reporting a conviction that will result in depriving someone of their livelihood may be especially potent for tribal court judges when this person is a member of their community. However, judges should consider the impacts to the community as a whole, as well as the impacts to the individual, if the court chooses not to report convictions for commercial drivers.

Impacts to Individual

Commercial drivers operate very complicated vehicles that require much more skill to handle, and that can cause a lot more damage to property and people when they are involved in collisions, than passenger cars. Drivers should understand the importance of safety protocols, and should understand the added responsibility they assume when driving a commercial motor vehicle.

Unsafe drivers that are allowed to continue operating commercial vehicles may not grasp the weight of their behaviors, and could continue to put themselves and others at risk.