

**COMMERCIAL MOTOR VEHICLE /
DRIVER ENFORCEMENT
DESKBOOK**

**OVERSIZED/OVERWEIGHT VEHICLES
AND
COMMERCIAL DRIVER LICENSE VIOLATIONS**

April 2024

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INTRODUCTION

Observation of the motor vehicles using Indiana roads, highways and interstates readily demonstrates the transition that has occurred in recent decades with regard to shipment and movement of commerce within the state and the nation. American commerce which used to travel predominately by rail now relies heavily upon ground transportation supplied by heavy trucks of all sizes, shapes and configurations. Truck usage of the highway infrastructure has become so dense that consideration has been given to the construction of “truck only” roadways paralleling interstate highways.

Below are Key findings from the National Highway Traffic Safety Administration’s (NHTSA) Traffic Safety Facts from June 2023 for Large Trucks.

- In 2021 there were 5,788 people killed in traffic crashes involving large trucks. This was a 17-percent increase from 4,945 in 2020.
- Seventy-two percent of people killed in large-truck traffic crashes in 2021 were occupants of other vehicles.
- Three percent of drivers of large trucks involved in fatal traffic crashes in 2021 had blood alcohol concentrations (BACs) of .08 grams per deciliter (g/dL) or higher, much lower than drivers of other vehicle types (28% for motorcycles, 24% for passenger cars, and 20% for light trucks).
- Drivers of large trucks involved in fatal traffic crashes in 2021 had a higher percentage (20.8%) of previously recorded crashes compared to drivers of other vehicle types (motorcycles, 19.9%; passenger cars, 18.2%; and light trucks, 17.2%).
- In 2021 drivers of large trucks in fatal traffic crashes were less likely (6.5%) to have previous license suspensions or revocations than other vehicle types (motorcycles, 16.8%; passenger cars, 14.2%; and light trucks, 11.2%).

Every time a truck is involved in a crash, the impact ripples through the economy as well as the lives of the participants. Each accident may involve a variety of direct costs:

1. cargo damage
2. vehicle damage
3. injury(s) costs
4. medical costs
5. loss of revenue
6. administrative costs
7. police report
8. effect on insurance costs
9. effect on workmen's compensation insurance costs

10. towing costs
11. damaged vehicle storage.

Accidents also result in other costs which are hidden:

1. lost clients/customers
2. lost sales
3. meetings missed
4. salaries paid to employees in accident
5. lost time at work
6. cost to hire/train replacement employees
7. supervisor's time
8. loss of personal property
9. replacement vehicle rental
10. damaged equipment downtime
11. accelerated depreciation of equipment
12. accident reporting
13. medical costs paid by company
14. poor public relations/publicity
15. increased public relations costs
16. government agency cost.

As the United States moved from reliance upon rail transportation to trucks, the interstate highway system was built and completed. Maintenance and repair of these, as well as other public highways, have been impacted by the increased volume of truck and car traffic.

Overweight and oversized vehicles cause damage to the road infrastructure while carriers attempt to earn greater revenue from the transportation of a single load. Road damage can be both immediately visible as well as observable only with the passage of time.

A correlation also exists between overloaded trucks and failure to comply with safety regulations. According to a 2016 Federal Highway Administration's "Comprehensive Truck Size and Weight Limits Study, Commercial Vehicles inspected with overweight violations noted on an inspection report had Out-of-Service rates more than two times higher than vehicles with no overweight violations.

Thus, Indiana has both a fiscal as well as humanitarian interest in thorough and forceful enforcement of its laws related to overweight and oversized commercial vehicles and those who are licensed as operators. However, issues related to the operation of vehicles on Indiana highways that violate laws concerning weight and size restrictions and the operation of commercial motor vehicles are not presented to most judges with a frequency that engenders immediate recollection of the intricacies involved. Complications regarding these cases arise from differing jurisdictions (Department of Revenue, Bureau of Motor Vehicles and Federal

Motor Carrier Safety Act).

The purpose of these materials is to acquaint judges who are seldom faced with these types of violations with the information needed to accurately dispose of the issues as well as to provide assistance for those who are confronted with issues that arise in these areas with greater frequency.

OVERWEIGHT AND OVERSIZED VEHICLES

The Indiana Department of Revenue administers all restrictions concerning weight and size restrictions and special notification must be provided.

Statutory Summary

IC 9-20-1 prohibits owners and operators of motor vehicles from exceeding statutory limits upon vehicle weight and size while driving upon Indiana highways. The Indiana Department of Transportation may prohibit the operation of vehicles or impose weight restrictions upon vehicles for a period up to 90 days within a year when serious damage or destruction would occur due to road deterioration or weather or climate conditions. Similarly, local authorities possess the same authority concerning streets and highways that are not part of the state highway system.

IC 9-20-2 establishes width and height exemptions for:

1. Vehicles:
 - a. engaged in highway construction and used on roads under construction and not open to public use,
 - b. operated under approved permit during highway construction or
 - c. registered or exempted recovery vehicles moving a disabled vehicle less than 50 miles and

2. Vehicles/machinery not on interstate highways:
 - a. used by the State of Indiana, county or municipal in highway construction or maintenance,
 - b. agricultural implements used during farm operations or constructed so movement would not cause material damage to highways,
 - c. farm drainage machinery and farm vehicles loaded with farm product and
 - d. firefighting apparatus owned or operated by a political subdivision or volunteer fire department.

Size Regulations

[IC 9-20-3](#) regulates the length, width and height of vehicles and their loads that may be operated upon Indiana highways.

Maximum Width

([IC 9-20-3-2](#)): (except for width exclusive devices in accordance with 23CFR 658.15)) 8' 6"

Load may not extend more than 6" beyond fender line on the right side ([IC 9-20-3-5](#)).

Exemptions:

1. Machinery or equipment used in utility construction or maintenance if the violation is the result of oversize tires or
2. recreational vehicles with manufacturer installed rear view mirrors extending only as far as necessary to afford the required field of view.

Maximum Height

([IC 9-20-3-3](#)): 13'6"

Maximum Length

([IC 9-20-3-4](#) unless otherwise specified)

1. single vehicle: 40'
If equipped with permanently installed specialized equipment used for lifting, reaching, pumping, or spraying, an additional 5' for overhang of the equipment is allowed.
2. recreational vehicle or railroad construction, reconstruction or maintenance vehicle: 45'
3. buses ([IC 9-20-8-2](#)):
 - a. articulating public transportation bus 65'
 - b. conventional school bus 42'
 - c. all others 45'
4. garbage truck-trailer and truck-wagon combinations ([IC 9-20-11-5](#)) 68'
5. truck-tractor/semitrailer-trailers combinations ([IC 9-20-13](#))
 - a. semitrailer or trailer units (doubles/triples) 28' 6"
 - b. semitrailer 53'
 - c. motorsports semi-trailer([9-20-13-2\(a\)\(5\)](#)) 57'
 - d. combinations - truck-tractor + semitrailer + semitrailer or truck-tractor + semitrailer None
 - e. maxi cube + cargo unit 65'
 - f. maxi cube cargo unit 34'
6. Kingpin Length ([9-20-13-4](#))
 - a. For semi-trailers longer than 48'6"
 - i. Maximum distance from Kingpin to center of rearmost axle 43'
 - b. Racing Trailers

- ii. Maximum distance from Kingpin to center of rearmost axle 46'
- 7. vehicle used by railroad companies in connection with railroad construction, reconstruction, maintenance 40'

Special Restrictions re: Combined Vehicles (IC 9-20-9)

This chapter contains length restrictions applicable to a wide variety of methods by which vehicles and boats are delivered by transport operators through the use of various coupling and towing techniques. Depending upon the particular type and combination, length restrictions vary from 60' to 80'.

Special Restrictions for Farm Vehicles and Machinery (IC 9-20-10)

Farm tractors may not draw more than two wagons or implements upon a highway. Farm wagons and implements must conform to all laws regarding use of highways.

Special Restrictions for Mobile Homes and Special Tractor-Mobile Home Rigs and Required Permits (IC 9-20-12, IC 9-20-14 and 9-20-15)

These chapters have restrictions concerning transportation of mobile homes.

Weight Regulations

[IC 9-20-4](#) provides general weight restrictions for vehicles upon Indiana highways. Toll Road weight limits are promulgated by the Indiana Department of Transportation. Interstate highway weight restrictions are set forth in 23 CFR 658.17.

General Limits (IC 9-20-4-1 and 23 CFR 658.17)

- 1. total loaded gross weight formula for 2 or more consecutive axles – overall gross weight limit of 80,000 pounds,
- 2. axle group
 - a. 34,000 pounds on a tandem axle,
 - b. 20,000 pounds on an individual axle,
- 3. maximum wheel weight (laden or unladen) of 800 lbs. per inch width of tire, measured between the rim flanges, or an axle weight in excess of 20,000 pounds.

Ind. Code § [9-20-4-1\(c\)](#) allows for the grand-fathering of vehicles that would have received a greater weight allowance under the rules in place on January 4, 1975 than allowed under the bridge formula. This allows them to carry the same weights as prior to this date. Those weights are:

Gross weight with load not to exceed	73,280 lbs.
Single axle (800 lbs per inch of rim width)	18,000 lbs.
Tandem axle	32,000 lbs.

Example: Tri-Axle Dump Truck

Steer Axle	18,000
Single Lift Axle	18,000
Tandem with	32,000
Gross:	68,000

These weights are used to determine the gross weight of these shorter vehicles but provide them the greater of the axle weights per [IC 9-20-4-1\(a\)](#).

Limits for Garbage Trucks (IC 9-20-11)

1. single axle: 24,000 pounds,
2. tandem axle group: 42,000 pounds for state highways but not interstate highways. Unladen garbage trucks are subject to the same axle limitations as all other trucks.

Exemptions for Farm Commodities; Logs, wood chips, bark and Sawdust; Aggregate [\(IC 9-20-4-2\)](#)

Section 1 (Overweight) and section 3 (penalty for over registered weight, prohibition from moving a vehicle with an excess load) do not apply to a vehicle or combination of vehicles that transports:

- (1) farm commodities from the place of production to the first point of delivery where the commodities are weighed if the weight of the vehicle with load or combination of vehicles with load does not exceed the gross weight limit by more than ten percent (10%); or
- (2) logs, wood chips, bark, and sawdust if the weight of the vehicle with load does not exceed either:
 - a) the gross weight limit; or
 - b) the axle weight limit; by more than ten percent (10%); or
- (3) aggregate, if the weight of the vehicle with load does not exceed:
 - a) the gross weight limit; and
 - b) the axle weight limit by more than ten percent (10%).
- (4) A person who transports vehicles or loads and exceeds an exemption in subsection (5) is subject to permit requirements under this article.
- (6) The exemptions in subsection (a) do not apply to the following: (1) Weight limits imposed for bridges or sections of highways under [IC 9-20-1-3](#).

Aggregate is defined under [IC 9-13-2-1.8](#) (sand, gravel, dirt, etc.)

Registered Weight of Vehicle (IC 9-20-4-3)

(a) Violation:

Pursuant to IC 9-20-4-3(a), the gross weight declared by the registrant (registered Weight) determines and fixes the limit of the load, including the unladen weight of the vehicle or combination of vehicles, that may be transported on the highways for the period of the registration.

(b) Exception:

Because of the potential variance in scale weights, a penalty for exceeding the registered weight may not be assessed until the actual scale weight of the vehicle plus load exceeds the registered weight by more than 1.5%.

(c) Penalty:

The person who violates this section commits a Class C infraction and in addition, shall be required to pay the difference between the fees paid, and the fees due based on the excess weight being transported. Until those fees are paid, the vehicle may not be moved.

Explanation:

When a person registers a truck in the state of Indiana, they declare to the Bureau of Motor Vehicles the amount of weight they will transport on that truck including its unladen weight. **This determines the fees they pay for registering that vehicle.** When the vehicle is operated with a weight in excess of what they declared and previously paid the BMV for, they are in violation of this statute and are now subject to a penalty, and also required to pay BMV the additional fees for the additional weight they are now carrying.

Heavy Duty Highways (IC 9-20-5)

The Indiana Department of Transportation may designate a highway as “heavy duty” or “extra heavy duty” and establish maximum weights.

“Heavy duty” highway limitations are:

1. loaded or unladen - 800 pounds per inch width of tire, measured between the flanges of the rim, or an axle weight in excess of 22,400 pounds,
2. total weight concentrated on the roadway surface from any tandem axle group - 18,000 pounds for each axle of the assembly and
3. total gross weight, with load, in pounds of a vehicle or combination of vehicles 80,000 pounds.

Extra Heavy Duty Highways (IC 9-20-5)

“Extra heavy duty” highways are listed in IC [9-20-5-4](#) and have special limitations. The total gross weight, with load, of a vehicle or combination of vehicles operated with a special weight permit on these highways is 90,000 pounds.

Maximum size and weight limits on “extra heavy duty” highways with special weight permit ([IC 9-20-5-5](#)):

1. total gross weight, with load, of a vehicle or combination of vehicles operated with a special weight permit 134,000 lbs
except for portions of State Road 3, U.S. 20, State Road 9 which is limited to 90,000 lbs, or except Highway 912 near Dickey Road and Riley Road in East Chicago **264,000 lbs**
2. maximum size and weight limits with special weight permit ([IC 9-20-5-5](#)):
 - a. loaded or unladen - per inch width of tire, measured between the flanges of the rim 800 lbs.
 - b. single axle 18,000 lbs.
 - c. an axle combination - per axle 13,000
lbs. (exception - 1 tandem group may be 16,000 lbs. per axle or a total of 32,000 lbs.)
 - d. total gross weight, with load, of any vehicle or combination of vehicles 134,000 lbs.
 - e. axle combination spacing may not be less than 3' 6"
 - f. axle spacing between each axle or axle combination is not less than 8'.
 - g. for vehicle operating under Highway 912 exception, loaded or unladen – per inch width of tire, measured between the flanges of the rim 1,650 lbs.
 - h. for vehicle operating under Highway 912 exception, single axle 65,000 lbs.

Special Weight Permits (Oversize/Overweight Permits)

Special Weight Permits are required and must be displayed as required by [IC 9-20-5-7](#) for transportation of vehicles with a total gross weight between 80,000 pounds and 264,000 pounds on “extra heavy duty” highways.

Both the Indiana Department of Transportation and local authorities that have jurisdiction over a highway or street and responsibility for repair and maintenance are authorized to issue special and emergency permits. These permits allow the transportation of vehicles and loads which exceed otherwise applicable weight, size and length limitations. See [IC 9-20-6](#).

[IC 9-20-6-2 \(d\)](#) This subsection applies to the transportation of ocean-going containers that:
(1) have been sealed at the place of origin and have not been opened except by an agent of the federal government that may inspect the contents; and
(2) are being transported to or from a distribution facility.
The total gross weight, with load of a vehicle or combination of vehicles transporting an ocean-going container may not exceed ninety-five thousand (95,000) pounds.

[IC 9-20-6-2.1\(c\)\(2\)](#) Bulk Milk; Electric Co-op equipment; may, upon proper application in writing and upon good cause shown, grant a permit for transporting bulk milk or material, products, or equipment belonging to an electric cooperative that are necessary for the installation or maintenance of facilities owned or operated by the electric cooperative which allows for transportation of loads of up to one hundred thousand (100,000) pounds.

[IC 9-20-6-2](#). Transporting overweight divisible loads
upon proper application in writing and upon good cause shown, grant a permit for transporting overweight divisible loads.

[IC 9-20-6-9](#) Violation of permit regulations; permit not construed as defense to holder
Sec. 9. A permit issued under this article may not be construed as protection to or as a defense by a holder of a permit if the restrictions and rules to which the permit is subject are violated.

Once a permit has been violated, the operator of the CMV may be charged with violations of [IC 9-20-4-1](#) as well as violating the terms of a permit under [IC 9-20-6-11\(b\)](#). In the absence of a permit, the size/weight limitations govern the allowable weight of a vehicle.

[IC 9-20-6-11](#) Inspection of permits; violations of terms and conditions; liability for damages to highway; additional registration and licensing

Sec. 11. (a) A permit issued under this chapter shall:
(1) be carried in or on the vehicle or other object to which the permit refers; and
(2) be open to inspection by a police officer.
(b) A person may not violate the terms or conditions of a special permit.

Note: Permits are now allowed to be carried and presented to law enforcement electronically.

Bridge, Causeway and Viaduct Weight Restrictions (IC 9-20-7)

Provides that the Indiana Department of Transportation and a local authority with responsibility for the repair and maintenance of a bridge, causeway or viaduct may reduce the weight limits set for highways, heavy duty highways and extra heavy-duty highways if they determine that the maximum load is greater than the bridge, causeway, or viaduct can sustain without serious damage or with safety to the vehicle.

Penalties for exceeding the weight limit on a bridge, causeway or viaduct are the same as for operating an overweight vehicle upon a highway.

Exceptions to wight limits:

Auxiliary Power Unit (APU) (23 CFR 658.17)

Any vehicle that utilizes an auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling, may be allowed up to an additional 550 lbs. total in gross, axle, tandem, or bridge formula weight limits.

(1) To be eligible for this exception, the operator of the vehicle must be able to prove:

(i) By written certification, the weight of the APU; and

(ii) By demonstration or certification, that the idle reduction technology is fully functional at all times.

(2) Certification of the weight of the APU must be available to law enforcement officers if the vehicle is found in violation of applicable weight laws. The additional weight allowed cannot exceed 550 lbs. or the weight certified, whichever is less.

Natural Gas and Electric Battery Vehicles (23 CFR 127S)

A vehicle, if operated by an engine fueled primarily by natural gas or powered primarily by means of electric battery power, may exceed the weight limit on the power unit by up to 2,000 pounds (up to a maximum gross vehicle weight of 82,000 pounds).

DEPARTMENT OF REVENUE GENERAL OVERSIZE/OVERWEIGHT PERMIT PROVISIONS

Indiana Department of Revenue General Provisions of an Oversize/Overweight Vehicle Permit

Required Markings

- Oversize Vehicles must be marked on front and rear with a sign reading "OVER-SIZE LOAD."
 - The sign must be at least 18 inches high and between 6 to 8 feet long.
 - The letters must be black, 12 inches high, with a 2-inch stroke on yellow background.
 - Color combinations or wording approved by other states will be permitted, when trip originates outside Indiana.
- Vehicles must be marked with 2 red or orange flags, placed at the widest extremities of the vehicle or load.
 - Flags must be in good condition, plain or orange with no figures.
 - Flags must be 18 inches square and placed so that approaching traffic can see them.

Lighting

- All provisions of 49 CFR 393.11 apply, plus the following:
- Permitted vehicles must have low beam headlights on while transporting a load.
- Mobile homes and sectionalized buildings having widths of 12 feet 4 inches or more must be equipped with four high intensity, amber, flashing lights.
 - Two of these must be mounted on the front. Two must be mounted on the rear of the combination.
 - Lights mounted on the load must be placed at the outer edges and not be less than 6 feet above the roadway.
 - Front lights may be mounted on the towing vehicle at furthest extreme of any safety device, not extending beyond the mirrors, and must be double-faced lamps, visible both on front and rear.
 - Lights must be visible at 500 feet in normal sunlight.

Flagmen

- Flagmen will be provided by the transporting company at all locations needing such traffic control. Locations needing such flagmen include: encroachment into opposing traffic lanes and stops, or blockages of traffic locations where stops are not normally required by existing traffic control devices. More information about traffic control regulation may be found at 105 IAC 9-2.

Speed

- Any permitted vehicle over 85' long, or 10'6" wide, or above legal height may not exceed 55 miles per hour.

Blockage of Traffic

- Permitted vehicles must not block traffic at any time from use of the highway, including the loading and unloading of equipment.
- Permitted vehicles must not be parked either day or night on the shoulder or right-of-way.
- Permitted vehicles will use the highway shoulder only on those occasions necessary to allow for the safe unrestricted passage of oncoming/passing traffic.

Vehicle Operators

- Operators must be 18 years of age or older and hold a valid Indiana Chauffeurs License or Commercial Driver's License, whichever is applicable.
- Drivers must have the vehicle permit in possession during transport and must show permit, on demand, to any police officer, motor carrier inspector, or any authorized employee of the State of Indiana.
- The mover and/or owner of the vehicle and/or load will be held responsible in the event that it is necessary to remove any buildings, railings, or other structures from the highway. In the event that any buildings, railings, or other structures are damaged, the cost of the removal and/or damage will be the responsibility of the permit applicant.

Weather

- Permitted oversized vehicles are not allowed to operate during hazardous weather, road, or traffic conditions, and/or when visibility is less than 500 feet. Permitted vehicles may not operate when wind velocity exceeds 25 miles per hour.

Escort Vehicle(s) Requirements

- Permitted vehicles must have escorts when they exceed:
 - 12'4" in width, 110' in length or 14'6" in height
 - One escort vehicle must be in front when on undivided highway and in rear when on divided highways
 - If over 14'6" high, must have an escort with a height stick traveling in front of load
 - If between 14'4" and 17" wide, one rear escort on a dual lane divided highway and two escorts (front and rear) on all other roads.

- Escort vehicles must have a minimum of 4 wheels with a maximum gross registered weight of 11,000 lbs. Must have a flashing amber light mounted on top and an oversize load sign, which is visible to approaching traffic. Must have radio communication with permitted vehicle and/or load and may not be more than 500 feet from permitted vehicle and/or load.

Other Provisions

- This permit does not apply to any state roads or bridges that are closed for construction purposes, or to any roads or bridges that are posted for gross load limits, and/or any roads, structures, wires, etc., having a restricted height and/or width clearance that will not clear said load.
- This permit does not apply to I-65 or I-70 inside I-465.
- This permit does not apply to any county roads or city streets.
- Any violation of this permit shall automatically cause the permit to be void. Upon violation the police officer or motor carrier inspector will have the authority to withdraw your permit.
- All transporting vehicles must meet all safety requirements as set forth in Title 49, CFR (Code of Federal

Regulations).

- This permit does not cover license or other registration requirements.
- Prepass carriers must enter open scales when operating under an OS/OW permit.

Holiday Restrictions

- Permitted vehicles, except those issued Overweight Commodity or Bulk Milk permits, may not operate on state highways from 12:00 noon the last weekday preceding and continuing until ½ hour before sunrise on the day following: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving day and Christmas day.
- OVERWEIGHT COMMODITY and BULK MILK permits are exempt from travel restrictions. Vehicles with Overweight Commodity and Bulk Milk Permits are no longer subject to holiday travel restrictions and may travel continuously during holiday periods. Overweight Commodity Permits that are not subject to previous metal and agriculture permits applies to those vehicles with a permit to haul various commodities up to 120,000 lbs including Bulk Milk up to 154,000 lbs.

Hours of Operation

Up to 110’ long 10’ wide, 13’6” high, and under 200,000 lbs	Continuous travel 7 days a week.
Over 110’ long, 10’-14’4” wide, up to 15’ high	7 days a week (1/2 hr before sunrise - 1/2 hr after sunset)
Between 14’4” and 16’ wide	Monday - Friday (1/2 hr before sunrise - 1/2 hr after sunset)
Over 16’ wide, or over 15’ high, or over 200,000 lbs gross vehicle weight	Monday - Friday 8:30 am - 3:30 pm (other provisions may apply)
Up to 110 long, 11’6 wide, 13’ 6” high and 120,000 lbs (for paving equipment only to travel between jobsite(s) and home base with red/amber flashing light at widest point)	Monday-Friday (1 ½ hour before sunrise -1 ½ hour after sunset)
Permitted Mobile Homes and Sectionalized Buildings between 8’6” and 14’4” wide	Monday - Friday (1/2 hr before sunrise - 1/2 hr after sunset) Saturday (1/2 hr before sunrise - 12:00 noon)

Note to Enforcement Agencies: Advise the Indiana Department of Revenue as soon as possible after withdrawing this permit by calling (317) 615-7200

DETENTION AND IMPOUNDMENT OF OVERWEIGHT VEHICLES

Detention (IC 9-20-18-3)

An overweight vehicle must be detained until its weight is reduced or distributed to comply with the limitation involved. During detention, the vehicle must be kept in the custody of the apprehending officer and may only be moved at the officer's direction.

[IC 9-20-18-3](#)(a) and (b).

The operator may post bond as set by the Court. Once the bond has been posted and the vehicle weight reduced to the legal limit, the vehicle must be released by Court order.

[IC 9-20-18-3](#)(c).

Impoundment

If the bond is not posted, the Court may direct the apprehending officer to impound the property until bond has been posted or all fines and costs have been paid or stayed. [IC 9-20-18-3](#)(d). Impoundment of a portion of the cargo of an impounded vehicle is not authorized.

[IC 9-20-18-5](#).

Unauthorized movement of an impounded vehicle is a Class A infraction. [IC 9-20-18-4](#).

An impounding officer is required to give the operator of the overweight vehicle a reasonable opportunity to notify the shipper or person with monetary interest in the cargo or vehicle of the cargo location. [IC 9-20-18-6](#).

The Court must determine the extent of liability of the driver, carrier, shipper or other party shown liable. As a matter of defense, a party may show they could not reasonably have known the actual weight of the load or that they did not have access or control of the loading of the vehicle. However, if a person who is an owner, a driver, a carrier or a shipper specifically or directly orders or assigns a particular shipment to be loaded the person shall be considered to have had control of the loading and a showing of knowledge of the overweighted load affixes liability to the person. A person who has loaded a shipment has control of the loading and a showing of knowledge of the over weighted load results in liability to the person if they are self-employed. If the person loading a shipment is not self-employed, then liability affixes to the person's employer jointly and severally with the driver of an overweight vehicle. [IC 9-20-18-7](#).

An owner of a vehicle or combination of vehicles involved in a case who has been found jointly or severally liable, shall be given ninety (90) days to pay the liability assessed by the court. During the ninety (90) day period, the Court may continue the impoundment of the equipment until all fines and costs are paid. If the fines and costs are not paid within ninety (90) days, the Court may order the property sold to pay the fines and costs.

[IC 9-20-18-7](#).

Sale (IC 9-20-18-8)

An order of sale may include an apportionment of fines and costs among the parties and/or establish a civil right of recovery by the owner of the property to be sold against any other parties the Court finds liable for apportioned shares.

The procedure for sale is the same as for abandoned property. The impounding officer initiates the action necessary for the sale of the impounded property under the laws concerning the sale of abandoned vehicles. Expenses incurred in the storage and selling of a vehicle or combination of vehicles shall be deducted from the sale proceeds and any amount remaining shall be forwarded to the owner by registered mail. The person conducting the sale may give a bill of sale to a purchaser and the Bureau of Motor Vehicles may issue a certificate of title based on the bill of sale.

All sales are subject to all liens of record or recorded on the title and a mechanic's possessory lien.

PENALTIES

Court Proceedings and Statutory Exceptions and Defenses

Violations of size and weight limitations by operation of a vehicle or combination of vehicles ([IC 9-20-4](#) and [9-20-5](#)) or a garbage truck ([IC 9-20-11](#)) are a continuing offense. The venue for prosecution is in a county in which the unlawful operation occurred. Once a conviction or acquittal occurs in one county, a prosecution may not be brought in another county. [IC 9-20-18-1](#).

All violations under IC 9-20 except for weight violations of 5,000 pounds or more are Class C Infractions and, in addition to a fine, the Court may suspend the vehicle registration for a period not to exceed 90 days. [IC 9-20-18-12](#)(a) & (d).

[IC 9-20-18-12](#)(c) creates an exception from conviction applicable to all highways except interstate highways if the weight violation is less than 1,000 pounds. [IC 9-20-18-7](#)(b) establishes a defense if the party can show they could not reasonably have known the actual weight of the load or did not have access to or control of the loading of an over weighted load.

Weight violations greater than 5,000 pounds but less than 10,000 pounds are Class B Infractions. If the weight violation exceeds 10,000 pounds, the violation is a Class A Infraction. [IC 9-20-18-12](#)(b).

In all weight violation cases, the Court may recommend a driver's license suspension if the violation was committed knowingly. [IC 9-20-18-12](#)(e).

Penalty Chart

Infraction	Penalty Range
C	Fine: \$1.00 - \$500.00 Suspend vehicle registration 1 – 90 days Recommend license suspension (offense committed knowingly)
B	Fine: \$1.00 - \$1,000.00 Suspend vehicle registration 1 – 90 days Recommend license suspension (offense committed knowingly)
A	Fine: \$1.00 - \$10,000.00 Suspend vehicle registration 1 – 90 days Recommend license suspension (offense committed knowingly)

Notification to the Indiana Department of Revenue (IC 9-20-18-9(b))

Immediately upon conviction of a weight violation under IC 9-20-4-1(a), a certified copy of the court judgment of conviction must be sent to the Indiana Department of Revenue. The judgment must contain the:

1. name of the vehicle owner,
2. date of violation, and
3. amount of the fine imposed.

The Revenue Department is required to maintain a record of all convictions and commence administrative suspension hearings for multiple violations as provided under [IC 9-20-18-9\(b\)](#).

Administrative suspension hearings result upon certification of the required number of weight violation convictions. Vehicle use of Indiana highways and permits, registration certificates or certificates of authority issued to a person shall be suspended for convictions within a year as follows:

- | | |
|---|---------|
| 1. 5 th conviction | 5 days |
| 2. 10 th conviction | 10 days |
| 3. 15 th conviction | 30 days |
| 4. Each conviction > 15, an additional period of. | 5 days |

[IC 9-20-18-9\(a\)](#).

Once the Revenue Department receives the required number of certifications, a notice to appear and show cause why a suspension should not be assessed is sent by certified mail to the violator. The Department is required to issue a decision within 30 days of the hearing.

If a private carrier convicted of weight violations is not under the jurisdiction of the Department of Revenue, the Department certifies the convictions to the Bureau of Motor Vehicles once the required number of convictions has been received. The Bureau then issues the show cause notice to the violator and the Revenue Department conducts the suspension hearing and issues its determination. [IC 9-20-18-9\(c-f\)](#).

Unsecure Loads (IC 9-20-18-14)

Loads of logs, lumber, pipe, poles, tanks, boilers or other similar objects transported upon a public street or highway must be secured with metal chains, wire cables, steel strapping or logistic webbing of synthetic fibers identified concerning strength with compatible hardware to hold the load in place under ordinary traffic or road conditions. Loads or portions of a load longer than 10 feet must utilize at least 3 fasteners positioned in the middle and near the front and end of the load. A violation of this section is a Class C Infraction.

Civil Penalties Imposed by the Department of Revenue (IC 9-20-18-14.5)

The Indiana Department of Revenue may impose civil penalties with regard to violations after conducting an administrative hearing not to exceed:

1. \$500.00 for the first violation by a person who obtains a permit under IC 9-20 and commits a violation there under and \$1,000.00 for each subsequent violation, and
2. \$5,000.00 for each violation resulting from transportation of an oversize or overweight vehicle or load without a permit.

Where Does the Money Go?

Court judgments except for court costs from Infractions for violations of IC 9-20 are distributed to the Indiana highway fund. [IC 9-20-18-12](#)(f). Civil penalties imposed by the Department of Revenue are distributed to the Indiana motor carrier regulation fund. [IC 9-20-18-14.5](#)(a)(2).

INTERSTATE COMPACT APPLICABILITY (IC 9-20-18-16)

All criminal convictions, judgments for an offense or ordinance violations under IC 9-20 related to the use or operation of a motor vehicle and citations (any summons, ticket, or other official document issued by a police officer for a traffic violation containing an order that requires the motorist to respond) are subject to IC 9-28 concerning Interstate Compacts which provide for reciprocal enforcement of penalties and suspensions for violations committed outside the state of residence of the violator.

PROCEEDINGS CONCERNING OVERWEIGHT VEHICLES

Overweight vehicle charges are normally brought by complaint and summons and are subject to the same legal and procedural requirements as other Infractions unless otherwise specified by statute.

Pursuant to [IC 9-20-18-3](#), the vehicle rather than the driver is detained until bond is posted, the load is reduced to the lawful limit or final disposition of the case. The detained vehicle is kept in the custody of the apprehending officer and can only be moved by that officer or an order of the Court. Once bond is posted, the Court shall issue an order releasing the vehicle. [IC 34-28-5-7](#) to 13 permits a traffic violations clerk to handle these matters applying the court-adopted schedule of judgment amounts (first violations only) for the particular violation, including acceptance of payment by credit card. [IC 34-28-5-12](#) requires either the clerk or the officer writing the ticket to inform the person that an admission or plead of nolo contendere has the same effect as a court judgment and a record of the judgment will be sent to either the Indiana BMV or to the state from which the individual received his/her driving license.

[IC 34-28-5-15](#)(a) requires a Court to order restriction of disclosure of a person's records for those infractions that were not prosecuted, were dismissed, were adjudged to not have been committed, or those adjudications that were subsequently vacated. This subsection doesn't apply to deferred prosecutions.

[IC 34-28-5-15](#)(b) allows a person to petition the court for restriction of disclosure of records wherein the infraction was either deferred or the infraction was adjudicated as having been violated. [IC 34-28-5-15](#)(d) provides proper jurisdiction for filing; subsection (e) provides the time for filing the petition; and subsection (f) provides the required contents of a petition. The prosecuting attorney may oppose the petition and has thirty (30) days to file an opposition. [IC 34-28-5-15](#)(h). The court may summarily grant the petition, set it for hearing or summarily deny it. [IC 34-28-5-15](#)(i), (j), (k).

Pursuant to [IC 9-20-18-7](#), the Court must determine the extent of liability of the driver, carrier, shipper or other party shown liable. As a matter of defense, a party may show they could not reasonably have known the actual weight of the load or that they did not have access or control of the loading of the vehicle.

However, if a person who is an owner, a driver, a carrier or a shipper specifically or directly orders or assigns a particular shipment to be loaded the person shall be considered to have had control of the loading and a showing of knowledge of the overweight load affixes liability to the person.

A person who has loaded a shipment has control of the loading and a showing of knowledge of the overweight load results in liability to the person if they are self-employed. If the person loading a shipment is not self-employed, then liability affixes to the person's employer jointly and severally with the driver of an overweight vehicle.

OVERWEIGHT VEHICLES PROCEEDING CHECKLIST

1. Detention of overweight vehicle/citation issued and filed.
2. Initial appearance of person apprehended is conducted as for infractions.
 - a. Determine identity and address of vehicle owner.
 - b. Penalties: (*See Penalty Chart, supra*).
 - c. Cross reference with Indiana Judicial Center infraction guidelines.
3. Accept denial of violation (*See Order, ante*).
 - a. Order vehicle held by officer for reasonable period to permit bail.
 - b. Set bond for release of vehicle.
 - c. Determine impoundment of vehicle if bond not posted.
 - d. Release operator and load of overweight vehicle.
4. Accept admission to violation (*See Order, ante*).
 - a. Determine the offenses infraction class. (*See IC 9-20-18-12*)
 - b. Determine amount of judgment.
 - c. Apportion liability for fine among owner, operator or other person.
 - d. Determine location and custody of vehicle and schedule impoundment if fine not paid in reasonable time.
 - e. Send certified copy of judgment against owner and/or operator to the Department of State Revenue as required by IC 9-20-18-9(b).
 - f. If the fine and costs are not paid within 90 days of the date of judgment, the court can order the vehicle sold to pay the fines and costs. IC 9-20-18-7(e).

STATE OF INDIANA

IN THE _____ COURT

STATE OF INDIANA)

vs.) CAUSE NO.: _____ - _____ - IF - _____

_____)

ORDER DETAINING OVERWEIGHT VEHICLE

The State of Indiana appears by its Deputy/Prosecuting Attorney. The Defendant appears in person and/or by counsel and denies the allegations of the complaint alleging operation of an overweight vehicle in violation of IC 9-20-4-1. Pursuant to IC 9-20-18-3, it is, therefore ORDERED as follows:

1. The apprehending officer, _____ (name) of the (law enforcement agency) detain the vehicle or combination of vehicles in question at _____ (address, city, state) and retain the custody thereof until the bond designated in this order is posted.
2. The vehicle or vehicles shall not be moved except as directed by the apprehending officer or this court.
3. The weight of the vehicle or combination of vehicles in question shall be reduced or redistributed so that it complies with applicable laws and any bond shall be posted prior to release of the vehicle or vehicles in question.
4. Bond herein is set in the amount of \$ _____.
5. If bond is not posted by _____, 20____, at _____ o'clock A.M./P.M., the apprehending officer shall impound the vehicle or vehicles in question until the bond is posted or any judgment and costs are paid or stayed.
6. The detention of the vehicle or vehicles under this order does not apply to any cargo and the defendant is advised that it is his/her duty to notify the shipper or any other person or persons having a monetary interest in any cargo of the cargo's location. The apprehending or impounding officer shall give the defendant a reasonable opportunity to make such notification.

Further proceedings herein are scheduled for _____, 20____, at _____ o'clock A.M./P.M. before which time any pre-trial motions or other matters to be considered by the court before trial shall be filed. The Defendant is ordered to advise the owner and/or shipper of these proceedings since the court shall be determining the extent of liability of the driver, carrier, shipper or other parties shown to be liable.

Dated this _____ day of _____, 20____.

Judge, _____ Court

STATE OF INDIANA

IN THE _____ COURT

STATE OF INDIANA)

vs.)
_____)

CAUSE NO. _____ IF-

ORDER/JUDGMENT

This matter came on for hearing/trial upon the allegations of the complaint at which time the following persons appeared:

Driver: _____

Owner: _____

State of Indiana: _____

The court, having heard the evidence and testimony of the parties and being duly advised in the premises, now finds and adjudges that the Defendant(s) herein is/are liable to the State of Indiana, for violation of IC 9-20-4-1 in the amount of \$ _____ plus, costs of \$ _____

It is, therefore, ordered, adjudged and decreed that the vehicle or combination of vehicles operated by the Defendant and presently located at (address) _____ shall be detained in the custody of the apprehending officer and moved only as directed by said officer or in accordance with an order of this court. If the judgment and costs are not paid on or before _____, 20_____, the vehicle or vehicles shall be impounded by the apprehending officer until such judgment and costs are paid to the Clerk of this Court. No part of the cargo of the vehicle or vehicles is included in this Order and Judgment and the Defendant shall notify the shipper or any person(s) having a monetary interest in any cargo contained in the vehicle or vehicles of this Order.

The judgment and costs shall be paid within thirty (30) days of the date of this judgment; provided, however, an owner determined to be liable shall have ninety (90) days to make such payments. If the judgment and costs not be paid within 90 days, the court shall order sale of the vehicle or vehicles in accordance with IC 9-20-18-7 and IC 9-20-18-8 and order the proceeds applied to the expenses of impoundment and sale and the judgment and costs of this action.

The clerk is directed to forward a certified copy of this judgment to the Commissioner of the Department of State Revenue.

Dated this _____ day of _____, 20_____ .

Judge, _____ Court

COMMERCIAL DRIVER'S LICENSE (CDL)

Indiana Commercial Driver's License (CDL)

Indiana Base License

Driver's License

For-Hire Endorsement

Commercial Vehicle Type

**Class "A" CMV –
Combination Vehicle**

(GCVWR > 26,001 lbs. if
towed vehicle > 10,001 lbs.)

**Class "B" CMV – Heavy
Straight Vehicle**

(GVWR > 26,001 lbs. if towed
vehicle is < 10,000 lbs.)

**Class "C" CMV – Small
Vehicle**

(designed to transport 16 or >
passengers (driver included)
OR

used in the transportation of
hazardous materials per 49
CFR 383.5)

Endorsements

H - Hazardous Materials

N – Tank (gas/liquid)

P – Passenger Transport

S – School Bus

**T – Combination Vehicles
with double or triple trailers**

**X – Tank with Hazardous
Materials**

V- No Hazardous Materials

Restrictions

No Air Brakes Intrastate Only (CDL)

Glasses/Contact Lens Outside Rear View Mirror Daylight Only

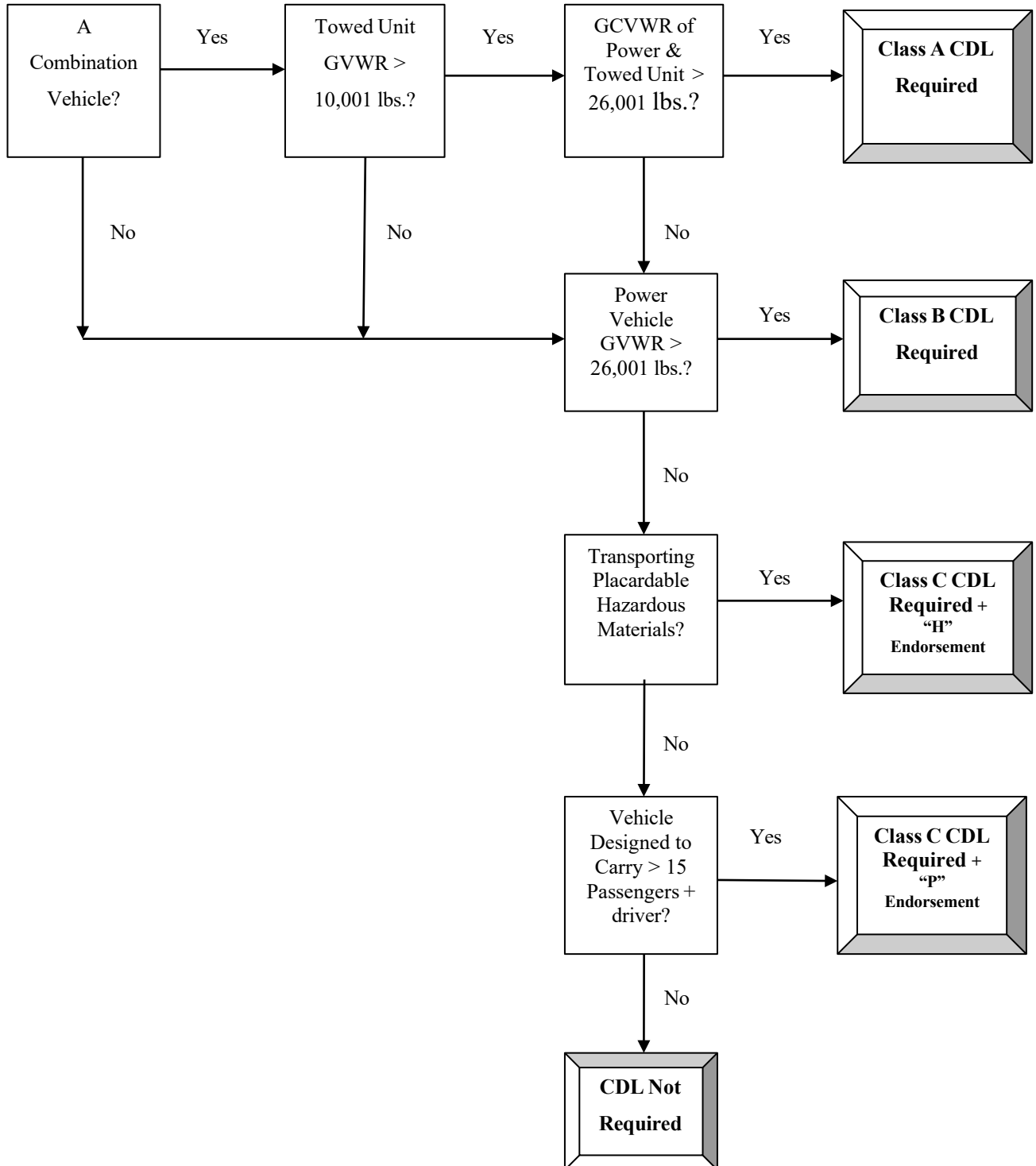
Power Steering Photo Exempt BMV Special

Medical Condition

Seat Belt Exemption

IS A COMMERCIAL DRIVER'S LICENSE REQUIRED?

START



FEDERAL MOTOR CARRIER SAFETY ACT

In order to foster greater safety with regard to the operation of commercial motor vehicles engaged in interstate commerce upon the highways in the United States, Congress imposed various measures applicable to “commercial motor vehicles” and the licensing of those who operate them.

Federal law controls the definition of “commercial motor vehicles” and the state licensing requirements for issuance of a “commercial driver’s license” (CDL) for the operation of such vehicles. States are mandated to establish certain offenses, penalties and license suspensions and revocations for those possessing a CDL. 49 USC 31311(a). The federal legislation with respect to operation of a commercial motor vehicle establishes a system of violations and penalties that is far more stringent than for those who operate a motor vehicle with a standard Driver’s License.

For all parts of the Federal Motor Carrier Safety Regulations (FMCSRs) except:

- (1) Part 40 (Transportation Workplace Drug and Alcohol Testing Procedures),
- (2) Part 382 (Controlled Substance and Alcohol Use and Testing) and
- (3) Part 383 (CDL Standards, Requirements and Penalties);

the general or base definition of a “commercial motor vehicle” is stated in Part 390 (Federal Motor Carrier Safety Regulations-General). It defines a “commercial motor vehicle” as any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

Federal Motor Carrier Safety Regulations, Part 390.5

When Congress enacted the CDL legislation in 1992, it chose to regulate only drivers of vehicles over 26,001 pounds and those which transport 16 or more passengers or a placardable amount of hazardous materials. In order to accomplish this purpose, Congress

created Part 383 for CDL licensing requirements and Part 382 for the drug testing of CDL holders to ensure they only covered these larger vehicles. These provisions brought to life a second and more restricted definition of “commercial motor vehicle” as:

a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

1. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds,
2. has a gross vehicle weight rating of more than 26,000 pounds,
3. is designed to transport more than 16 passengers, or
4. is used, regardless of size, in the transportation of hazardous materials.

Federal Motor Carrier Safety Regulations, Parts 382.107, 383.5.

Misconceptions arose throughout the state and nation when CDLs came into effect that the rules had changed to define a CMV at the 26,001 threshold. However, the CMV regulations, including Parts 171-180 (Haz-Mat) and 390-397 apply at the 10,001 pound level and the drug testing and CDL requirements apply only at the 26,001 pound threshold.

As used in both definitions, the term “commerce” constitutes any trade, traffic or transportation within the jurisdiction of the United States between a location in a state and a location outside of the state including locations outside the United States including any trade, traffic or transportation within a state which affects such inter or extra state activity. Federal Motor Carrier Safety Regulations, Parts 382.107, 383.5.

What is a Commercial Driver License (CDL)?

In Indiana, a CDL is not a separately issued license but rather a series of endorsements added to a base License (Driver) that is required of all who operate a motor vehicle. The endorsements vary depending upon the nature of the commercial vehicle operated and the cargo an operator must haul.

In order to apply for a CDL, special conditions apply:

1. Transportation of Persons– the applicant must be 21 years of age and have at least 1 year of driving experience.
2. Transportation of Property– the applicant must be at least 18 years of age and have at least 1 year of driving experience.

In order to obtain a CDL, an applicant must:

1. Hold a valid **Indiana** driver's license (this license, and any other license the driver may have that was issued by another jurisdiction, must be surrendered to the BMV at the time the CDL is issued).
2. Have a valid U.S. Social Security Card (copies of a card are not considered valid and are not accepted),
3. Pass a DOT physical examination prior to applying for a CDL and every two years thereafter,
4. Obtain a commercial driver learner permit from the Indiana BMV by taking and passing various written knowledge tests based upon the type of vehicle to be driven,
5. After obtaining the CDL permit, the driver must take a skills test in the type of vehicle the driver wants to be licensed to drive. This test must be taken at a state test site and consists of three parts.
6. After passing all the tests, the driver needs to take his/her CDL permit, test certifications and DOT/CDL physical examination documents to the BMV.

Indiana Bureau of Motor Vehicles –[Commercial Driver License Manual](#) (2005 CDL Testing System (August 2017) (last visited August 12, 2020).

Physical examinations are required every two years to maintain the license. Indiana now requires the driver to have a long form physical DOT/CDL on file with the CDL Medical Division. The form can be obtained at any Indiana license branch. The driver must also sign a medical release of information for the Indiana Dept. of Revenue and provide the physicians' address, phone number and state license number. The driver must have a copy of the medical examiner's certificate with him/her while driving any Commercial Motor Vehicle (CMV).

Beginning on January 30, 2015 through June 22, 2025 a CDL driver who has submitted their physical to the State documenting that they meet the physical qualification requirements no longer needs to carry on their person the medical examiner's certified for more than 15 days after the date it was issued. On or after June 23, 2025, a CDL driver who has a current medical examiner's certificate documenting that they meet the physical qualification requirements no longer needs to carry on their person the medical examiner's certificate.

However, a CDL driver who has obtained a medical variance from the physical qualifications must continue to have in their possession the original or copy of the medical variance.

In order to obtain a CDL learner permit, an applicant must:

1. Be at least 18 years old to transport property within state lines, and at least 21 years old to transport people;
2. Hold an **Indiana** driver's license for at least one year;

3. Pass written tests for each vehicle type:
 - a. CDL drivers: General knowledge test
 - b. School Bus drivers: School Bus endorsement test and passenger transport test
 - c. Bus drivers: Passenger transport test
 - d. Vehicle with air brakes: Air brakes test
 - e. Combination of vehicles: Combination vehicle test
 - f. If required to transport hazardous material: Hazardous material test
 - g. If required to transport liquids in bulk: Tanker test
 - h. If required to pull double or triple trailers: Doubles/triples test
4. Present documents of identification proving identity, Social Security number, and Indiana Residency.
5. A permit is valid for six months.

Bureau of Motor Vehicles - Obtaining a [CDL Learner permit](#), (last visited August 12, 2020).

Holders of CDL learner permits (CDLPs) are subject to the same penalties for driving offenses as those holding a CDL. FMCSR §383.51.

Compliance with Federal Motor Carrier Safety Act

[IC 9-24-6.1](#) et seq and 140 IAC 7-3 et seq for provisions incorporating 49 CFR 383-399; 49 USC 31311 governs state's role in complying with Commercial Motor Vehicle Operations. 49 CFR 383.51 includes:

1. Creates disqualification periods upon conviction of a "serious driving offense" while operating a commercial motor vehicle,
2. Defines "disqualifying offenses" and
3. Establishes periods of disqualification for operation of a commercial motor vehicle:
 - a. One year
 - b. Three years
 - c. Operation in violation of an out-of-service order
 - d. Lifetime disqualification and
 - e. Hazardous materials endorsement revocation.

Use of Seat Belts in a Commercial Motor Vehicle

Drivers. No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly.

Passengers. No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has seat belt assemblies installed at the seats for other occupants of the vehicle unless all other occupants are properly restrained by such seat belt assemblies.

Indiana law by reference incorporated this federal regulation under [IC 8-2.1-24-18](#). All law enforcement officers certified to enforce the Federal Motor Carrier Safety Regulations must cite a violator driving a Commercial Motor Vehicle under [IC 8-2.1-24-18](#). A law enforcement officer that is not certified to cite federal regulations must cite a Commercial Motor Vehicle driver under [IC 9-19-10-2](#).

Example:

CMV driver/passenger is cited for seat belt violation by certified law enforcement officer. Officer cites seat belt violation under [IC 8-2.1-24-18](#). A violation of [IC 8-2.1-24-18](#) is a class B infraction. Both civil penalties and costs may be collected by court.

CMV driver/passenger is cited by non-certified officer. Officer cites violator under [IC 9-19-10-2](#): Up to a \$25.00 judgment (“fine”) can be collected by court. Court costs may not be assessed against the violator.

Specialized Driving Privileges (formerly Hardship/Probationary/Restricted Licenses)

The FMCSA does not restrict a CDL holder’s right to operate a non-commercial vehicle. Thus, specialized driving privileges may be granted with regard to a driver’s Driver License if otherwise allowed by Indiana law.

Consistent with FMCSA requirements, [IC 9-30-16-3\(g\)](#) prohibits the issuance of Specialized Driving Privileges for CDL drivers to operate a commercial motor vehicle.

Gibson v. Hand, 756 N.E.2d 544 (Ind. Ct. App. 2001).

Administratively suspended for a chemical test failure, Gibson obtained a court order for issuance of a restricted license to operate a commercial motor vehicle. Issuance of the restricted license was overturned on appeal with the observation that a restricted operator’s license would have been authorized as long as it did not grant permission to

operate a commercial motor vehicle. See also *Indiana Bureau of Motor Vehicles v. Orange*, 889 N.E.2d 388, (Ind. Ct. App. 2008).

Silverman v. Fifer, 837 N.E.2d 186 (Ind. Ct. App. 2005).

Fifer's license was suspended for a breath test refusal, and the Court ordered issuance of a hardship license under IC 9-24-15-6.5. The order was overturned on appeal because it effectively granted Fifer a hardship CDL.

Indiana Bureau of Motor Vehicles v. Orange, 889 N.E.2d 388 (Ind. Ct. App. 2008).

Orange was convicted of OWI involving a non-commercial vehicle and was granted a probationary license to drive to and from work (but not in his work) in accordance with his plea agreement. The order was upheld because the probationary license did not authorize operation of a commercial motor vehicle and the BMV could readily issue the license with specified restrictions as with hardship licenses.

Note – An OWI conviction and a test refusal and a variety of other offenses automatically result in a varied mandatory period of CDL disqualification depending upon the vehicle driven and prior convictions. See the “CDL Penalty Charts for Violations in 49 CFR 383.51.

Commission of a Felony while Operating a Vehicle

Commission of a felony while operating a motor vehicle has a substantial impact upon a CDL license holder regardless of whether the vehicle was a commercial vehicle or not. Every offense must be reported pursuant to the FMCSA because it results in a period of disqualification ranging from one year to life depending upon vehicle type, prior offenses and whether the offense involved a controlled substance.

Impact of non-disqualifying offenses on CDL license:

CSA – Compliance, Safety, Accountability

Carrier Safety Measurement System (SMS)

CSA is the Federal Motor Carrier Safety Administration's (FMCSA) safety compliance and enforcement program, which holds motor carriers and drivers accountable for their safety on our Nation's roads. CSA affects carriers subject to the Federal Motor Carrier Safety Regulations, carriers transporting passengers or cargo in interstate commerce, and Hazardous Materials carriers operating in intrastate commerce. CSA consists of several key components:

1. The Safety Measurement System (SMS) is FMCSA's system for identifying unsafe carriers that should receive interventions. The SMS allows FMCSA, law

enforcement, and motor carriers to see a comprehensive profile of safety issues. The SMS automatically identifies carriers that pose the greatest safety risk so that resources can be prioritized.

2. The safety interventions include tools to bring carriers more efficiently and effectively into compliance.

Carrier Safety Measurement System (SMS)

The SMS assigns violations to 7 BASIC categories and points are assigned to the motor carrier(only) based solely on inspection and crash data. This allows FMCSA to identify motor carriers that are at higher risk in specific categories and target them for a 'safety intervention' or focused review instead of conducting full Compliance reviews. This allows FMCSA to interact with more carriers before they become an imminent safety hazard.

Since motor carriers know the point values for various violations, when a driver turns in an inspection with violations, they are telling the drivers they have been assessed points, but the points count towards the Motor Carrier only. Motor Carriers encourage drivers with citations to contest citations in order for the points against the Carrier to be reduced or eliminated, hopefully avoiding a focused review.

Pre-Employment Screening (PSP)

PSP is a Federal Motor Carrier Safety Administration program mandated by Congress that is designed to assist the motor carrier industry in assessing individual drivers' crash and serious safety violation history as a pre-employment condition. The program is voluntary and is not part of the Compliance, Safety, Accountability program.

Motor carriers may request driver information for the purpose of pre-employment screening. The driver must provide written consent. Individual drivers may request their own driver information record at any time. The information will be retrieved from the Motor Carrier Management Information System (MCMIS). Electronic profiles contain five years of crash data and three years of inspection data; however, MCMIS does not include conviction data.

The PSP information is derived from roadside safety inspections, and FMCSA 'Reportable Crashes' (CMV crash involving a Fatality, someone is provided Immediate Medical attention, or any involved vehicle is towed due to disabling damage). There is no inclusion of citation or warning data in the PSP.

The PSP does not show or aggregate 'points' for violations for a CMV driver, it only provides a list of those violations identified during a roadside safety inspection.

An adjudication of an associated citation impacts the drivers PSP in the following manner:

Conviction/Fine Paid	Violation retained on the PSP
Conviction of different charge	Violation retained w/indicator of conviction of a different charge
Dismissed/Not Guilty	Violation removed from the PSP

Note: Citations received that are not documented on a roadside safety inspection report are not reported to FMCSA and are not included on a drivers PSP.

More information on the PSP can be found at [Federal Motor Carrier Safety Administration help Center](#), and then selecting Drivers under the Search by Topic menu.

CDL PENALTY CHARTS FOR VIOLATIONS COMMITTED IN INDIANA

NOTE: IC 9-24-6.1 *et seq.* does not apply to a motor vehicle or an operator of a motor vehicle that is not a commercial motor vehicle (CMV). See also 140 IAC 7-3 *et seq.* The controlling law is 49 CFR 383.51

Major Offence Disqualifications – 49 CFR 383-51

CDL Driver Operating Commercial Vehicle				CDL Driver Operating Non-Commercial Vehicle (Disqualification relates to Driver's ability to drive a CMV (49 CFR 383.51))	
Offense	1st Conviction	1st Conviction (HazMat cargo)	2nd Conviction (any combination)	1 st Conviction	2 nd Conviction (any combination)
OWI (IC 9-30-5-1(a)) (IC 9-30-5-2(b))	1 year	3 years	Life	1 year	Life
Operating w/ Elevated BAC > 0.04 < 0.08 (IC9-24-6.1-6)	1 year	3 years	Life	Not Applicable	Not Applicable
OWI (cont'd substance) (IC 9-30-5-1(c))	1 year	3 years	Life	1 year	Life
OWI Test Refusal (IC 9-30-6)	1 year	3 years	Life	1 year	Life
Leaving Accident Scene (IC 9-26-1)	1 year	3 years	Life	1 year	Life
Vehicle use in felony (non-cont'd substance)	1 year	3 years	Life	1 year	Life
Vehicle Use in felony (cont'd substance) (IC 35-48)	Life w/o 10-year reinstatement	Life w/o 10-year reinstatement	Life w/o 10-year reinstatement	Life w/o 10 year reinstatement	Life w/o 10-year reinstatement

Operating a CMV while disqualified or CDL revoked/suspended/canceled (49 CFR 383.51)	1 year	3 years	Life	Not Applicable	Not Applicable
Negligent Operation Causing Death (49 CFR 383.51)	1 year	3 years	Life	Not Applicable	Not Applicable

Serious Traffic Offenses- 49 CFR 383.51

CDL Driver Operating Commercial Vehicle			CDL Driver Operating Non-Commercial Vehicle (Disqualification relates to Driver's ability to drive CMV) (49 CFR 383.51)		
Offense	Second Conviction w/in 3 years of a listed Offense	Third or subsequent Conviction w/in 3 years of any listed Offense	Second Conviction w/in 3 years of any listed Offense	Third or subsequent Conviction w/in 3 years of any listed Offense	
Speeding - 15 mph or >	60 days	120 days	60 days	120 days	
Reckless Driving	60 days	120 days	60 days	120 days	
Improper/Erratic Lane Shift	60 days	120 days	60 days	120 days	
Following Too Closely	60 days	120 days	60 days	120 days	
State/Local Traffic Control	60 days	120 days	60 days	120 days	
Operating CMV w/o CDL	60 days	120 days	Not Applicable	Not Applicable	
Operating CMV w/o Possession of CDL	60 days	120 days	Not Applicable	Not Applicable	

Driving CMV w/o Proper CDL Class or Endorsement	60 days	120 days	Not Applicable	Not Applicable
Texting or using hand-held mobile device while driving	60 days	120 days	Not Applicable	Not Applicable

Railroad – Highway Crossing Offenses –

(while operating a CMV)

Offense	1st Conviction	2nd Conviction w/in 3 years	3rd or subsequent Conviction w/in 3 years
Stop Not Required - failure to slow and check that tracks are clear (IC 9-21-5-4) (IC 9-21-8-39) (IC 35-44.1-2-13)	60 days or >	120 days or >	1 year or >
Stop Not Required - failure to stop before reaching crossing when tracks not clear (IC 9-21-4-16) (IC 9-21-8-39)	60 days or >		1 year or >
All drivers whether or not stop required - stopping in a railroad crossing (IC 9-21-8-50)	60 days or >	120 days or >	1 year or >
Stopping in railroad crossing due to insufficient undercarriage clearance (IC 9-21-8-50) (IC 35-44.1-2-13)	60 days or >	120 days or >	1 year or >
Failure to obey crossing traffic control signal or directions of official (IC 9-21-8-1)	60 days or >	120 days or >	1 year or >

Violation of Out of Service Orders -

Violation	1st Conviction	2nd Conviction w/in 10 years	3rd or > Conviction w/in 10 years
Driver/Vehicle Out of Service Order with Non HazMat Cargo	180 days to 1 year	2 years to 5 years	3 years to 5 years
Driver/Vehicle Out of Service Order with Placard Required HazMat Cargo	180 days to 2 years	3 years to 5 years	3 years to 5 years
Driver/Vehicle Out of Service Order with Vehicle designed to carry more than 15 passengers including the driver	180 days to 2 years	3 years to 5 years	3 years to 5 years

Examples Of Fines And Fees Collected For Commercial Vehicle Violations

Example #1

COMMERCIAL VEHICLE VIOLATIONS

No Annual Inspection	\$147.00
Log Book Violation	\$147.00
Possession Of Radar Detector	\$147.00
Unsafe Vehicle Conditions	\$147.00
Equipment Violation	\$147.00
No Medical Certification	\$147.00
Seat Belt Violation (Class B)	\$147.00

*Speeding Violations Charge as a Normal Speeding Violations

OVER WEIGHT VEHICLES

Over Plate Weight	\$147.00
Over Gross, Tandem or Single Axle Weight	
1,000-1,999	\$139 + 0.02 cents per lb
2,000-2,999	\$139 + 0.04 cents per lb
3,000-3,999	\$139 + 0.06 cents per lb
4,000-4,999	\$139 + 0.08 cents per lb
5,000 or more over	\$139 + 0.10 cents per lb

Example #2

COMMERCIAL VEHICLE VIOLATIONS

Overweight	\$139.00 plus
1 – 5,000 lbs. over	\$500.00
5,001 - 10,000 lbs. over	\$0.10 per lb
10,0001 over	\$0.15 per lb
FMCSR - Company Violations	\$200.00
FMCSR - Driver Violations	\$200.00
Fuel Tax Permits	\$100.00
Speeding Violations:	
1 - 15 MPH over Limit	\$150.00
16 - 20 MPH over Limit	\$200.00
21 - 25 MPH over Limit	\$300.00
Other Moving Violations	\$150.00
Seat Belt Violations	\$100.00

Example #3

COMMERCIAL VEHICLE OVERWEIGHT VIOLATIONS

0-5,000 pounds over	\$500.00
5,001-10,000 pounds over	\$1,000.00
More than 10,001 over	\$0.20 per lb

NOTE: These are some examples of how fines and fees are collected by different courts for Commercial Motor Vehicle violations. The fee structure for Oversize and Overweight Commercial Vehicle violations is not mandated by State Statute. Any of the examples above can be used as a guideline to help determine how courts collect fines and fees for Commercial Motor Vehicle violations.

Diversion Programs or Agreements to Withhold Prosecution

As required by FMCSA, [IC 33-39-1-8](#) prohibits use of programs that mask convictions, defer imposition of judgment, or diversion programs for a driver holding a CDL who has been charged with an offense within the purview of the FMCSA. This applies to any vehicle the CDL holder is driving at the time of the offense. Federal Motor Carrier Safety Act, Part 384.226, see also IC [34-28-5-1\(g\)](#) and [IC 34-28-5-1\(f\)](#).

Federal regulation of commercial motor vehicles began in 1986 when Congress passed the Commercial Motor Vehicle Safety Act. That Act was amended in 1999 by the Motor Carrier Safety Improvement Act, which created the Federal Motor Carrier Safety Administration, to monitor and regulate what is sometimes referred to as the trucking industry. Indiana has implemented the federal regulations and requirements by statute ([I.C. 9-24-6.1-2](#)), and the burden primarily falls on state law enforcement, prosecution, and administrative personnel to properly enforce those laws and regulations. But judges and courts are not without responsibility. Many traffic citations issued in Indiana are resolved without a court appearance or direct court involvement by way of a violation bureau or prosecutorial deferral program. As a result, some judges may leave traffic case processing in the hands of others. After all, the prosecutor's office and clerical staff handle the traffic infraction docket effectively and efficiently, and, because the process isn't broken, a busy judge may consider it ill-advised to get involved. However, when it comes to commercial motor vehicles and holders of a

commercial driver's license, the adjudicatory process in Indiana may not be broken, but it merits attention from judges.

Prohibition against masking:

49 C.F.R. Sec. 384.226 provides:

“The State must not mask, defer imposition of judgment, or allow an individual to enter a diversion program that would prevent a CLP (Commercial Learners Permit) or CDL (Commercial Driver's License) holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight or vehicle defect violations) from appearing on the Commercial Driver's License Information System (CDLIS) driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.”

As noted previously, many traffic citations in Indiana are disposed of through the Prosecutor's Deferral Program which is authorized by IC 34-28-5-1. Importantly, that statute is not applicable to offenses or violations under IC 9-24-6.1-2 by which Indiana adopted the federal regulations and requirements for CDLs and CMVs. That is, a driver holding a CDL, or a driver of a commercial motor vehicle, is **not** permitted to participate in the Prosecutor's Deferral Program.

Fortunately, most prosecutor's offices in Indiana do not allow CDL/CMV citations to be handled through a prosecutor's deferral program. However, the prohibition against masking extends to many other contexts and applies systemwide. For example, if an individual appears in court and explains that a conviction on the charge will cause the loss of a CDL, resulting in the inability to provide for their spouse and/or dependents, it is improper for either the prosecutor or the judge to extend mercy by holding the citation for later disposition/dismissal, with or without conditions.

Masking sometimes occurs because prosecutors and judges misunderstand how the term conviction is defined for CDL/CMV purposes. There are numerous case disposition methods in the criminal system that occur without the entry of a conviction to a charge as filed. A conviction for CDL/CMV purposes includes an unvacated adjudication of guilt but it also includes those instances in which there has not been a formal guilty plea or guilty finding at trial, IF the case is deferred, diverted, delayed, and dismissed.

Even if a CDL driver is disqualified at the time of a traffic stop, they are considered to have a CDL and cannot enter into Diversion Programs or Agreements to Withhold Prosecution. This also applies to a CDL driver who has voluntarily surrendered their CDL after the date of the citation or charge, or is operating a non-commercial vehicle. (Please see Caselaw section below)

Prosecutor's discretion and due process

The masking prohibition is not designed to curtail the prosecutor's discretion or to prohibit legitimate plea bargaining when the law and facts permit. Not every CDL/CMV citation issued is supported by sufficient evidence, and a prosecutor may determine to dismiss a citation or allow a plea to another offense, based on the evidence and circumstances of the case. However, it is contrary to the intent of the anti-masking provisions in

the MCSIA for CDL/CMV violations to be dismissed or amended to a less serious charge simply to avoid the ramifications of the federal regulations.

CDL/CMV laws do not mean that every person cited or charged is guilty. Holders of a CDL and operators of commercial motor vehicles do not waive all due process rights, but the process afforded to CDL holders and CMV operators is not the same as for other drivers. Driving is a privilege, and those who choose to operate any vehicle on the public roadway are bound by various regulations and laws. And because of the dangers inherent in the operation of large trucks, buses, and other commercial vehicles, those who wish to obtain a CDL and operate those vehicles are obligated to comply with several additional requirements imposed in the name of public safety.

Caselaw

CDL/CMV requirements are determined at the time of the citation or charge and are not limited to when the CDL holder is operating a commercial motor vehicle. If the driver has a CDL on the date of the charge, the no masking limitation is applicable—even if the driver is operating a personal vehicle.

The federal mandates cannot be avoided by the driver surrendering the CDL after the citation or charge. In the case of *State v. Hargrave*, 51 N.E.3d 255 (Ind. Ct. App. 2016), Nicholas Hargrave, who possessed a CDL, was charged with operating a vehicle while intoxicated in his private vehicle. Following the charge, Hargrave surrendered his CDL and subsequently pleaded guilty. The court withheld judgement and ordered Hargrave to complete a diversion program after which the charge would be dismissed. The Court of Appeals found that the trial court erred in deferring judgment because Hargrave held a CDL at the time of the offense, noting, “allowing Hargrave to surrender his license, avoid his conviction, and possibly return to driving professionally with no record of the offense is precisely what the anti-masking law is designed to prevent.”

Summary

The FMCSA strives to make the highways safer by reducing crashes, injuries, and fatalities involving large trucks and buses by ensuring that only qualified drivers receive and retain a CDL. To further that mission, the Commercial Driver’s License Information System assists states in maintaining a, “one license, one record,” approach for CDL holders, and the entire regulatory scheme underscores the importance of complete and accurate records.

Judges, prosecutors, and other stakeholders should not need a financial incentive to comply with the law, but it is pointed out in the *Hargrave* case that a state in violation of the CDL/CMV regulations faces a loss of federal highway funds. While awareness of the regulations, including the anti-masking provision is increasing, the FMCSA audit of state activity shows that Indiana still has some room for improvement.

The National Traffic Law Center (NTLC) published a document “MASKING QUICK REFERENCE GUIDE” of a few examples of what is and is not considered masking a CDL violation.

MASKING QUICK REFERENCE GUIDE

*DRIVER CHARGES	PROSECUTOR ACTIONS	COURT ACTIONS	MASKING?	EXPLANATION
DUI	Prosecutor allows a plea conditioned upon alcohol treatment and adjourns case 6 months.	Court allows non-adjudication. Non-adjudication is a process by which after a guilty plea or trial, the court withholds acceptance of the plea and sentence thereon, pending successful completion of any conditions imposed by the court. Upon successful completion of said conditions, the case is dismissed.	Yes.	Non-adjudication for CDL or CLP (Commercial Learner's Permit) holders is prohibited. These actions prevent the reporting of violations and hides a driver's true driving history.
Using Cellphone While Driving	No reduction offered. Driver pleads as charged.	Court allows withdrawal of plea and driver enters new plea to a lesser charge, because driver complains his/her CDL will be revoked if convicted of the original citation.	Yes.	If no legal basis exists to the withdraw plea and enter a lesser plea, and withdrawal of the plea was based solely on sympathy, this is Masking.
Failure to Yield	None.	Court convicts but allows traffic school in lieu of reporting conviction.	Yes.	This practice is called diversion. Allowing driver, after adjudication of guilt to perform actions that will result in conviction being reduced/dismitted is prohibited.

This list is not meant to be exclusive. State terminology may differ. Every state that accepts federal highway funding is required to comply with 49 CFR 384.226, the “Prohibition on Masking Offenses.” Both federal and state specific CDL Laws should be consulted when dealing with CDL and/or CMV cases.

||Additional CDL Resources||

National Traffic Law Center:

[Federal Motor Carrier Safety Administration](#)

National Judicial College:

[National Center for State](#)

Courts:

[National Center of State Courts](#)

American Association of Motor Vehicle Administrators:

[AAMVA Organization](#)