



OOIDA

Owner-Operator Independent Drivers Association



Prohibition on Coercion Rulemaking

Meeting with OIRA

February 13, 2014

What is coercion in trucking?

Motor Carrier

- ▶ Demanding the driver log on-duty time as "off-duty" to allow for increased driving time.
- ▶ Demanding the driver drive when they are fatigued or in poor weather.
- ▶ Submitting false and negative information into a former driver's DAC report (i.e. blackballing the driver).
- ▶ Harassment through the EOBR/fleet management system.
- ▶ Submitting (and threatening to submit) false and misleading employment histories to consumer reporting agencies (Hireright.com) – thereby damaging, if not destroying, a driver's future employment prospects.
- ▶ Setting appointment times, enforceable through economic and other penalties, that cannot safely be completed under the Hours of Service Rules (requiring speeding or operating beyond the permitted HOS).

Shipper and/or Receiver

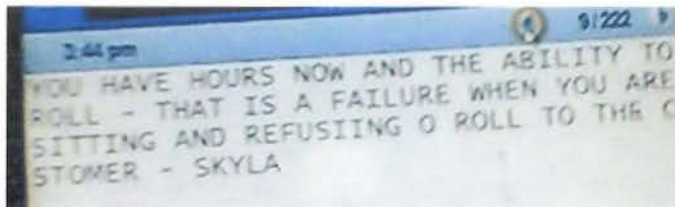
- ▶ Loading the driver overweight and threatening to pull the load from the driver if they do not haul it.
- ▶ Detaining the driver so long that they run out of "on-duty" time, but then requiring them to leave the property, violating HOS rules.
- ▶ Setting appointment times, enforceable through fines, that require the driver to speed or take other unsafe actions.

There is significant interplay between the two...

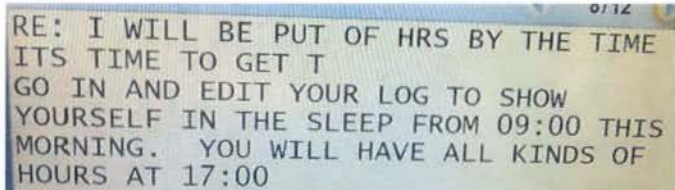
A motor carrier may force the driver to exceed posted speed limits or manipulate the driver's record of duty status - either paper log or even an ELD - to meet an appointment schedule demanded by a shipper or receiver.

Understanding where coercion takes place

Typically oral, in person or on the telephone. But they can be by email or text, and over the motor carrier's EOBR (fleet management system).



2:44 pm 9/22
YOU HAVE HOURS NOW AND THE ABILITY TO ROLL - THAT IS A FAILURE WHEN YOU ARE SITTING AND REFUSING TO ROLL TO THE CUSTOMER - SKYLA



07/12
RE: I WILL BE PUT OF HRS BY THE TIME ITS TIME TO GET T GO IN AND EDIT YOUR LOG TO SHOW YOURSELF IN THE SLEEP FROM 09:00 THIS MORNING. YOU WILL HAVE ALL KINDS OF HOURS AT 17:00

On driver employment histories (Hireright.com consumer reports) that report misleading notations such as "late pick-up/delivery" even if to deliver on-time would have been unlawful or an HOS violation.

Motor carriers feel free to use such codes to coerce drivers even when the motor carrier demanded the reported action.

FMCSA's Ferro:

When "a shipper or receiver or another party is exercising some sort of leverage or coercion through economic withholding or perhaps even physical harm..."

Coercion has real safety & economic costs...

Increased Crash Risk

- ▶ Placing the CMV operator under additional stress.
- ▶ Subjecting the CMV operator to greater levels of fatigue.
- ▶ Forcing the CMV operator to operate unsafe equipment.

Negative Economic Consequences

- ▶ Hides supply chain inefficiencies, leading to greater costs for consumers.
- ▶ Negatively impacts driver pay, especially when available driving time is impacted.
- ▶ Increases driver turn-over.

Safe drivers who refuse to violate the rules, and displease their motor carrier or the customer are driven out of the industry.

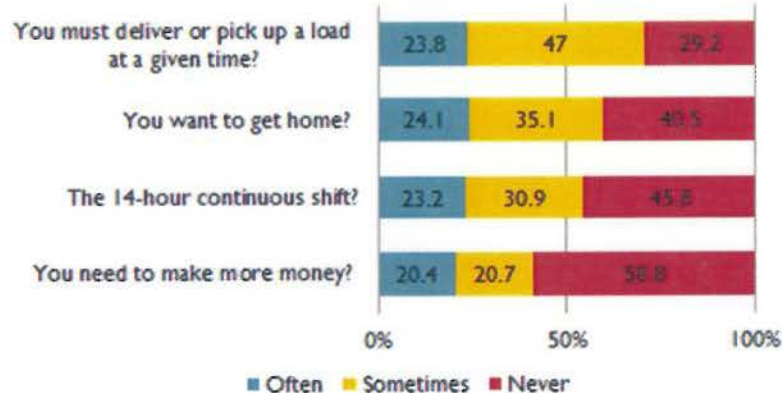
Unsafe drivers who capitulate or comply with such demands successfully remain within the industry.

Findings of Recent NIOSH Driver Health & Safety Survey

Behaviors (continued)



How often do you continue to drive despite fatigue, bad weather, or heavy traffic because:



Work environment (continued)

	Often (%)	Sometimes (%)	Never (%)
Must deliver or pick up a load at a given time	72.4	21.3	5.6
Forced to wait for access to a loading dock	34.9	49.8	12.2
Traffic congestion delays your deliveries significantly	17.2	60.7	21.9
Receive an unrealistically tight delivery schedule	15.5	57.9	25.7
The hours-of-service rules are violated	9.7	27.0	63.0

OOIDA Driver Survey Results

Does the Company you drive for contact you while driving?



- Does not apply
- No
- Yes

Does the company you drive for expect a response within a "specific" time frame when they contact you?



- Does not apply
- No
- Yes

Has the Company you drive for ever contacted you to "get moving" when taking a break or when using the sleeper berth?



- Does not apply
- No
- Yes

Has the company you drive for ever used the EOBR to encourage you to log loading/unloading times as off-duty, not driving?



- Does not apply
- No
- Yes

Has the company you drive for ever communicated with you to ask why your truck has stopped?



- Does no apply
- No
- Yes

Potential Distracted Driving violations

Potential HOS violations

Potential HOS, speeding, and other violations

Impact of MAP-21's Coercion Provision

- ▶ Adds efforts to prohibit coercion of CMV operators as a core regulatory priority for the DOT and FMCSA.
 - ▶ On par with existing priorities such as addressing the physical condition of the operator and the maintenance of the vehicle.
- ▶ Two impacts to FMCSA's rulemaking and enforcement policies:
 1. **All regulations issued by the agency must consider the issue of coercion and must ensure that the regulation does not make the CMV operator subject to coercion.**
 2. **FMCSA – and its state partners - must take action to affirmatively protect CMV operators who are subject to coercion to violate safety rules and take enforcement actions against entities who engage in coercion.**

§31136. United States Government regulations

(a) Minimum Safety Standards.-Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that-

- (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;
- (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;
- (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry;
- (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and

(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.

Being addressed in other countries...

Who is responsible?

Drivers and operators have traditionally been the focus of road laws – including those covering driving hours and fatigue management. However, breaches are often caused by the actions of others. The new Heavy Vehicle Driver Fatigue reform requires all parties in the supply chain to manage the causes of heavy vehicle driver fatigue.

Under these new laws, everyone in the supply chain, not just the driver, will have responsibilities to prevent driver fatigue and ensure drivers are able to comply with the legal work/rest hours. If your actions, inactions or demands cause or contribute to road safety breaches then you can be held legally accountable. Authorities can investigate along the supply chain and up and down the corporate chain of command. The days of 'all care and no responsibility' are over.

Who are the parties in the supply chain?

Parties in the 'Chain of Responsibility' (in addition to the driver) include:

- the employer of a driver;
- the prime contractor of a driver;
- the operator of a vehicle;
- the scheduler of goods or passengers for transport by the vehicle and also the scheduler of its driver;
- both the consignor and consignee of the goods transported by the vehicle;
- the loading manager i.e. the person who supervises loading or unloading or manages premises where regular loading or unloading occurs; and
- the loader and unloader of the goods carried by the vehicle.



National Transport Commission

Chain of Responsibility

- ❖ Drivers are currently 'carrying the can' for the failures and unreasonable pressures of others
- ❖ The reform helps drivers get home safely by requiring all parties in the supply chain to manage the causes driver fatigue



Taking reasonable steps

Under the new laws, everyone in the supply chain must take 'reasonable steps' to prevent driver fatigue and ensure a driver does not drive a heavy vehicle while impaired by fatigue – an approach consistent with existing Occupational Health & Safety (OH&S) laws.

Employers and customers will be held accountable for dangerous work schedules and long truck queues, which are known to be major causes of fatigue. If poor business practices endanger the lives of other road users, there will be severe penalties for those responsible.

Penalties escalate sharply for offences which pose a serious road safety risk; including court-imposed fines of up to \$50,000 and demerit points. Pointing the finger at someone else who has broken the law does not automatically mean you are no longer responsible. In some circumstances, you may also have multiple duties under the Chain of Responsibility and are therefore also liable.

Applying §31136(a)(5) to DOT Regs...

- ▶ §31136(a) requires that all DOT regulations ensure basic, minimum safety standards.
- ▶ With the passage of MAP-21 and the addition of the “prohibition of coercion” provision to this section, every DOT regulation must consider if the regulation allows for opportunities for coercion of CMV operators or if the regulation would have the ability to prevent coercion by the named entities.
- ▶ **Regulations must include a process to ensure that CMV operators have a way to report coercion without fear of retribution, and that FMCSA takes affirmative action upon such reports within its current safety audit and compliance review processes.**

Affirmatively addressing coercion

- ▶ Safety enforcement activities by FMCSA and state partners must now affirmatively address coercion of drivers by named entities.
- ▶ FMCSA can and must allow state partners to assist with enforcement of this provision, just as state partners assist with enforcement of other regulatory requirements.
- ▶ **FMCSA must:**
 - ▶ Identify avenues where coercion exist within trucking
 - ▶ Determine need to address coercion (high profile enforcement, enforcement through compliance reviews, drafting new regulatory tools, etc.).
 - ▶ Develop and publicize reporting tools for drivers, including anonymous reporting.
 - ▶ Take active steps to investigate ALL reports of coercion and protect drivers who are subjected to it.
 - ▶ Engage state partners to assist with enforcing this new foundational highway safety priority.