

EDD FOR THE TRUCKING INDUSTRY

Robert Reed 12/9/06

The new Federal Rules of Civil Procedure that came into effect on December 1, 2006 governing discovery of electronically stored information dramatically changes how litigation will be conducted in the federal jurisdiction and eventually all court systems. The rules pose new demands for the electronically stored information (ESI) to be disclosed. One important item is to know what information and data has been compiled. The trucking industry relies heavily upon computerized systems for efficient operation of dispatch, payroll, billing, accounting, management reports, regulatory compliance and communications. This is accomplished through the satellite systems in the truck (OBC) linked to the computer operating systems in the terminals and any paperwork generated that is scanned into the computer programs.

These type systems have been used since the late 80's and have developed into sophisticated and efficient modes of operating trucking companies. The information created by these systems generate files, sub-files, profiles, and folders in an automatic cumulative manner in the various programs for customer information, loads, revenue, miles, fuel, expenses, taxes, payroll, maintenance, billing, hours of service, hiring, qualifications, training, money transfers, tolls, delivery times, routing, messages to and from the vehicle, trailer or freight tracking, and vehicle and driver performance history that is communicated via cellular, GPS, or the Internet. These programs and communications are the operating data of the company and are preserved on discs or tapes through the daily back-up of the computer systems.

The data transmitted over the Internet is increasing as company websites are used for customer inquires on freight shipments, driver's applying for employment, and company operations conducted via the Internet. The increasing use of laptops, estimates from 17% to 30% of over-the-road drivers, provides for instant communication to the driver's home and company operations from virtually every truckstop or other wireless hotspots. Companies may also have internal voicemail and electronic mailboxes through their Intranet or Internet systems. Drivers fax documents from truckstops to the trucking company for system scanning and faster processing for billing and payroll purposes. Many accessories and hand held devices are also available to the industry.

Some shippers use RFID technology integrated with their freight for tracking and security purposes that transmit data. Trucking companies may utilize transponders in their trucks for toll booth and on-the-road weigh station functions that operate through RFID technology. This technology transmits information that creates files and reports on the positions, toll charges and operating conditions of the truck.

The ECM built into the truck engine and the ABS platforms of the brake systems relies on computer technology (microprocessors) that utilizes sensors in major components that transmit data that may travel directly to the trucking company computer files to create history reports on operation and use. Limited information may also be provided to the driver on in-cab dash displays. This information is also stored onboard the truck in the electronic modules integrated into these engine and brake control units. This electronic information can be downloaded directly from the truck's modules in the form of paper reports, charts and graphs. Manufacturers make use of the detailed information to protect their interests in misuse and warranty claims or repairs. Garages use the diagnostic information to check components and perform repairs. The information may also be used by the trucking company to monitor, discipline, discharge or provide bonuses to drivers. Detailed reports on transmission and cruise control use, throttle position and speed, fuel use, engine operating temperature and brake use provide a vast variety of information.

The Federal Rules of Civil Procedure discovery process will involve the information from the computer operating systems and enhanced software databases of specific programs along with the technology built into or added to the truck. This information has been available for many years is electronically generated, transmitted and stored in the normal course of business.

The new rules of disclosure should not have much affect on motor carriers as records and retention policies have long existed in the Federal Motor Carrier Safety Regulations at 49CFR § 379 and Appendix A to Part 379. The production and retention of documents are also discussed at 49CFR § 390.29, § 390.31, DOT Interpretations for § 390.31, §395.15 and DOT Interpretations for §395.15. Specifics of the following regulations also provide retention requirements; 49CFR § 376.11, § 380.401, § 380.509, § 380.511, § 382.401, § 387.31, § 391.51, § 391.53, § 391.63, § 391.64, § 391.65, § 395.8, § 396.3, § 396.11, § 396.19, § 396.21, § 396.25, and § 398.2. Many of these regulations evolved from the late 1930's from original interstate trucking regulation and most states adopt these regulations for their intrastate (in-state) motor carriers.

There are also records and retention policies for trucking companies for fuel tax reporting (IFTA), miles traveled in states (IRP), highway-use tax (IRS), revenue reports (SEC) and the normal other records kept for state and federal government agencies. These records may also be electronically produced through the satellite and computer based systems. Before computer technology all the aforementioned records were all kept by hand, which created mounds of paperwork and multiple file cabinets for storage. The advent of computers allowed for this information to be compiled quickly, accurately and in condensed form for manageable filing, storage and use. Small and medium size trucking companies without computers and satellite or cellular operating systems still create this same mentioned information in paper reports.

The IT person may know the computer operating principles, maintenance and repairs of the programs but not have practical use the complete system or understand the reports of the files. The systems may be segregated by departments (i.e. accounting, maintenance, billing, safety, dispatch, operations, and management) with limited access for use built into the systems.

Trucking companies should renew their knowledge of the regulations and review their retention policies for all required documents.

The aforementioned systems have the capability to print paper reports for the discovery process in trucking litigation issues and should not require use of sophisticated e-discovery firms. The use of "peers" from the trucking industry to assist with these matters should provide essential results for both plaintiff and defense issues.

Reference – Code of Federal Regulations (49 CFR)

www.fmcsa.dot.gov

Modern Trucking Forensic Guide by Robert Reed

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