

against harms that would be caused by premature circulation of such transcripts, while protecting the witness' rights by allowing him or her to inspect the official transcript. This approach, embodied in this regulation, is also consistent with the principles of Attorney General Ashcroft's October 12, 2001, "Memorandum for Heads of All Federal Departments and Agencies," on the Freedom of Information Act, in which he said, "Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information."

This proposal is modeled on the rules of the Securities and Exchange Commission (17 CFR 203.6) and those of other agencies which also follow the APA and permit the agency to limit witnesses to inspection of transcripts in non-public investigatory proceedings for good cause. The Board has followed the APA process by allowing witnesses, after their testimony, to ask the General Counsel for the opportunity to procure a copy of the transcript, provided, of course, that for good cause, the General Counsel may deny the petition and limit the witness (and his or her counsel) to an inspection of the witness' testimony. This regulation also makes it clear that this right to inspect the transcript is a right guaranteed by the APA and that witnesses who seek copies of the transcript are informed by the General Counsel of their right to inspect it.

As the court stated in *SEC v. Sprecher*, 594 F.2d 317, 319 (2nd Cir 1979), "[I]t is obviously impractical for the Commission to determine prior to the testimony of a witness whether there will be 'good cause' to withhold a copy of the testimony from that witness, and we do not read the APA as requiring such an advance determination."

Moreover, the courts have made it clear that the APA "does not require [the agency] to spell out the 'good cause' which was the basis for the refusal to sell copies of the transcript." *Commercial Capital Corp. v. SEC*, 360 F.2d 856, 858 (7th Cir. 1966).

In summary, this regulation largely tracks the language of the APA. The courts have recognized that such regulations are properly designed to "permit the [agency] to enjoy confidentiality, where it is necessary, in order effectively to complete its investigation." *Zients v. La Morte*, 319 F. Supp 956, 958 (S.D.N.Y 1970) (discussing purpose of the SEC regulation), accord *Lamorte v.*

Mansfield, 438 F.2d 448 (2d Cir 1971), (Friendly, J.) ("to the extent that a privilege exists, it is the agency's not the witness'").

Regulatory Flexibility Act

The Board, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48.

Federalism (E.O. 13132)

The CSB has determined this regulation conforms to the federalism principals of Executive Order 13132. It also certifies that to the extent a regulatory preemption occurs, it is because the exercise of State and tribal authority conflicts with the exercise of Federal authority under the U.S. Constitution's supremacy clause and Federal statute.

Paperwork Reduction Act

This regulation contains no reporting or record keeping requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3510 *et seq.*

List of Subjects in 40 CFR Part 1610

Administrative practice and procedure, Investigations.

For the reasons set forth in the preamble, the Chemical Safety and Hazard Investigation Board amends 40 CFR part 1610 as follows:

PART 1610—ADMINISTRATIVE INVESTIGATIONS

1. The authority citation for part 1610 is revised to read as follows:

Authority: 42 U.S.C. 7412(r)(6)(C)(i), 7412(r)(6)(L), 7412(r)(6)(N).

Section 1610.4 also issued under 5 U.S.C. 555.

2. Add § 1610.4 to read as follows:

§ 1610.4 Deposition Transcripts.

(a) Transcripts of depositions of witnesses compelled by subpoena to appear during a Board investigation, shall be recorded solely by an official

reporter designated by the person conducting the deposition.

(b) Such a witness, after completing the compelled testimony, may file a petition with the Board's General Counsel to procure a copy of the official transcript of such testimony. The General Counsel shall rule on the petition, and may deny it for good cause. Whether or not such a petition is filed, the witness (and his or her attorney), upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony. If such a petition is denied by the General Counsel, he shall inform the petitioner of the right to inspect the transcript.

(c) Good cause for denying a witness' petition to procure a transcript of his or her testimony may include, but shall not be limited to, the protection of: trade secrets and confidential business information contained in the testimony, security-sensitive operational and vulnerability information, and the integrity of Board investigations.

Dated: January 23, 2003.

Christopher W. Warner,
General Counsel.

[FR Doc. 03-2001 Filed 1-28-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03-159, MB Docket No. 02-91, RM-10411]

Digital Television Broadcast Service; Cheboygan, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WPBN/WTOM License Subsidiary, Inc., substitutes DTV channel 35 for DTV channel 14 at Cheboygan, Michigan. See 67 FR 31170, May 9, 2002. DTV channel 35 can be allotted to Cheboygan, Michigan, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 45-39-01 N. and 84-20-37 W. with a power of 80, HAAT of 168 meters and with a DTV service population of 68 thousand. Since the community of Cheboygan is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective March 10, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02-91, adopted January 16, 2003, and released January 23, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan, is amended by removing DTV channel 14 and adding DTV channel 35 at Cheboygan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03-1966 Filed 1-28-03; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket Nos. FMCSA-2001-9709 and FMCSA-00-7382]

RINs 2126-AA60 and 2126-AA55

Commercial Driver's License Standards, Requirements, and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends its Commercial Driver's License (CDL) rules concerning disqualification of drivers to make a technical correction in response to a petition for reconsideration filed by the International Brotherhood of Teamsters, the Transport Workers Union of America, the Transportation Trades Department of the AFL-CIO, and the Amalgamated Transit Union (collectively, "the Petitioners"). The technical correction provides that disqualifications for offenses committed by a CDL holder while operating a non-commercial motor vehicle (non-CMV) would be applicable only if the conviction for such offenses results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges. The agency denies the Petitioners' request to: shorten the disqualification periods driving a non-CMV while under the influence of controlled substances or alcohol; and establish a means to disqualify foreign drivers for offenses committed in a non-CMV in the country of domicile. The FMCSA believes these issues were adequately explained in the July 31, 2002, final rule concerning the CDL program, and that the petitioners have not presented any new information that would warrant reconsideration of the agency's decisions.

DATES: The effective date of this final rule is January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366-9579, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 201(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1759) requires that the FMCSA issue regulations providing for the disqualification of CDL holders who are convicted of a serious offense involving a non-CMV that results in the revocation, cancellation, or suspension of the person's driver's license, or a drug or alcohol related offense involving a non-CMV. The MCSIA also requires FMCSA to establish minimum disqualification periods for non-CMV offenses based on the seriousness of the offense. However, the disqualification periods for non-CMV offenses must not

exceed the disqualification periods for offenses involving a CMV.

On July 31, 2002, the FMCSA published a final rule (67 FR 49742) implementing several MCSIA provisions concerning the CDL program, including the requirements of section 201(b).

Petition for Reconsideration

On August 30, 2002, the Petitioners requested that the agency reconsider three issues covered in the final rule. A copy of the petition is in both of the dockets identified at the beginning of this notice. The following is a summary of the three issues raised by the petitioners, followed by the FMCSA's response.

Issue 1: Disqualification Periods for Driving Under the Influence (DUI).

The Petitioners believe the disqualification periods for driving under the influence of controlled substances or alcohol are excessive and can result in unfair sanctions against CDL holders by potentially disqualifying them from working in the motor carrier industry for life. The Petitioners argue that the disqualification periods are significantly longer than State penalties and that the States generally do not impose lifetime disqualification for second offenses.

FMCSA Response: The FMCSA denies the Petitioners' request to shorten the disqualification periods established by the July 31, 2002, final rule. Section 201(b) of the MCSIA clearly provides FMCSA with the statutory authority to establish disqualification periods for DUI offenses committed by CDL holders while operating non-CMVs, that are identical to the disqualification periods for DUI offenses committed while operating a CMV. Although the FMCSA could have proposed and adopted less stringent penalties, the agency chose to impose the maximum penalties provided by the statute to ensure the highest level of safety. To achieve our safety objectives, we must disqualify CDL holders who represent an unacceptable safety risk to the motoring public by failing to refrain from the use of controlled substances, and consuming alcoholic beverages prior to driving a motor vehicle. There is no readily apparent reason why the agency should consider DUI committed by a professional CMV driver to be less severe when committed in a non-CMV during off-duty hours, than in a CMV while on duty. The conviction for such a serious offense in the non-CMV suggests that the CDL holder is more likely to commit the same offense in a CMV, than a CDL holder who has never committed such an offense. The FMCSA