

**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](mailto: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]

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## 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

must take action to reduce to the greatest extent practicable, the likelihood of unsafe drivers being allowed to operate CMVs on public roads.

With the publication of the July 31, 2002, final rule, all CDL holders should now be aware that a conviction for DUI while operating a non-CMV could have a significant adverse impact on their driving careers. These drivers have a choice between sharing the road responsibly with other motorists at all times, regardless of the type of vehicle being operated, or engaging in unsafe driving practices with the potential of being subjected to enforcement actions and ultimately disqualification. The agency's decision represents an appropriate use of its statutory authority, and will help to ensure national uniformity and consistency in the administration of the CDL program.

#### *Issue 2: Less Stringent Penalties for Foreign-Domiciled Drivers*

The Petitioners argued that the penalties discriminate against U.S. drivers because foreign drivers' CDLs are not subject to suspension, cancellation or revocation for the same offenses in non-CMV. They believe that convictions for non-CMV offenses must be enforced in a non-discriminatory manner against all drivers operating on U.S. highways.

*FMCSA Response:* The FMCSA denies the Petitioners' request because all CDL holders, including foreign domiciled drivers, operating in the U.S. are held to the same standard for offenses committed in the U.S. The agency recognizes that the July 31, 2002, final rule leaves unresolved differences between the consequences for a U.S. driver convicted of a disqualifying offense in a non-CMV, and a foreign domiciled driver who commits similar offenses in his/her country of domicile. However, this is an issue that cannot be resolved through the rulemaking process because it involves offenses in countries that have not adopted laws to disqualify commercial drivers for offenses committed in private vehicles. As indicated in the preamble of the July 31, 2002, final rule, the FMCSA will initiate discussions with Mexico and Canada to modify existing CDL reciprocity agreements to include non-CMV convictions for offenses committed in the drivers' country of domicile.

The FMCSA urges all States to implement the disqualification standards adopted on July 31, 2002, and corrected by today's final rule, because doing so is necessary to safeguard the motoring public. Implementation of the disqualification standards should not be

delayed because of concerns about the status of reciprocity negotiations between the U.S., Canada and Mexico. The governments of Canada and Mexico share our commitment to ensuring the safety of cross-border motor carrier operations, and we expect to complete appropriate reciprocity agreements.

#### *Issue 3: Inconsistency Between the Regulatory Language and MCSIA*

The Petitioners stated that MCSIA provides for disqualification based on a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual's license. However, the rule adopted by the FMCSA does not include the limiting language concerning the revocation, cancellation, or suspension of the license by the State. The Petitioners argue that rule must be amended to make it consistent with MCSIA.

*FMCSA Response:* The FMCSA agrees with the Petitioners that a CDL driver may only be disqualified for offenses committed while operating a non-CMV if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license. The preamble to the 2002 final rule includes a discussion that explicitly acknowledges that offenses are not disqualifying unless the State also finds that the circumstances of the offense warrant revocation, cancellation, or suspension. However, Table 2 to § 383.51 does not include the required reference to revocation, cancellation, or suspension. Therefore, the agency is revising Table 2 to include the required reference to revocation, cancellation, or suspension.

#### **Rulemaking Analyses and Notices**

Under the Administrative Procedure Act (APA)(5 U.S.C. 553(b)) an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. In this case, additional notice and comment are unnecessary. This final rule makes a technical correction to the FMCSA's July 31, 2002, final rule concerning disqualifying offenses committed by CDL holders while operating non-CMV. This correction is necessary to make the regulatory language in Table 2 of § 383.51 consistent with section 201(b) of MCSIA. The agency requested public comment in response to its May 4, 2001, notice of proposed rulemaking, and intended to adopt the necessary regulatory language on July 31, 2002. However, certain regulatory text was omitted, and the agency must now

correct that error. Therefore, the FMCSA finds good cause to adopt this final rule without prior notice or opportunity for public comment [5 U.S.C. 553(b)].

For the same reasons, the FMCSA finds, pursuant to 5 U.S.C. 553(d)(3) that there is good cause for making the rule effective upon publication. The final rule is a technical correction to Table 2 of § 383.51 to make the regulations consistent with MCSIA. Therefore, good cause exists under 5 U.S.C. 553(d) to dispense with the 30-day delay in the effective date requirement and the FMCSA is making the rule effective upon publication in the **Federal Register**. The final rule does not change the substance of the requirements.

#### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action makes only technical corrections to the current regulations, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. Although the July 2002 final rule establishing the current requirements was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget does not consider this amendment of the final rule to be a significant action.

#### *Regulatory Flexibility Act*

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The original rule did not have a significant effect on a substantial number of small entities, and this rule simply amends Table 2 to § 383.51 to reflect the statutory language in the MCSIA.

#### *Unfunded Mandates Reform Act of 1995*

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*) that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of

\$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

We have analyzed this action under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule is not economically significant and does not involve an environmental risk to health or safety that would disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. This action will not have a significant effect on the States' ability to execute

traditional State governmental functions, and any additional administrative cost borne by the States should be negligible. Nothing in this document directly preempts any State law or regulation.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. Although the July 31, 2002, final rule affected the information collection burden associated with OMB Control No. 2126-0011, titled "Commercial Driver Licensing and Test Standards," this rulemaking does not result in any additional changes to the approved information collection.

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

We have analyzed this rule under Executive Order 13211, Actions

Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required

**List of Subjects in 49 CFR Part 383**

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, part 383 as set forth below:

1. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; sec. 214 of Pub.L. 106-159, 113 Stat. 1766; and 49 CFR 1.73.

**§ 383.51 [Amended]**

2. Revise Table 2 to § 383.51 to read as follows:

\* \* \* \* \*

TABLE 2 TO § 383.51

<p>If the driver operates a motor vehicle and is convicted of:</p>	<p>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</p>	<p>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .</p>	<p>For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</p>	<p>For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .</p>
<p>(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit.</p>	<p>60 days .....</p>	<p>60 days .....</p>	<p>120 days .....</p>	<p>120 days.</p>

TABLE 2 TO § 383.51—Continued

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for . . .
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.	60 days .....	60 days .....	120 days .....	120 days.
(3) making improper or erratic traffic lane changes.	60 days .....	60 days .....	120 days .....	120 days.
(4) following the vehicle ahead too closely.	60 days .....	60 days .....	120 days .....	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident.	60 days .....	60 days .....	120 days .....	120 days.
(6) driving a CMV without obtaining a CDL.	60 days .....	Not applicable .....	120 days .....	Not applicable.
(7) driving a CMV without a CDL in the driver's possession <sup>1</sup> .	60 days .....	Not applicable .....	120 days .....	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days .....	Not applicable .....	120 days .....	Not applicable.

<sup>1</sup>Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

\* \* \* \* \*

Issued on: January 22, 2003.  
**Annette M. Sandberg,**  
*Acting Administrator.*  
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