Emerging Issues in CDL Hearings

Toni Boone, Administrative Law Judge (retired)
Nevada Department of Motor Vehicles

Peter Halbach, Chief Hearing Officer
North Dakota Department of Transportation

I. Introduction and Background

Every federal regulation presented in this outline has either been adopted by reference or codified in every state in the United States. There is no state in which these regulations are inapplicable or have been diluted beyond what is contained in the foregoing federal regulations. However, there are states whose motor carrier and commercial driver's license laws are stricter than those found in these federal regulations.

A. Commercial Motor Vehicle Safety Act

1986: Congress passes the Commercial Motor Vehicle Act (CMVSA).

1. Goals of CMVSA:
    a. Prevent commercial vehicle drivers from concealing unsafe driving records by carrying more than one license (cannot distribute traffic convictions over more than one driving record).
    b. Ensure that all commercial vehicle drivers demonstrate the minimum levels of knowledge and skills needed to safely operate commercial motor vehicles (CMV) before being licensed; and
    c. Subject commercial motor vehicle drivers to new, uniform sanctions for certain unsafe driving practices. (49 CFR § 383.51)

2. Result of CMVSA:
    a. All states are mandated to comply with federal commercial motor vehicle testing, licensing standards and sanctions.
    b. States that are not in compliance with the federal requirements may lose their federal highway funds (5% the first year of noncompliance and 10% each subsequent year of noncompliance).
    c. All 51 jurisdictions have enacted laws in compliance with the federal requirements outlined in this session, including the disqualification of drivers who commit certain offenses while operating a commercial motor vehicle.

3. The basic principle of the CMVSA: – **One and *only* one driver's license and only one driving record for each commercial driver.**

B. History of Federal Motor Carrier Safety Administration

1. Federal Motor Carrier Safety Administration (FMCSA) was established within the Department of Transportation on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 113) and was formerly a part of the Federal Highway Administration.

2. Mission: prevent commercial motor vehicle-related fatalities and injuries.

3. Laws and programs implemented as a direct result of FMCSA:
    a. Mandatory motor carrier workplace drug testing
    b. Training, including additional training for Haz-Mat drivers
    c. Regular, uniform inspection of motor carriers and CMVs
    d. Medical examinations and medical standards for drivers.

II. General qualifications of drivers. 49 CFR § 391.11

(a) A person shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle. Except as provided in §391.63, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle.
(b) Except as provided in subpart G of this part, a person is qualified to drive a commercial motor vehicle if he/she—
(1) Is at least 21 years old;
(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;
(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;
(4) Is physically qualified[1] to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;
(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;
(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by §391.27;
(7) Isn't disqualified to drive a commercial motor vehicle under the rules in §391.15; and
(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with §391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with §391.33.

[1] See 49 CFR § 391.41 through 391.49 for detailed requirements regarding physical qualification of drivers.

III. Physical Qualifications for Drivers: 49 CFR § 391.41

1. Mexican and Canadian drivers are not required to carry their medical certificates with them when driving in the U.S. It is assumed that if they have a valid CDL from their home jurisdiction, they are also medically qualified; however, drivers from either country who do meet the medical fitness provisions and are driving on a special waiver or variance from their country may not drive in the U.S.
2. Every driver must either:
   (a) comply with the medical examination[2] requirement and meet the physical qualification standards **OR**
   (b) comply with the medical examination requirement and possess a medical variance from the physical qualification standards direct from FMCSA.
3. Has no loss of a foot, a leg, a hand, or an arm, or has been granted a skill performance evaluation (SPE) certificate.
4. Has no impairment of:
   (a) A hand or finger which interferes with prehension or power grasping; or
   (b) An arm, foot, leg or any other limb which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle or has been granted a skill performance evaluation (SPE) certificate pursuant.
5. Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;
6. Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.
7. Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his/her ability to control and drive a commercial motor vehicle safely;
8. Has no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial motor vehicle safely;
9. Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his/her ability to control and operate a commercial motor vehicle safely;
10. Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;
11. Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his/her ability to drive a commercial motor vehicle safely;
12. Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal

[2]The medical examination shall be performed by a licensed medical examiner knowledgeable of the specific physical and mental demands associated with operating a commercial motor vehicle and FMCSA requirements including the medical advisory criteria prepared by the FMCSA as guidelines to aid the medical examiner in making the qualification determination.

Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

13. First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid.
14. Does not use any drug or substance identified in Schedule I (amphetamine, narcotic, or other habit-forming drug).
15. Does not use any non-Schedule I drug or substance identified in the other Schedules except when prescribed by a licensed medical practitioner who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
16. Has no current clinical diagnosis of alcoholism.
17. Medical examinations shall include:

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic conditions of such a character and extent as to affect the driver's ability to operate a commercial motor vehicle safely and should at least include all of the information requested in the required form.

General appearance and development. Note marked overweight. Note any postural defect, perceptible limp, tremor, or other conditions that might be caused by alcoholism, thyroid intoxication or other illnesses.

Head-eyes. If the driver wears corrective lenses for driving, these should be worn while driver's visual acuity is being tested. Indicate the driver's need to wear corrective lenses to meet the vision standard on the Medical Examiner's Certificate by checking the box, “Qualified only when wearing corrective lenses.” Monocular drivers are not qualified to operate commercial motor vehicles in interstate commerce.[3]

Ears. Note evidence of any ear disease, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

Throat. Note irremediable deformities likely to inhibit breathing or swallowing.

Heart. Note murmurs and arrhythmias, and any history of an enlarged heart, congestive heart failure, or cardiovascular disease that is accompanied by syncope, dyspnea, or collapse. Indicate onset date, diagnosis, medication, and any current limitation. An electrocardiogram is required when findings so indicate.

Blood pressure (BP). If a driver has hypertension and/or is being medicated for hypertension, he or she should be recertified more frequently. An individual

[3] To drive a CMV legally, monocular drivers must retain a current federal waiver from a FMCSA-approved ophthalmologist saying that their peripheral vision and depth perception in the remaining eye meets certain specified high standards.

diagnosed with Stage 1 hypertension (BP is 140/90-159/99) may be certified for one year. At recertification, an individual with a BP equal to or less than 140/90 may be certified for one year; however, if his or her BP is greater than 140/90 but less than 160/100, a one-time certificate for 3 months can be issued. An individual diagnosed with Stage 2 (BP is 160/100-179/109) should be treated and a one-time certificate for 3-month certification can be issued. Once the driver has reduced his or her BP to equal to or less than 140/90, he or she may be recertified annually thereafter. An individual diagnosed with Stage 3 hypertension (BP equal to or greater than 180/110) should not be certified until his or her BP is reduced to 140/90 or less and may be recertified every 6 months.

Lungs. Note abnormal chest wall expansion, respiratory rate, breath sounds, impaired respiratory function, dyspnea, or cyanosis. Abnormal finds on physical exam may require further testing such as pulmonary tests and/or x-ray of chest.

Abdomen and Viscera. Note enlarged liver, spleen, abnormal masses, bruits, hernia, and significant abdominal wall muscle weakness or tenderness. If diagnosis suggests the condition might inhibit safe operation of a commercial vehicle, further testing is required.

Genital-urinary and rectal examination. A urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problems. Note hernias. A condition causing discomfort should be evaluated to determine the extent to which the condition might interfere with the control and safe operation of a commercial motor vehicle.

Neurological. Note impaired equilibrium, coordination, or speech pattern; paresthesia; asymmetric deep tendon reflexes; sensory or positional abnormalities; abnormal patellar and Babinski's reflexes; ataxia. Abnormal neurological responses may be an indication for further testing to rule out an underlying medical condition. Any neurological condition should be evaluated for the nature and severity of the condition, the degree of limitation present, the likelihood of progressive limitation, and the potential for sudden incapacitation. In instances where the medical examiner has determined that more frequent monitoring of a condition is appropriate, a certificate for a shorter period should be issued.

Spine, musculoskeletal. Previous surgery, deformities, limitation of motion, and tenderness should be noted. Findings may indicate additional testing and evaluation should be conducted.

Extremities. Carefully examine upper and lower extremities and note any loss or impairment of leg, foot, toe, arm, hand, or finger. Note any deformities, atrophy, paralysis, partial paralysis, clubbing, edema, or hypotonia. If a hand or finger deformity exists, determine whether prehension and power grasp are sufficient to enable the driver to maintain steering wheel grip and to control other vehicle equipment during routine and emergency driving operations. If a foot or leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. In the case of any loss or impairment to an extremity which may interfere with the driver's ability to operate a commercial motor vehicle safely, the medical examiner should state on the medical certificate “medically unqualified unless accompanied by a Skill Performance Evaluation Certificate.” The driver must then apply to the Field Service Center of the FMCSA,

for the State in which the driver has legal residence, for a Skill Performance Evaluation Certificate.

Laboratory and Other Testing. Other test(s) may be indicated based upon the medical history or findings of the physical examination.

Diabetes. If insulin is necessary to control a diabetic driver's condition, the driver is not qualified to operate a commercial motor vehicle in interstate commerce. If mild diabetes is present and it is controlled by use of an oral hypoglycemic drug and/or diet and exercise, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

IV. Obtaining a Commercial Learner's Permit (CLP): 49 CFR § 383.25

1. Must be at least 18 years of age;
2. Must have a valid non-CMV driver's license.
3. CLP may be issued by the same jurisdiction which issued the non-CMV driver's license authorizing the commercial-driver-in-training to practice driving a CMV on public roads with a qualified CDL holder next to him/her.
4. Must pass all the Knowledge Tests for the type of commercial driver's license desired. The General Knowledge Test must be taken and passed by all trainees. Specific Knowledge Tests must be passed to obtain an endorsement for passenger vehicles (P), school buses (S), and tank trucks (N). All other federal endorsements are prohibited on a CLP.
5. Must have a satisfactory driving record for the last 10 years (FMCSA will check records in all 50 states and the District of Columbia);
6. Must have a DOT medical card, which requires passing a DOT physical; and
7. Pay a fee for the CLP.
8. The initial CLP is valid for 180 days and may be renewed for an additional 180 days without re-taking the Knowledge Tests.

V. Obtaining a CDL

1. Potential CDL holders are required to possess a CLP for at least 14 days prior to taking the Skills Test to obtain a CDL.
2. The Skills Test has three parts:
   (a) the Vehicle Inspection Test;
   (b) the Basic Controls Test; and
   (c) the Road Test.
3. Some states require proof of completion of a CDL training school prior to testing. Tuition for a commercial truck driving course can costs from $3,000 to $7,000 dollars.[4]
4. CLP drivers aren't allowed to drive vehicles transporting hazardous materials.

[4] MacMillan, Catherine. *Smart Trucking*. Three Practical Ways to Pay for Truck Driving School Training. June 22, 2020.

VI. Definitions

A. **"Commercial motor vehicle"**

Means any motor vehicle or motor vehicle combination used in commerce on the streets or highways, which has:

1. Gross combination weight rating[5] (GCWR) of 26,001 or more lbs., with towed unit having gross vehicle weight rating[6] (GVWR) > 10,000 pounds; or
2. A GVWR of 26,001 or more pounds; or
3. A GVWR of 26,000 pounds or less, and
    a. Be designed to transport 16 or more passengers, including driver, or
    b. Be transporting hazardous materials that are required to be placarded.

4. Commercial Motor Vehicle Classes:
    a. Class A: has a gross combination weight rating (GCWR) of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds.
    b. Class B: Any single vehicle with a GVWR of 26,001 pounds or more and any such vehicle towing a vehicle of 10,000 pounds or less.
    c. Class C: Any single vehicle or combination of vehicles that meets neither the definition of a Class A nor that of Class B vehicle, but is:
        (1) Designed to transport 16 or more passengers, including driver; OR
        (2) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (HMTA) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

B. **Commercial Driver's License (CDL) Classifications:**

Any person who operates a commercial motor vehicle is required to have a commercial driver's license. Uniform endorsements[7] for CDLs are:

1. "T" for double/triple trailers
2. "P" for passenger vehicles
3. "N" for tank vehicles
4. "H" for hazardous materials
5. "X" for a combined hazardous materials and tank vehicle endorsements
6. "S" for school buses

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[5] Weight of the combination of the truck-tractor and the towed unit plus the maximum safe load as assigned by the vehicle manufacturer.
[6] Weight of the vehicle plus the maximum safe load as assigned by the vehicle manufacturer.
[7] Pursuant to F.S.A. § 322.01(1), "Endorsement" means a special authorization which permits a driver to drive certain types of vehicles or to transport certain types of property or a certain number of passengers.

C. Waivers or exemptions to requirement of having a CDL:

1. Operators of non-commercial/non-business recreational vehicles;
2. Operators of vehicles transporting their own personal property in a not-for-hire situation, including rental vehicles;
3. Farmers operating a farm vehicle that is:
    a. Controlled and operating by a farmer (includes operation by employees or family members of the farmer);
    b. Is used to transport agricultural products, farm machinery or farm supplies to or from a farm;
    c. Limited to a 150 radius of the farm;
    d. Not a common or contract motor carrier.
4. Firefighters and operators of emergency equipment:
    a. Must be equipment necessary to the preservation of life or property; or
    b. Necessary for the execution of emergency governmental functions;
    c. Must be equipped with audible and visual signals; and
    d. Not subject to normal traffic regulation;
5. Backup drivers employed by a local government with a population of 3,000 persons or less when operating equipment to remove snow and ice during an emergency;
6. Military personnel on active duty (at the time of driving) and operating a commercial motor vehicle for military purposes, including vehicles both owned and leased by the military (excludes civilian employees and contractors).
7. Part-time drivers (from June 30th to July 6th) in the pyrotechnic industry driving vehicles with a GVWR of less than 10,001 pounds transporting less than 500 pounds of fireworks (DOT Class 1.3G explosives).

D. Conviction as defined by 49 C.F.R. § 383.5:

"Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or *nolo contendere* accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated."

E. Disqualification as defined by 49 CFR § 383.5

"Disqualification" means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle, including:

1. The Suspension, revocation or cancellation of CDL by state or jurisdiction of issuance.
2. Any withdrawal of a person's privileges to drive a CMV by a state or other

jurisdiction due to violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations).

3. A Determination by FMCSA that a person is not qualified to operate CMV under 49 CFR § 391.

VII. Major Disqualifying and Serious Offenses and Penalties

A. **Major Disqualifying Offenses**: **49 C.F.R. § 383.51 – Table 1**

1. Operating any motor vehicle while under the influence of alcohol as prescribed by State law.
2. Operating any motor vehicle while under the influence of a controlled substance.
3. Driving a CMV with an alcohol concentration of .04% or more (no need to show impairment of ability to drive as the offense is illegal *per se*).
4. Refusing to take an alcohol test as required by State implied consent law.
5. Leaving the scene of a collision operating any motor vehicle.
6. Operating any motor vehicle in commission of non-drug-related felony.
7. Driving CMV when, as a result of prior convictions for CMV violations, driver's CDL is suspended, revoked, cancelled or disqualified from driving.
8. Causing fatality via negligent operation of CMV, including but not limited to crimes of motor vehicle manslaughter, homicide and negligent homicide.
9. The use of a CMV in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance.
10. The use of a CMV in the commission of a felony involving human trafficking.

B. **Penalties for Major Disqualifying Offenses: 49 C.F.R. § 383.51 – Table 1**

1. One-year disqualification upon first "conviction" of A 1 through 8 above
2. Three-year disqualification of CDL privileges on conviction of offenses listed under A 1 through 8 above while transporting hazardous materials.
3. Lifetime disqualification of commercial driving privileges are required:
   a. Upon first "conviction" for driving CMV to commit felony involving making, distributing or dispensing controlled substance; no opportunity to reduce penalty under state law.
   b. Upon first "conviction" for driving CMV to commit felony involving human trafficking; no opportunity to reduce penalty under state law.
   c. Upon second "conviction" of a "Major Disqualifying Offense" listed under A 1 through 8 or upon "conviction" of any two "Major Disqualifying Offenses" arising from separate incidents (no time limit necessary between offenses) with opportunity to reduce penalty under state law after ten years disqualification upon proof of completion of appropriate rehabilitation program

4. A driver who is disqualified for a Major Disqualifying Offense. and is reinstated after 10 years of disqualification will receive a permanent lifetime disqualification for conviction of a subsequent Major Disqualifying Offense.

C. Serious Traffic Violations: **49 C.F.R. § 383.51 – Table 2**

1. Driving a CMV 15 mph or more miles over the posted speed limit.
2. Driving CMV recklessly or in willful or wanton disregard of safety.
3. Improper or erratic lane change while driving a CMV.
4. Following too close while driving a CMV.
5. Violating state or local traffic law in connection with a fatal accident while driving a CMV (excludes parking violations).
6. Driving a CMV without obtaining a CLP or CDL
7. Driving a CMV without a CLP or CDL in the driver's possession
8. Driving CMV without proper class of CLP or CDL or proper endorsements
9. Driving a CMV while violating state or local law prohibiting texting
10. Driving a CMV while violating a state or local law restricting or prohibiting the use of a hand-held mobile telephone while driving.

D. Penalties for Serious Violations: 49 C.F.R. § 383.51 – Table 2

1. Conviction of two (2) serious traffic violations in separate incidents within 3 years warrants a sixty (60) day disqualification of CDL.
2. Conviction of three (3) serious traffic violations in separate incidents within 3 years warrants a 120-day disqualification of CDL.
   a. 49 CFR § 384 mandates disqualifications for serious traffic violations run consecutively.
   b. Relevant period for CDL disqualification for 2 or more serious traffic violations within 3 years is time between violations, not convictions.

E. Railroad Crossing Violations: 49 C.F.R. § 383.51 – Table 3

CMV drivers who are driving a vehicle that is placarded for hazardous materials of who are driving school buses must *always* come to a complete stop at a railroad crossing regardless of whether there are any signs or controls at the crossing.

CMV drivers who are not driving a school bus or are not placarded must exercise ordinary care upon approaching and crossing a railroad track.

1. For Drivers Who Are *Not* Always Required to Stop:
   a. Failing to slow to check that tracks are clear of oncoming train
   b. Failing to stop before crossing reached if tracks are not clear.
2. For Drivers Who Must *Always* Stop: Fail to stop before driving on crossing.
3. For *All* Drivers

a. Failing to have sufficient space to drive completely through the crossing without stopping.
b. Disobey traffic control device or order of official at crossing.
c. Failing to negotiate crossing due to insufficient undercarriage clearance.

F. Penalties for Railroad Crossing Violations: 49 C.F.R. § 383.51 – Table 3

Conviction for railroad-highway grade crossing violation within a 3-yr period:

1. First Conviction = 60 days disqualification
2. Second Conviction = 120 days disqualification
3. Third or subsequent conviction = One (1) year disqualification
4. Employers who permit or require violation of railroad-highway grade crossings are subject to a civil penalty up to $10,000.

VIII. Reporting of Convictions and Conditional CDL Licensing

1. Out-of-state convictions related to motor vehicle traffic control by CDL holder or in CMV must be sent to licensing state within 10 days.[8]

2. States must make all convictions and disqualifications for violations that occurred in any vehicle by a CDL holder and all CMV convictions and disqualifications for any person required to have a CDL available to authorized persons within 10 days of receipt, if it occurred in same state.[9]

3. State may not issue a special CDL/permit (*i.e.* hardship license) to drive CMV when CDL holder's CMV/non-CMV privileges are suspended, revoked, cancelled or disqualified.[10] Issuance strictly prohibited.[11]

IX. Out-of-Service Orders

A. Out-of-Service (OOS) Order Defined:

1. Temporary withdrawal of the privilege to drive or operate a CMV for any reason; in this instance an "Out-of-Service Order" is a disqualification.

2. Order temporarily prohibiting a commercial CMV from being driven.

3. Declaration by a law enforcement officer that a commercial driver, a commercial vehicle, or a motor carrier operation is "out-of-service" pursuant to commercial federal motor vehicle laws.

[8] 49 CFR § 384.209
[9] 49 CFR § 384.225
[10] 49 CFR § 384.210
[11] *Moore v. DPS*, 655 So.2d 644 (La. App. 1995)

4. An "Operations Out-of-Service Order" is an order placing a trucking company out of service because it is an imminent hazard. This occurs when the company's record of safety compliance demonstrates that the company is an imminent hazard to public safety.

B. What does it mean to be "out-of-service"?

1. Under Federal Motor Carrier Safety Regulations, a driver is required to be placed out-of-service for 24 hours if he or she is found to be operating a commercial motor vehicle with any measurable or detectable amount of alcohol in his or her system.[12]

2. A driver may also be placed out-of-service for violating the hours of service regulations.

3. A vehicle may be placed out-of-service for defects until repaired.

4. A driver may also be placed out-of-service for operating a vehicle that he knew or should have known was unsafe.

C. Penalties for CMV Drivers Based on Federal Regulations

1. Penalties for CMV Drivers Based on Federal Regulations
   a. First conviction of driving while out-of-service: disqualification for 180 days to 1 year, unless transporting hazardous materials in placardable quantities or operating a vehicle designed to carry more than 16 people including the driver, which warrants up to 2 years disqualification.
   b. For a second conviction of driving while out-of-service, the driver will be disqualified for a period of 2 years to 5 years, unless the driver was transporting hazardous materials in placardable quantities or operating a vehicle designed to transport more than 16 passengers inclusive of the driver, in which case, the period of disqualification will be 3 years to 5 years.
   c. For a third or subsequent conviction of driving while out-of-service, the driver will be disqualified for a period of 3 to 5 years. In the case of a third conviction, there is no enhancement for hazardous materials or passengers because the maximum period of disqualification permitted by statute is 5 years.
2. In order to be considered a "second" or "third" conviction, the last offense must occur within 10 years of a previous offense(s) and must arise out of separate incidents.
3. In all cases, a civil penalty is also required to be assessed against the driver. The minimum penalty is $2,500 for a first conviction and $5,000 for a second or subsequent conviction.

[12] 49 CFR § 392.5(c)

4. Penalties to Employers Who Order Driver to Violate Out-of-Service Orders
   a. Employers who knowingly permit or who require drivers to operate a commercial motor vehicle while subject to an out-of-service order are subject to a minimum civil penalty of $2,750 and a maximum civil penalty of $25,000.
   b. Failure to pay civil penalty can result in CMV being impounded until civil penalty is paid.[13]

X. Is There a Serious Problem With CMV Competence? If so, why?

A. Ongoing (and Continually Worsening) Commercial Driver Shortage

As Baby Boomers reach retirement age, the shortfall in truck drivers has risen dramatically. From 1994 to 2013, the number of truck drivers in the 55 to 64 age group rose by 126%.[14] As these Baby Boomer truck drivers continue to retire, the commercial driver shortage will continue and worsen because the industry cannot find enough newly qualified drivers to replace the retirees.

Annually, the American Transportation Research Institute (ATRI) publishes a "Critical Issues in the Trucking Industry"—the top ten concerns of the trucking industry based on ATRIs poll of drivers and others in the industry. Since 2015, the number one concern of motor carriers has been Driver Shortages. The 2017 chart below the American Trucking Association (ATA) estimated a shortage of 48,000 in 2015 and projected that the shortage could increase to 175,000 by 2026.[15]

However, in 2020, data showed the industry was losing far more truckers annually than it gained. This increasing shortfall, combined with the pandemic, resulted in a loss of 150,172 drivers at smaller trucking operations in the four-month period from July to October of 2020.[16] The ATA now estimates the industry needs to hire 1.1 million new drivers over the next decade (110,000 per year) to meet current industry demand.

B. General Impact of the Driver Shortage

1. Increased Pay for Drivers

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[13] ***H.B. Walker Inc. v. State, Dept. of Transp***., Ohio App. 1 Dist., 707 So.2d 790 (1998), rehearing denied. State Department of Transportation (DOT) is authorized to impound motor vehicle for failure to pay civil penalty in connection with motor carrier terminal audit during pendency of administrative hearings and prior to rendition of final order in those proceedings.

[14] White Paper*: Analysis of Truck Driver Age Demographics Across Two Decades*, American Transportation Research Institute.
[15] Costello, B. *ATA's Trucking Economic Review*. Volume 17, Issue 4, 23 December 2015.
[16] Cassidy, William. *Journal of Commerce*. U.S. truck driver shortfall steeper than expected. Nov. 25, 2020.

According to the Wall Street Journal, the average pay for long-haul truckers jumped 17% between 2013 and 2017, from $48,000 per year to $57,000 per year. By May, 2021, the average base salary for a truck driver in the United States was $63,710 per year[17] and is expected to continue to rise.

XPO Logistics	$143,889
Estes Express	$ 90,942
UPS	$ 89,868
Eagle Express	$ 88,059
FedEx Ground	$ 85,035
Walmart	$ 73,000

2. Pressure from Industry to Change Regulations
   The trucking industry is pushing for two changes in Federal Motor Carrier regulations in order to make up for the deficit of drivers:

   a. Lowering the age for interstate drivers to include drivers from 18 to 20.

   b. Easing regulations to facilitate the transition of former military personnel to careers in the trucking industry.

3. Industry Collusion to Keep Drivers Driving
   The shortage has caused motor carriers to ignore some behaviors that, previously, would have caused termination of the driver.

   a. Property damage issues: Formerly, if the driver was responsible for damage to the rig or to the cargo, he was told to seek a job elsewhere. Now, due to the driver shortage, trucking companies tend to look the other way until the carrier's insurance company demands termination because they're tired of paying for the damage the driver causes.

   b. Facilitating Employment as a Driver After Termination: Formerly, if a driver was terminated for a bad safety record, he was out of the industry. Now, due to the driver shortage, motor carriers will often keep the driver's safety record with their company concealed, permitting the fired driver can probably get a job driving elsewhere. This practice also eliminates unemployment costs and termination issues for the carrier.

4. Changes in the Insurance Industry
   For some time now, the insurance industry has persuaded motor carriers to hire drivers with three years or more of driving experience because the collision rate among newer drivers is much higher. Now, the insurance companies, due to the shortage and pressure from the trucking industry, are giving less

[17] https://www.indeed.com/career/truck-driver/salaries

experienced drivers some leeway if they graduated from a reputable truck-driving school.

5. Increasing Numbers of Older New Drivers
With no mandatory retirement age and ever-increasing salaries, many drivers are opting to drive much longer. The median age of the average worker in the U.S. is 42. The median age of the average truck driver is 55.[18] Many companies prefer hiring a new, inexperienced driver over 60, rather than a younger driver, because of the CMV crash statistics for drivers 25 years of age or younger.

   a. Of the 3,697 drivers of large trucks involved in fatal crashes in 2014, 202 (5%) were 25 years of age or younger.

   b. Eight (3%) of the 232 drivers of buses involved in fatal crashes were 25 years of age or younger.

   c. In 2020, drivers under 26 were involved in 10,061 crashes in the U.S. while drivers 66 and older were involved in 8,622.[19]

6. Law Enforcement Increasingly Lenient
Formerly, if a truck driver caused a collision, he could count on a citation from the police officer that was dispatched to investigate the collision. It is more becoming more common now for officer not to issue a citation despite the CMV driver's culpability in causing the collision.

7. Recent study revealed new trends in truck driver recruitment[20] which included 72 percent of recruiters reported that of the applicants received, the majority of candidates were not qualified for the role. Candidate qualification goes further than driver licensure. Disqualifying factors can also include previous accident or violation history,

C. Impact of the Pandemic on the Driver Shortage

1. Many driving schools stopped taking students during the pandemic. For example, the average time to obtain a CDL in New Jersey went from 2 months to 6 months.[21]

2. Shortage of tanker truck drivers left many stations across the country with limited fuel supplies or out of fuel entirely.[22]

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[18] Bureau of Labor Statistics
[19] A&I online - Motor Carrier Analysis and Information Resources Online (dot.gov)
[20] recruitingdaily.com. New Trends in Trucking Recruitment: 2019 Study Reveals New Trends in Trucking Recruitment > Sourcing and Recruiting News (recruitingdaily.com)
[21] Money, April 13, 2021: Truck driver shortage affecting deliveries nationwide: Truck driver shortage affecting deliveries nationwide | Fox Business

3. The empty grocery store shelves during the pandemic were at least partially due to the truck driver shortage.[23]

4. FMCSA issues Emergency Declaration to rush supplies to empty store shelves of grocery
stores and pharmacies.[24]

5. The driver shortage left companies trying to recruit qualified drivers from wherever they might find them.

6. Many trucking companies began actively recruiting retirees.[25]

XI. Increasing Risk Factors: Disability and Aging

A. Long-Haul Truck Driver Health and Injury[26]

Drivers of heavy trucks account for 56% of all production and nonsupervisory employees in the trucking industry. The limited data for illness and injury in long-haul drivers prompted a targeted national survey which was funded, in part, by FMCSA. Interviewers collected data from 1,670 long-haul truck drivers at 32 truck stops across the 48 contiguous United States. Obesity and current smoking were twice as prevalent in long-haul truck drivers as in the U.S. adult working population: Morbid obesity was 17% vs. 7%, obesity was 69% vs. 31% (making truck drivers the most obese working group in the U.S.[27]) and current smoking was 51% vs. 19%. Additionally, 61% of drivers reported having two or more of these risk factors: hypertension, obesity, smoking, high cholesterol, no physical activity, 6 or fewer hours of sleep per 24-hr period.

B. Driver Retention

Driving a truck cross country is a tough job. Most people understand it‘s tough to be away from family so much; however, that’s only one of the downsides listed by the drivers themselves:[28]

1. Although truckers’ pay has been rising, truckers don’t feel their pay compensates for everything they’re expected to do. For instance, drivers often wait for hours for their truck to be loaded or unloaded, unable to leave the truck, but never receive pay for that time.

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[22] NBC Universal, April 28, 2021: Shortage of tanker truck drivers could limit gas station supply, experts say (yahoo.com)
[23] CBS Sacramento: Truck Driver Shortage Could Impact Store Shelves (yahoo.com)
[24] Reason, March 28, 2020, Britschgi, Christian: Truckers Are Rushing Supplies to Empty Store Shelves During Coronavirus Crisis. Will Regulators Get Out of the Way? – Reason.com
[25] Tully, Jake. Trucking Jobs for people over 50. Trucking Jobs for people over 50 | TruckDrivingJobs.com
[26] Sieber, W.K., Robinson, C.F., Birdsey, J., Chen, G.X., Hitchcock, E.M., Lincoln, J.E., Nakata, A., Sweeney, M.H., *Obesity and other risk factors: The National Survey of U.S. Long-Haul Truck Driver Health and Injury*, American Journal of Industrial Medicine. 2015. http://onlinelibrary.wiley.com/journal/10.1002/(ISSN)1097-0274
[27] *Behavioral Risk Factor Surveillance System*, Preventing Chronic Disease: January, 2014.
[28] alltruckjobs.com industry blog: *Hit the Road Jack.*

2. Many drivers claim that their companies have tried to persuade, or even force, them to break federal driving rules at the expense of their own safety and the safety of the motoring public.
3. Some drivers leave because of disputes over equipment and maintenance. Drivers are often promised regular maintenance they do not receive.
4. Drivers who are not tech savvy hate the Electronic Logging Devices required for most CMV drivers by 49 CFR 395.8(a).

C. Crash Data from the Aging CMV Driver Population

CBS News analysis of crash data collected from other sources reveals a 19% increase in collisions involving commercial truck and bus drivers in their 70s, 80s and even 90s in just the last 3 years. From 2013 to 2015, there were more than 6,636 collisions involving elderly drivers in 12 states alone. Below is a chart containing data from 5 of the 12 states.

State	Ages	2013	2014	2015
Alabama	70-74	131	148	179
	75-79	46	44	65
	80-84	20	19	11
	85-89	6	5	2
	90+	1	1	1
	TOTAL	204	217	258
California	70-74	41	52	46
	75-79	15	20	23
	80-84	3	6	11
	85-89	2	2	1
	90+	NA	NA	NA
	TOTAL	61	80	81
Florida	70-74	262	286	311
	75-79	103	106	100
	80-84	22	25	32
	85-89	3	8	6
	90+	NA	NA	NA
	TOTAL	390	425	449
Idaho	70-74	41	42	0
	75-79	10	11	0
	80-84	3	4	0
	85-89	0	2	0
	90+	0	0	NA
	TOTAL	54	59	0
Texas	70-74	336	416	455
	75-79	122	109	114
	80-84	25	29	37
	85-89	5	3	5
	90+	1	1	NA
	TOTAL	489	558	611

NA does not mean that there were no collisions. It means that the state involved in the study did not provide the data for that category. Since states indicated "0" when there were no collisions, it should not be assumed that NA means "0".

D. Conditions in Older Drivers Which, According to Research, Impair CMV Driving Ability[29]

1. Conditions That Often Impair Visual Function in Older Drivers
   a. Cataracts
   b. Glaucoma
   c. Age-Related Macular Degeneration

2. Conditions That Often Impair Cognitive Function in Older Drivers
   a. Dementia
      1) loss of executive functioning: inability to plan, initiate, sequence, monitor, etc.
      2) memory loss
      3) spatial disorientation

   b. Stroke: survivors have increased likelihood of transient ischemic attack/mini-stroke

   c. Sleep Apnea
      1) drowsiness and sleepiness
      2) memory loss
      3) impaired concentration
      4) impaired coordination
      5) anxiety and depression

   d. Alzheimer's disease

3. Conditions That Often Impair Psychomotor Function in Older Drivers

   a. Parkinson's disease
   b. Arthritis

E. Medication Use and Safety Concerns Among Older Drivers

The following factors affect drug actions and interactions in older adults:

1. An increase in the number of drugs taken daily.
2. Alterations in pharmacokinetics (the process by which a drug is absorbed, distributed, metabolized, and eliminated by the body).
3. Long-term drug use.

[29] *Older Commercial Drivers: Do They Pose a Safety Risk?* National Academies Press, 2010.

4. Alteration in gut surface area.
5. Decrease in gastric motility.
6. Decreased gastric acid secretion.
7. Multiple drugs competing for binding sites on serum albumin.
8. Multiple drugs competing for metabolic enzymes.
9. Increase in the proportion of fat to body mass.
10. Decreased body water.
11. Reduced liver size with diminished ability to metabolize drugs.
12. Less efficient renal clearance of drugs

Because of the above factors, older adults can experience side effects of medication, even if they are taking the normal, prescribed dose of the medication. These common side effects include:

1. Dizziness
2. Drowsiness
3. Tremors
4. Rigidity
5. Confusion
6. Hypoglycemia
7. Hypotension
8. Blurred vision

Additional Age-Related and Drug-Related Data

1. The amount of prescribed medication goes up sharply beginning at age 50.
2. More than 25% of drugged drivers in fatal (CMV and non-CMV) crashes were 50 or older.[30]
3. Illicit drug use in adults 50 to 59 more than doubled from 3% in 2002 to 7% in 2010.[31]
4. Mental decline in the elderly can lead to taking a drug more or less often than prescribed or in the wrong amount.

XII. Potential Improvements to CMV Competence & Solutions to Driver Shortage

A. Electric Commercial Motor Vehicles With New Safety Features

Daimler's electric trucks and buses (FUSO, Freightliner and Mercedes brands) have already covered more than seven million kilometers with battery-powered commercial trucks in Europe. Portland (Oregon) General Electric recently opened its

[30] Brady, J. E., Li G. *Trends in Alcohol and Other Drugs Detected in Fatally Injured Drivers in the United States, 1999-2010*. American Journal of Epidemiology. January 2014:kwt327.
[31] Center for Behavioral Health Statistics and Quality (CBHSQ). *Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health*. Rockville, MD: Substance Abuse and Mental health Services Administration; 2015. HHS Publication No. SMA 15-4927, NSDUH Series H-50.

first electric charging island for semi-trucks and buses near the Daimler headquarters in Portland. Their safety features of Daimler trucks include:

1. Active Drive Assist (sophisticated cruise control) both longitudinal and lateral control in all speed ranges using a combination of radar and camera information.

2. Proximity Control Assist: truck brakes of its own accord if it gets too close to another vehicle in front and then and then accelerates back up to a predetermined speed.

3. Active Brake Assist: radar and camera systems interact enabling the system to react to objects traveling at high speed and can apply full braking if the driver doesn't react.

4. Mirror Cam and Sideguard Assist: two short-range radar sensors on the right side of the truck's frame monitors the entire length of the vehicle and can even detect pedestrians and bicycles approaching from the front or side. If there is a risk of a collision, visual warnings light up in the Mirror Cam on the right side. Audio warnings also occur if a stationary or moving object appears within two meters of the front or two meters of the rear.

5. Blind Spot Assist: radar sensors monitor the areas directly alongside and behind the truck. The system warns the driver in the truck's blind spot by illuminating a red warning signal in the glass of the exterior mirror. If the driver fails to see this warning and indicates a lane change, a warning signal also sounds.

6. Active Lane Keeping Assist: uses a camera to keep the truck centered in it lane and may make subtle interventions in the steering.

7. Parking Packages with 360-degree cameras

B. Autonomous Vehicles

In December of 2019, an autonomous semi-tractor-trailer drove 2,800 miles from Tulare, California, to Quakertown, Pennsylvania on I-15 and I-75. The three-day trip was done primarily in autonomous mode with a safety driver in the vehicle to take over if and when needed. The truck traveled both during the day and at night and safely navigated road construction, mountains, tunnels, rain, and snow pulling a refrigerated trailer carrying Land O Lakes butter. The manufacturer is Plus.ai, which has offices in Silicon Valley, Beijing, and Shanghai.

XIII. Common Questions and Answers Regarding CDL Regulations

A. Can the names of foreign drivers be entered in a special list attached to the National Driver Register (NDR) when the driver fails to appear or pay?

No special list needs to be created in the NDR. If a state withdraws a privilege to drive in their state for failure to appear or pay, this suspension of privilege can be entered into the NDR, regardless of where the driver is licensed.

B. Driving with 0.04 BAC is a CDL disqualifying offense. Is it a criminal offense?

Whether driving with 0.04 BAC is a criminal offense is up to each state. FMCSA's only requires at least one-year disqualification on "conviction" of first offense and lifetime disqualification upon second "conviction."

C. What about driving a person, non-CMV during disqualification of a CDL when the CDL holder was only "convicted" of having a 0.04 BAC while driving a commercial vehicle? What about reinstatement?

A CDL holder can only hold one license, the CDL. The CDL provides both CMV and automobile privileges. If a CDL holder is convicted of an alcohol concentration of 0.04 or more in a CMV ***OR*** 0.08 or more in a non-CMV, the CDL holder is disqualified from operating a CMV for one year for a first offense and for life for conviction of a second offense (both are "Major Disqualifying Offenses").

States may issue a hardship/restricted license to operate a non-CMV during the disqualification period for operating a CMV with a BAC from 0.04 to 0.079, but are prohibited from issuing a permit to operate a CMV during this time. FMCSA encourages states to disqualify drivers from all driving privileges during CDL disqualification. After the disqualification is served, CDL may be restored by the state of issuance once that state's reinstatement requirements have been met.