Emerging Issues in CDL Hearings

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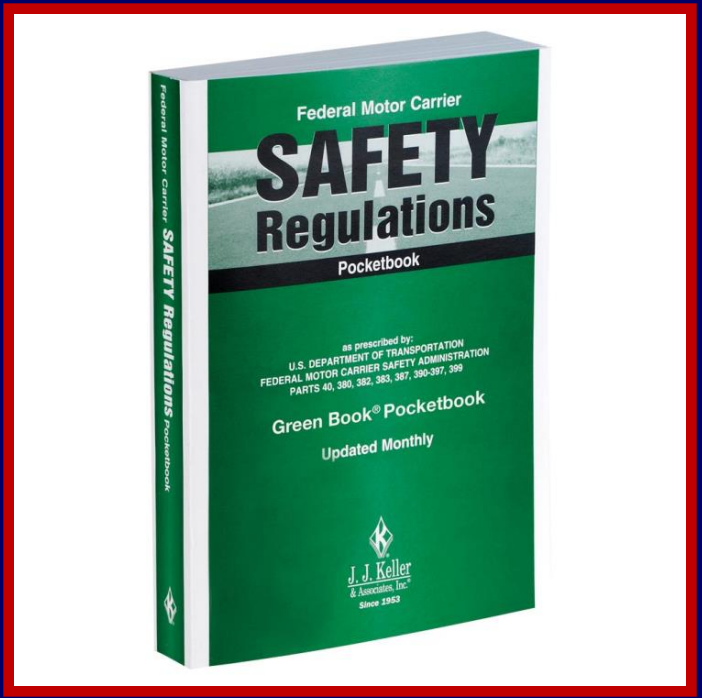
This is an *overview*.

- After this class, you'll be better able to:
  - Convey a basic familiarity with common terms related to commercial motor vehicle operation;
  - Recognize premises underlying FMCSA regulations; and
  - Grasp the way that federal motor vehicle regulations and tables are structured.
- 49 CFR §§ 300-399 is lengthy and complex →
- Please refer to CDL/CMV Benchcard at www.fmcsa.dot.gov/regulations and www.cdlresources.org for further information.



They're not just *federal* regulations.

- Have been adopted by reference or codified in every state.
- Apply in all states.
- States can't dilute or weaken them; some states strengthened them.

CMVSA's Overriding Principle for CMV Highway Safety

ONE driver, ONE license, ONE driving record

CDL Endorsements

- T = double or triple trailers
- P = passenger commercial vehicles
- N = tank vehicles
- H = hazardous materials
- X = tanker carrying hazardous materials
- S = school buses

Defining a Commercial Motor Vehicle

Gross Vehicle Weight Rating =

trailer weight

+

maximum safe load for trailer assigned by manufacturer

Gross Combination Weight Rating =

truck-tractor weight

+

towed unit (trailer) weight

+

weight of (safe) load

Commercial Motor Vehicle

A. GCWR of 26,001 or more including towed unit with GVWR over 10,000
B. GVWR of 26,001 or more pounds
C. 26,000 pounds or less and
   - Transports 16 or more passengers including driver or
   - Transports hazardous materials required to be placarded

Question 1: Which vehicle is least likely to be a CMV?

A

B

C

D

Question 2: With a "waiver" or "exemption" a CMV may be operated *without* a CDL. Which of the situations below does *not* qualify as an exemption (*i.e.*, which is illegal).

A. Farmers driving a CMV carrying agricultural products, farm machinery, or farm supplies for commercial purposes;
B. A small-town mayor who needs to drive a CMV snowplow to clear his city streets of snow and ice;
C. Truck pulling a trailer carrying a race car (Racing Rig) taking a race car to Daytona Speedway for a charity race;
D. People who need to use a CMV to bring a few hundred pounds of fireworks to your town for your local 4th of July celebration;
E. None of the above.

CDL Waivers or Exemptions

- Part-time drivers from 6/30 to 7/6 for pyrotechnic industry if GVWR is under 10,001 or carrying < 500 lbs. of fireworks
- Your own or rented non-business, non-commercial RV
- Not-for-hire (from you) truck carrying your own property
- Farmers, including family & employees:
  - Transporting agri products, farm machinery or farm supplies
  - Within 150-mile radius of farm
  - Neither common nor contract motor carrier

CDL Waivers or Exemptions

- Backup drivers employed by town of 3,000 or less to remove snow and ice during emergency
- Active-duty military personnel in military vehicles (not contractors)
- Firefighters and other emergency vehicle drivers if:
  - Equipment is necessary to preserve life or property
  - Needed to execute emergency governmental functions
  - Equipped with audible & visual signals (lights & sirens)
  - Not subject to normal traffic regulations

"Conviction" 49 CFR § 383.5

- Unvacated adjudication of guilt; or
- Determination person violated or failed to comply with law by a court or authorized administrative tribunal; or
- Unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court; or
- Plea of guilty or *nolo contedere* accepted by a court; or
- Payment of a fine or of court cost; or
- Violation of a condition of release without bail regardless of whether the penalty is rebated, suspended, or probated.

Reporting Convictions
49 CFR § 384.208, § 384.209, § 384.225

- Courts must send all convictions (as conviction is defined in 49 CFR § 383.5) to the state that licensed the CDL holder within 10 days of the date of conviction.
- States must make convictions and disqualifications of all CDL holders and CMV drivers available (place them on the driver's record) within 10 days of receipt.
- Convictions and disqualifications *must* go in CDLIS.
- Issuance of any license or permit to operate CMV during suspension, revocation, or disqualification is prohibited.

Masking is prohibited by 49 CFR § 384.226

"The State must not

- Mask,
- Defer imposition of judgment, or
- Allow an individual to enter into a diversion program

that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense in the State where the driver is licensed or another state."

Major Disqualifying Offenses
49 CFR 383.51 – Table 1

- DUI alcohol/controlled substance as defined by state law
- Driving CMV with BAC of 0.04 or more (but under 0.08)
- Refusal to submit to chemical test for intoxication
- Leaving the scene of a crash
- Driving CMV when CLP or CDL is disqualified
- Causing fatality by operating a CMV negligently
- Driving CMV for purpose of committing a felony:
  - To create distribute or dispense a controlled substance
  - For the purpose of human trafficking
  - Other felony

Human Trafficking & the CMV or CDL Driver

3. Why was 49 CFR 383.51 amended to include human trafficking?

4. What role, if any, do CMV/CDL drivers play in human trafficking?

Penalties for "Major Disqualifying Offenses"

First conviction of a Major Disqualifying Offense

- 1 year disqualification for most drivers
- 3 year disqualification for HazMat drivers
- Lifetime disqualification (without possibility of reinstatement—ever)
  - For operating a CMV to commit felony involving controlled substance
  - For operating a CMV to commit felony involving human trafficking

Second conviction of most Major Disqualifying Offenses

- Lifetime disqualification (possibility of reinstatement after 10 years)

Subsequent conviction of any Major Disqualifying Offense by someone reinstated after a prior 10-year disqualification for second offense is not eligible for a second reinstatement.

Disqualification of Drivers Under 49 CFR § 383.51

- Person required to have CLP/CDL must not drive CMV while disqualified.
- Employer must not knowingly allow, require, or authorize disqualified driver to drive a CMV.
- CLP/CDL holder can be disqualified convictions in CMV *or* non-CMV
- To determine 1st or subsequent offenses, each conviction resulting from a separate incident, whether in a CMV or non-CMV, must be counted.
- Disqualifications are always consecutive, not concurrent—no overlap.
- Canadian or Mexican CDL drivers can be disqualified from driving in U.S.
- If CDL driver disqualified for life can attain reinstatement after 10 years and receives subsequent offense, no subsequent reinstatements.

Serious Violations: 49 CFR § 383.51 – Table 2

- 15 or more miles per hour over posted speed limit in CMV
- Driving CMV recklessly as defined by state statute
- Making improper or erratic lane change in a CMV
- Following the vehicle ahead too closely in a CMV
- Any non-parking CMV violation arising from a fatality
- Driving CMV without CLP or CDL
- Driving CMV without a CLP or CDL in the driver's possession
- Driving CMV without proper class or endorsements
- Violating state or local law prohibiting texting while driving
- Violating state or local law prohibiting use of a handheld mobile phone while driving

Penalties for Serious Violations
49 CFR 383.51 – Table 2

- 2 convictions within a 3-year period = 60-day disqualification
- 3rd conviction within 3 years = 120-day disqualification
- Disqualifications run consecutively
- It's the date of violation that matters, not the conviction date

Question 5:

A CDL driver is schedule for a hearing before you. His CDLIS record shows two convictions for serious violations within 3 years. He is subject to 60-day disqualification. He tells you that the first of the two violations, for driving a CMV without a CDL, was received before he obtained a CDL; however, he was entitled to an exemption from having a CDL because he was driving a pyrotechnic truck full of fireworks. You check his record and see the date of the violation was, indeed, on July 1. He said he paid the fine even though he had an exemption because it was less trouble than fighting the ticket. What is your decision?

6. What's the most critical issues relating to the trucking industry according to people in the industry?

Question 8

According to U.S. Department of Labor study on the rate of fatal occupational injuries by industry, which medical condition was the most frequent fatal occupational injury among CMV drivers?

a. Diabetes mellitus requiring medication
b. Hypertension
c. Morbid Obesity (body mass index > 35 kg/m)
d. Cardiovascular disease or Dysrhythmias

FMCSA Study of CMV Driver Health

61% of drivers reported having ***two or more of the following conditions***:

- Hypertension
- Obesity,
- Smoking
- High cholesterol,
- No physical activity
- 6 or fewer hours sleep in a 24-hour period

Question 9

As of 2020, life expectancy for someone in the U.S. is 77.8 years. According to a 2018 NIOSH/CDC study, the life expectancy for a trucker is:

a. 74 years

b. 70 years

c. 66 years

d. 61 years

Aging CMV Drivers

At left is Joe Rocha, at aged 90, was one of seven CDL drivers in California between 90 and 99. He began driving a truck in 1938 and was still driving in 2016.

Older CMV Driver Crash Rates

CBS News Analysis:

- 19% increase in collisions involving commercial truck and bus drivers in their 70s, 80s, and 90s.
- 6,636 crashes involving CMV drivers 65 and older in a 3-year period in the 12 states included in study.

Common Conditions in Older Drivers That Impact CMV Driving Ability

- Can’t effectively divide attention between multiple activities—slower to make driving decisions
- Neck pain/stiffness; harder to look over shoulder
- Slower reaction times
- Sleep disorders or difficulty sleeping
- Cataracts or age-related macular degeneration
- Need frequent changes to eyeglass prescriptions but don’t get them because they’re on the road
- Less peripheral vision; can’t judge distances
- More likely to need medication to maintain health
- More likely to suffer memory loss which may impede taking medications as prescribed

Questions?