

**COMMERCIAL DRIVER'S LICENSING  
ENFORCEMENT – INSTRUCTOR'S NOTES**

For use in conjunction with  
CDL PowerPoint (October 2010)

## COMMERCIAL DRIVERS' LICENSING LAWS

### LEARNING OBJECTIVES

#### Participants will be able to:

- Define the basic terms and provisions unique to CDL;
- Describe the classes of commercial motor vehicles; and
- Identify various disqualifying offenses and sanctions.

### CONTENT SEGMENTS

- I. Introduction
- II. Background
- III. Who Is Required to be Licensed
- IV. Commercial Motor Vehicle Drivers and Alcohol Use
- V. Disqualification
- VI. Legal Challenges
- VII. Conclusion
- VIII. Exhibits (1-7)

## I. INTRODUCTION

Enforcement of the CDL regulations and laws is a joint effort involving:

- Federal regulations and oversight
- State testing and licensing
- State and local law enforcement
- The judicial system

The system is only as strong as the weakest link in the chain of events from traffic citation to conviction on the driver's record.

2008 – **4,066** Large trucks involved in fatal traffic crashes (518 less than 2007).

2008 – **3,816** Vehicle occupants died in crashes involving a large truck (587 less than 2007).

2008 – **67** Vehicle occupants died in crashes involving a bus (30 more than 2007).

### **PowerPoint Slide No. 1 [CDL Enforcement]**

### **Quiz 10 Slides**

The instructor may also want to distribute copies of the quiz (**Exhibit 1**) as an ice-breaker. If a quiz is used, then the answers could be given at the close of the presentation as part of the concluding remarks (**Exhibit 2**). If jurisdictional statistics on truck crashes are available the instructor may want to modify the quiz to reflect local conditions.

### **PowerPoint Slide No. 2 [2008 Fatal Crashes]**

### **PowerPoint Slide No. 3 [2008 Fatalities]**

### **PowerPoint Slide No. 4 [2008 Fatalities]**

### INTRODUCTION (Cont.)

The instructor may want to present a case study such as the *Jamie Lee Burke* case or one of State or local interest.

The learning objectives of this course are to:

- Define and describe the basic terms and provisions unique to CDL laws;
- Describe the various classes of commercial motor vehicles; and
- Identify various disqualifying offenses and sanctions.

### **PowerPoint Slide No. 5 [Course Learning Objectives]**

The instructor should state the objectives of the course as illustrated by this PowerPoint Slide .

The instructor should stress that while Federal regulations (49 CFR 383 and 384) are being discussed, each State has adopted them into State laws or statutes.

### **PowerPoint Slides No. 6-12 [ Photos]**

As part of the introduction, the instructor may also want to further emphasize the seriousness of commercial vehicle violations by showing PowerPoint Slides Nos. 6-12.

The instructor may also want to engage the participants in a discussion of particular local examples of serious traffic violations involving commercial motor vehicles.

The instructor may want to contact local law enforcement, such as the state highway patrol, for particular incidents, which will emphasize the serious consequences of commercial motor vehicle violations.

**INTRODUCTION (Cont.)****II. BACKGROUND****PowerPoint Slides No. 13-14  
[Goals of CMVSA]**

The goals of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) are to:

- Prevent commercial vehicle drivers from concealing unsafe driving records by carrying licenses from more than one state;
- Ensure that all commercial vehicle drivers demonstrate the minimum levels of knowledge and skills needed to safely operate commercial motor vehicles before being licensed; and
- Subject commercial motor vehicle drivers to new, uniform sanctions for certain unsafe driving practices.

[49 CFR. § 383.51]

A. In 1986, in response to growing public concerns over the safety of the nation's highways, Congress passed the Commercial Motor Vehicle Safety Act (CMVSA) (Pub. L. 99-570, Title XII). This act required the states to comply with federally mandated testing and licensing standards and sanctions. Prior to this, many states had wide variations in testing and licensing standards, as well as disciplinary actions.

**BACKGROUND (Cont.)**

- No classified driver licensing system in 18 states and D.C.
- Of the 32 states with a classified driver licensing system, only 12 required a person to take a skills driving test in a representative CMV. The other 20 states only required a knowledge test or the payment of a higher license fee.
- Equally serious was the problem of multiple driver licenses.
- Even though 35 states were voluntarily participating in the Driver's License Compact that required an existing license from another jurisdiction to be turned in before issuing a new license, there was no national information network to check a driver license applicant's driver license status or driving history.

B. Also included in the Act were provisions that required states to disqualify drivers who committed certain offenses while operating a commercial motor vehicle. [49 U.S.C. § 31310].

The instructor may want to discuss the requirement that states must enact laws in compliance with the federal requirements or risk loss of a significant portion (up to 5% the first year and up to 10% each subsequent year) of their federal highway funds. As a consequence, all 51 jurisdictions have enacted laws in compliance with the federal requirements outlined in this course.

C. Basic principle of the Act is one license, one record for each driver.

**III. WHO IS REQUIRED TO BE LICENSED**

- A. Any person who operates a commercial motor vehicle. [49 U.S.C. §31301] [49 CFR §383.3].

- B. What constitutes a commercial motor vehicle? [49 U.S.C. §31301] [49 CFR §383.5]. A motor vehicle, or combination of motor vehicles, used in commerce, to transport passengers or property if the motor vehicle:

**PowerPoint Slide No. 16  
[Who is Required to be Licensed]**

As part of this program, the instructor should provide a copy of the jurisdiction's classification scheme to the participants.

The instructor may also want to discuss the Uniform Vehicle Code (UVC) sections that are applicable. **(Exhibit 3).**

License Classifications may vary from state to state for non-commercial drivers but all states must use Classes A, B and C for their CDL classifications and must use the specified CDL endorsements.

For illustration purposes, the Uniform Vehicle Code (UVC) describes the CDL classification as follows:

**UVC §6-515 — Classifications, endorsements and restrictions**

Commercial driver licenses may be issued with the following classifications, endorsements and restrictions; the holder of a valid commercial driver license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles, except motorcycles.

**PowerPoint Slides No. 17-20  
[What Constitutes a CMV]**

## WHO IS REQUIRED TO BE LICENSED (Cont.)

### ~~Contents~~

1. 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; or
  2. Has a GVWR of 26,001 or more pounds; or
  3. Has a GVWR of 26,000 pounds or less, and
    - a. Is designed to transport 16 or more passengers, inclusive of the driver, or
    - b. Is transporting hazardous materials that are required to be placarded.
- C. Commerce - includes both interstate and international commerce; also includes anything which “affects” interstate commerce (*i.e.*, intrastate commerce). [49 U.S.C. §31301]; [49 CFR §383.5]

### ~~Instructor's Notes~~

The instructor needs to determine whether his or her state has retained the “commerce” element. If so, he or she should discuss with the participants the types and levels of proof of engaging “in commerce” that they would require.

Would proof of registration as a commercial motor vehicle be sufficient?

Would the state have to show that the driver was actually engaged in commercial activities at the time of the citation?

The case of *Commonwealth v. Williams*, 425 Pa. Super. 113, 624 A.2d 171 (1993) may be illustrative. In that case the Pennsylvania court determined that a tractor cab unit (a/k/a “bobtail”) was a commercial motor vehicle for the purposes of sustaining a conviction for driving without a CDL, even though the tractor was not connected to a trailer unit at the time of the driver’s arrest and was being used for personal transportation.

## WHO IS REQUIRED TO BE LICENSED (Cont.)

PowerPoint Slide No. 23 [CDL - Class A]

### D. CMV Classes.

1. **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.

- **Definition of GCWR and GVWR:** Weight of the vehicle or combination of vehicles plus the maximum safe load as assigned by the vehicle manufacturer

2. **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.

PowerPoint Slide No. 24 [CDL - Class B]

3. **Class C:** Any single vehicle, or combination of vehicles, that meets neither the definition of Class A nor that of Class B as contained in this section, but that is either:
  - a. Designed to transport 16 or more passengers, including the driver;

PowerPoint Slide No. 25 [CDL - Class C]

## WHO IS REQUIRED TO BE LICENSED (Cont.)

**Contents** used in the transportation of materials found to be hazardous for the purposes of the Hazardous materials Transportation Act (HMTA) (Pub. L. 93-633, Title I) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations. [49 CFR Part 172, Subpart F].

## Instructor's Notes

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- A driver operating a passenger vehicle designed to transport 16 or more passengers or hazardous materials will be required to hold a Class A or B license, if the GVWR of the vehicle meets the weight rating thresholds for those classes.

### PowerPoint Slide No. 26 [CDL Chart]

- Some states use “gross registered weight,” “actual weight” or GVWR, whichever is greater.
- Federal regulations require GVWR and GCWR.

**WHO IS REQUIRED TO BE LICENSED (Cont.)**

- States may expand the definition of a CMV and therefore the need to obtain a CDL for its own residents, but cannot enforce them on other drivers.
- Drivers testing in a CMV that is under the federal weight or passenger design threshold and issued a CDL must be restricted on the CDL to a CMV no greater than 26,000 pounds GVWR or GCWR and/or designed to transport no more than 15 passengers.
- “In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.” [49 CFR 383.5]

E. The federal regulations establish uniform endorsements for commercial drivers' licenses. They are as follows:

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 (N+H).

**PowerPoint Slides No. 27-29  
[CDL Endorsements]**

**WHO IS REQUIRED TO BE LICENSED (Cont.)**

6. "S" for school buses

F. Persons who fail to pass the air brake section of the CDL general knowledge test or do not take the skills driving test in a CMV equipped with air brakes must be restricted to operating CMV's without air brakes.

G. Who is/may be waived or exempted?

- The following activities are or may be exempted or waived under the CDL regulations:
- Operators of recreational vehicles used for non-business purposes; exempt from the CMVSA because they are not operating in commerce; states may require CDL.
- Operators of vehicles transporting their own personal property in a not-for-hire situation; rental vehicles; exempt from CMVSA because they are not operating in-commerce; states may require CDL.

**PowerPoint Slide No. 30  
[Air Brake Restriction]**

There is no universally recognized restriction code for drivers who are limited to operating non-airbrake equipped commercial motor vehicles.

**PowerPoint Slides No. 31-38  
[CDL Exemptions]**

The instructor may have to modify these PowerPoint Slides if his/her jurisdiction has elected not to exercise waivers for certain vehicle operations.

**WHO IS REQUIRED TO BE LICENSED (Cont.)**

- **Farmer operating a farm vehicle that is:**
  - Controlled and operated by a farmer (includes operation by employees or family members);
  - Used to transport agricultural products, farm machinery or farm supplies to or from a farm;
  - Limited to a 150 mile radius of the farm;
  - Not a common or contract motor carrier;
  - State may require CDL  
[49 CFR § 383.3(d)(1)]
  
- **Firefighters and operators of emergency equipment:**
  - Must be equipment necessary to the preservation of life or property; or
  - Necessary for the execution of emergency governmental functions;
  - Must be equipped with audible and visual signals; and
  - Not subject to normal traffic regulation;
  - States may require CDL  
[49 CFR § 383.3(d)(2)]

**WHO IS REQUIRED TO BE LICENSED (Cont.)**

- **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;
  - State may require a CDL;  
[49 CFR § 383.3(d)(3)]
  
- **Military personnel:**
  - Active duty military personnel includes members of the;
    - Military reserves
    - National Guard on active duty, including personnel on full-time national guard duty;
    - Personnel who are part-time National Guard military technicians (civilians who are required to wear military uniforms and are subject to the code of military justice); and
  - Active duty U.S. Coast Guard personnel;
  - All states must honor the exemption;
  - Must be operating CMV for military purposes;
  - Applies to CMV owned or leased;
  - DOD civilian employees and/or contractor not eligible.  
[49 CFR § 383.3 (c)]

Previously discussed waivers may be granted by each state. Military personnel must be granted an exemption by all states.

**WHO IS REQUIRED TO BE LICENSED (Cont.)**

- **Restricted CDL**
  - Unlike the previously listed waivers and exemptions, the following activities are or may be waived from some of the CDL regulations and issued a restricted CDL:

- **Farm-related Service Industries (FRSI)**
  - Operators not exempt from all of the CDL requirements, only the testing requirements, if they have a good driving record;
  - Issued a restricted Class B or C CDL;
  - License is valid for no more than 180 days in any 12-month period for commercial use;
  - Industries covered by this “waiver” include custom harvesters, farm retail outlets and suppliers, agrichemical businesses and livestock feeders.

Restricted CDL intended for seasonal drivers, not full time drivers.

[49 CFR § 383.3(f)]

- **Certain drivers in the pyrotechnics industry –** Operators of these vehicles are not exempt from all the CDL requirements .
  - States may waive only the hazardous materials endorsement test;

- Only part-time drivers of vehicles with a GVWR of less than 10,001 pounds;
- Transporting less than 500 pounds of fireworks (DOT Class 1.3G explosives);
- They are issued a restricted Class C CDL. This CDL is valid for commercial purposes from June 30 through July 6 of each year. [49 CFR § 383.3(g)]

**IV. COMMERCIAL VEHICLE DRIVERS AND ALCOHOL USE**

A. Due to the serious effects caused by the combination of alcohol use and operating a commercial motor vehicle, the CMVSA and accompanying rules, establish a “zero tolerance” regarding the use of alcohol while operating a commercial motor vehicle.

**PowerPoint Slide No. 39**  
**[CMV Drivers and Zero Alcohol Use]**

B. A commercial vehicle operator may not drive, operate or be in physical control of a commercial motor vehicle if he or she has any measurable or detectable amount of alcohol in his or her system.

If a driver violates the “zero tolerance” requirement of the CDL law, he or she may be requested to submit to an alcohol test and upon a positive test, or refusal to submit to a test, be placed out-of-service for 24 hours.

Possible case for discussion: *Owens v. Motor Vehicles Division*, 875 P.2d 463 (Or. 1994). In this case, the Oregon Supreme Court held that a driver cannot challenge the validity of test results if the person who administered the test was qualified and the test was conducted in compliance with statutory guidelines.

- E. All drivers who operate commercial motor vehicles must, as a condition of licensure, agree to submit to a chemical test of their breath, blood, urine or saliva at any time an enforcement officer has reason to believe that the driver was operating a commercial motor vehicle with any measurable or detectable amount of alcohol in his or her system.
  - 1. The level of suspicion necessary to request a driver to submit to a test is not “probable cause” to believe the driver was driving while intoxicated or impaired.
  - 2. All the officer needs is “reasonable suspicion”; this could include a number of things, such as an odor of alcohol detected on a routine weight stop.

During this section, the instructor may also want to use a chart or a blank overhead transparency to aid in the discussion of the types of things the participants would consider to be sufficient “reasonable suspicion” if the disqualification was challenged by the driver. The instructor should be careful to emphasize that the “reasonable suspicion” standard is much lower than the traditional “probable cause” standard required under non-commercial implied consent laws. Commercial vehicle drivers are held to a higher standard.

**COMMERCIAL VEHICLE DRIVERS  
AND ALCOHOL USE (Cont.)**

3. If a driver refuses to be tested when requested by an enforcement officer, he or she will immediately be placed out-of-service for a period of 24 hours and may be disqualified in the same manner as if he or she had been convicted of driving a commercial motor vehicle while under the influence of alcohol. (*See, Section IV below on Disqualification.*)

**V. DISQUALIFICATION**

- A. [49 CFR §383.5] - suspension, revocation, cancellation or any other withdrawal of a person's privilege to drive a commercial motor vehicle.
- B. Model law - withdrawal of the privilege to drive a commercial motor vehicle.

**PowerPoint Slide No. 42  
[What is Disqualification]**

The instructor should discuss the traditional concept of suspension/revocation where the driver loses all of his or her privileges to drive any type of vehicle.

The instructor should stress the point that even though judges only "convict" and state licensing agencies "disqualify" drivers, the resulting "disqualification" action can only happen if the "conviction" is properly adjudicated and documented.

**DISQUALIFICATION (Cont.)**

- C. In some states, disqualification results in the loss of **only** the privilege to drive a commercial motor vehicle; the privilege to drive non-CDL class vehicles is not affected if the driver is only disqualified and not suspended.
- D. Basis for Disqualification:  
Conviction - an unvacated adjudication of guilt; 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 fine or court cost; or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended or probated. [49 CFR §383.5].
- E. There are four categories of disqualifying offenses with different disqualifying penalties:
- Major Offenses
  - Serious Traffic Violations
  - Railroad-Highway Grade Crossing Violations
  - Violations of Out-of-Service Orders

**PowerPoint Slide No. 43  
[State Driver Licensing Agency]**

The instructor should contrast the concept of disqualification with suspension. Federal law only requires that disqualification be applied against the commercial driving privileges and not the entire privilege to drive. The instructor should ascertain whether, in his or her jurisdiction, disqualification affects the entire privilege or only the commercial aspects.

**The instructor may want to note that this definition of conviction is much broader than traditionally used.** This definition treats administrative determinations as the equivalent of criminal convictions for the purposes of disqualification.

**PowerPoint Slides No. 44-45  
[Basis For Disqualification]**

**DISQUALIFICATION (Cont.)**

F. Major Offenses -  
[49 CFR §383.51].

1. Driving a commercial motor vehicle (CMV) or a non commercial vehicle (non-CMV) while under the influence of alcohol as prescribed by state law.
2. Driving a CMV with an alcohol concentration of .04 percent or more; no need to show impairment of ability to drive; *per se* offense. (See, *State v. Snyder*, 835 S.W.2d 30, 32 (Tenn. App. 1992));
3. Driving a CMV or non-CMV and refusing to submit to testing to determine alcohol concentration.
4. Driving a CMV or non-CMV while under the influence of a controlled substance a defined by 21 USC § 802(6) and includes all substances listed on schedules I through V of 21 CFR §1308, as they may be amended by the U.S. Department of Justice.
5. Driving a CMV or non-CMV and leaving the scene of an accident.
6. Any felony involving the use of a

**PowerPoint Slides No. 46-47**  
**[Major Disqualifying Offenses]**

An interesting case to discuss is *Wiebenga v. Iowa DOT*, 530 N.W. 2d 732 (Iowa S.Ct. 1995). In this case, the court permitted the Iowa DOT to use a blood alcohol reading of .14 taken from a commercial vehicle operator to disqualify the driver, even though the criminal charge of operating while intoxicated was dismissed for lack of probable cause.

The instructor may want to discuss the *per se* law in the states. Is a conviction needed in addition to the test results of .04 percent or more or is the test results sufficient to disqualify the driver [49 CFR § 384.203(b) and (c)]?

**PowerPoint Slides No. 48**  
**[Traffic Citation vs. Felony Arrest]**

**PowerPoint Slides No. 49-50**  
**[Major Disqualifying Offenses, cont.]**

- CMV or non-CMV, other than felonies involving manufacture, dispensing or distribution of controlled substances.
7. Causing a fatality through the negligent operation of CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.
  8. Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended or cancelled, or the driver is disqualified from operating a CMV.
  9. The use of a CMV or non-CMV in the commission of a felony involving manufacture, distribution or dispensing a controlled substance.

### **Duration of Disqualification for Major Offenses.**

- **First Conviction – One Year**

Any of the major disqualifying offenses, other than the use of a CMV or non-CMV in the commission of a felony involving the manufacture, distribution, or dispensing of controlled substances.

- **First Conviction – Three Years**

- a. Transporting hazardous materials that are required to be placarded;

### **PowerPoint Slides No. 51-53 [First Conviction – Major Offense]**

In determining first and subsequent convictions for disqualifying offenses both offenses in a CMV and non-CMV are counted.

and

- b. Any of the major disqualifying offenses, other than the use of a CMV or non-CMV in the commission of a felony involving the manufacture, distribution, or dispensing of controlled substances.

- **First Conviction – Mandatory Lifetime Disqualification**

- a. Use of a CMV or non-CMV in the commission of a felony involving the manufacture, distribution, or dispensing of controlled substances.
- b. Permanent disqualification. No state option to reduce time to ten years.

- **Second Conviction – Lifetime Disqualification**

- a. Offenses must arise out of separate incidents;
- b. Conviction of any two major offenses while driving a CMV or non-CMV, other than drug-related felony involving manufacture, distribution or dispensing;
- c. No time limit between offenses.

**PowerPoint Slide No. 54**  
**[Second Conviction – Major Offense]**

- G. Lifetime Disqualification Reduced**

- 1. CDL may be reinstated after ten (10) years at the state's option,

**PowerPoint Slide No. 55 [Special Rule: Lifetime Disqualification May Be Reduced]**

other than drug-related felony involving a manufacture, distribution or dispensing, if the driver voluntarily enters and successfully completes an appropriate state approved rehabilitation program;

2. Once restored to commercial operating privileges, any subsequent conviction of major disqualifying offense results in permanent lifetime disqualification.

### H. Serious Traffic Violations

1. Serious traffic violations [49 CFR § 383.5 and 383.51(c)]
  - a. Excessive speed – 15 mph or more over posted speed limit;
  - b. Reckless driving;
  - c. Improper or erratic lane changes;
  - d. Following too close;
  - e. Any traffic conviction in connection with a fatal accident; (not parking)
  - f. Driving a CMV without obtaining a CDL.
  - g. Driving a CMV without a CDL in the driver's possession.

The instructor needs to determine whether his or her jurisdiction has chosen to permit a person who has served a ten-year disqualification to be re-licensed. This flexibility was given to each state and not all states have chosen to allow re-licensure under these circumstances. If the state has chosen this option, a copy of the relevant statute or regulation should be discussed and/or attached.

### PowerPoint Slide No. 56-57 [Serious Traffic Violations]

Non-CMV offenses, “if the conviction results in the revocation, cancellation or suspension of the CDL holder’s license or non-CMV privileges. Applies to offenses a – e.

Note: If proof is provided by the date the individual must appear in court or pay any fine for the violation that the individual held a valid CDL on the date the citation was issued, then the individual shall not be guilty of this offense.



7. Under the Federal standards for state compliance with the CDL mandate, 49 CFR § 384, disqualification for serious traffic violations must run consecutively.

### I. Out-of-Service Disqualification

- **Definition:** An out-of-service order is a temporary withdrawal of the privilege to drive or operate a CMV, for any reason, not just alcohol or drug use.
1. **What is Out-of-Service?** Under the Federal Standards, 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. [49 CFR §392.5 (c)]. A driver may also be placed out-of-service for violating the hours of service regulations. A vehicle may also be placed out-of-service for defects.

This may or may not be an issue depending upon how the instructor's jurisdiction treats withdrawals for other traffic violations.

If other traffic violation withdrawals do not run consecutively, the instructor should emphasize to the participants that this is a mandatory requirement and that the courts have no authority to change this disqualification period to run concurrently.

### PowerPoint Slide No.59 [Out-of-Service Order]

This would be a good time for the instructor to review the concepts of suspension versus disqualification and contrast them with out-of-service.

The instructor should discuss the consequences of a driver being placed out-of-service. When a driver is placed out-of-service, the driver is prohibited from driving a commercial motor vehicle for the specified period of time. He or she is not prohibited from driving non-commercially (unless under arrest for DWI or some other offense). The vehicle and its cargo may be moved by another driver. The out-of-service driver is generally not under arrest nor is he or she subject to detention.

### DISQUALIFICATION (Cont.)

2. Under the Federal Standards in 49 CFR § 383.51(e) and 49 CFR § 391.15(d), driving while subject to an out-of-service order is a disqualifying offense.

**PowerPoint Slide No. 60**  
**[Driving While Subject to an Out-of-Service Order]**

3. This rule established the following periods of disqualification for persons convicted of violating an out-of-service order while driving a CMV.

**PowerPoint Slides No. 61-64**  
**[Disqualification for Violation of Out-of-Service Order]**

- a. For a first conviction of driving while out-of-service, the driver will be disqualified for a period of 180 days to 1 year, unless he or she was transporting hazardous materials in placardable quantities or operating a vehicle designed to transport 16 or more passengers inclusive of the driver, in which case the period of disqualification will be 180 days to 2 years
- b. For a second conviction, driving while out-of-service, the driver will be disqualified for a period of 2 to 5 years, unless the driver was transporting hazardous materials in placardable .

The instructor should consult his or her jurisdictions' laws/regulations relating to driving while out-of-service to determine how the jurisdiction implements the federal requirements. Some jurisdictions legislatively enacted only the minimums and some left the discretion as to penalties to the courts.

quantities or operating a

vehicle designed to transport 16 or more passengers inclusive of the driver, in which case the period of disqualification will be 3 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.

To be considered a “second” or “third” conviction, the last offense must occur within 10 years of the first offense and must arise out of a different incident than the first conviction.

- d. In all cases, a civil penalty is also required to be assessed against the driver. The minimum penalty is \$2,500 for a 1<sup>st</sup> conviction and \$,000 for a 2<sup>nd</sup> or subsequent conviction.

- 4. The rule also penalizes employers who knowingly permit or require drivers to operate a commercial motor vehicle while subject to an out-of-service order. Employers

Enforcement - currently there is no national database for out-of-service orders; how is law enforcement to determine whether the driver or vehicle, much less the company is out-of-service? What kind of proof of the existence of an out-of-service order would be required by the participants?

The instructor may want to discuss some commonly raised issues concerning the out-of-service penalties, such as:

- 1. The driver is penalized for operating

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## Instructor's Notes

are subject only to civil penalties with a minimum penalty of \$2,750 and a maximum penalty of \$25,000.

5. The disqualification periods and civil penalties are applicable to all out-of-service violations not just those arising under the commercial drivers license law.

### I. Railroad-Highway Grade Crossing Violations

Violation of Railroad-Highway Grade Crossing Law or Regulation [49 CFR 383.51(d)].

- **For drivers who are not required to always stop:**

Failing to slow down and check that the tracks are clear of an approaching train.

Failing to stop before reaching the crossing, if the tracks are not clear.

- **For Drivers who are always required to stop:**

Failing to stop before driving onto the crossing.

- **For All Drivers:**

Failing to have sufficient space to drive completely through the crossing without stopping.

a vehicle which he or she may not know is out-of-service; appears to be strict liability for driver.

2. Would an officer's testimony that he or she was informed that the driver/vehicle/carrier was out-of-service be sufficient if there was no longer a computer or other record to support this testimony?

### PowerPoint Slides No. 65-67 [Railroad-Highway Grade Crossing Violations]

Drivers operating CMV carrying most hazardous materials and buses carrying passengers must stop.

Failing to obey a traffic control device or the instructions of an enforcement official at the crossing.

Failing to negotiate a crossing because of insufficient undercarriage clearance.

- **Duration of Disqualification**

First Conviction = 60 days

Second Conviction = 120 days

Third or Subsequent Conviction = 1 year [49 CFR § 383.51(e)].

Violations must occur within a three (3) year period.

- Employers who knowingly permit or require drivers to operate a CMV in violation of a railroad-highway grade crossing law or regulation are subject to a civil penalty of up to \$10,000. [49 CFR § 383.53(c)].

**PowerPoint Slides No. 68-69**  
**[Disqualification for Railroad-Highway Grade Crossing Violations]**

### **K. Other Conviction and Disqualification Requirements**

- Out-of-state convictions related to motor vehicle traffic control in any vehicle by a CDL holder and in a CMV for a person required to have a CDL must be sent to the licensing state within 30 days of the conviction. Beginning no

**PowerPoint Slide No. 70**  
**[Transmitting Out-of-State Convictions]**

later than September 30, 2008, it must be within 10 days of the conviction. [49 CFR § 384.209]

- A state 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 receiving information from another state or from the date of conviction, if it occurred in the same state.

[49 CFR § 384.225]

- A state may not mask, defer imposition of judgment or allow an individual to enter into a diversion program that would prevent a conviction in any type of vehicle from appearing on the CDL driver's record.

[49 CFR § 384.226]

- A state may not issue a commercial special license or permit (*i.e.* hardship license) to operate a commercial motor vehicle (CMV) when a CDL holder's CMV or non-CMV driving privileges have been suspended, revoked or cancelled.

[49 CFR § 384.210]

**PowerPoint Slide No. 71**  
**[Posting convictions and Disqualifications]**

**PowerPoint Slide No. 72**  
**[Masking convictions]**

**PowerPoint Slide No. 73**  
**[Hardship Licenses]**

**VI. LEGAL CHALLENGES**

- A. *Equal* protection - Is it permissible to impose differing penalties on drivers based on the type of vehicle operated at the time of the violation?

**PowerPoint Slide No. 74 [Legal Challenges]**

1. Different standards may be imposed on commercial vs. non-commercial drivers so long as there is a rational basis for differing penalties: (*See, Peretto v. Department of Motor Vehicles*, 235 Cal.App. 3<sup>rd</sup> 449, 1 Cal. Rptr.2d 392; *Murphy v. Pierce*, 1 Cal.App. 4<sup>th</sup> 690, 2 Cal.Rptr.2d 18 (Cal.App. 1991). *See also Wilson v. State Office of Hearing Examiner*, 841 P.2d 90 (Wyo. 1992).)
  2. States may refuse to issue a probationary license to a CDL holder, which would permit the driver to operate a commercial motor vehicle, if the driver's license is suspended due to a violation which occurred in a
- The instructor may want to discuss the differing standards for reviewing Equal Protection challenges. Whether the challenged law is subject to strict scrutiny or merely must be justified by a rational basis is determined by the classification challenged. Because driving is generally considered to be a privilege and not a right, the usual standard would be to require the jurisdiction to show a rational basis for the distinction. If driving is a right, the jurisdiction may be required to show a compelling state interest for the distinction and meet the strict scrutiny test.
  - For sample cases for discussion, the instructor should consult the case law in his or her jurisdiction. The discussion in *Pylar v. Doe*, 457 U.S. 202 (US Tex. 1982) may be enlightening. In *Pylar*, the Supreme Court held that, "on applying the Equal Protection Clause to most forms of state action, we thus seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose." *Id.* at 216.
  - The court further discusses the "strict" scrutiny standard as well as the "intermediate" standard of review.
  - The instructor may want to discuss the *Moore* case as it illustrates the importance of carefully reviewing the individual state's enactment of the federal minimums. Under Louisiana law, as discussed in this case, a driver would be eligible for hardship driving

- non-commercial vehicle; this refusal does not violate equal protection even if the driver would have been eligible for a probationary license if he or she had not been a CDL holder. (*See, Wilson, supra; Lockett v. Commonwealth*, 438 S.E.2d 497 (Va.App. 1993); *Moore v. State Dept. Of Public Safety*, 655 So.2d 644 (La.App. 2Cir. 1995)).
- B. Commercial motor vehicle - gross vehicle weight rating (GVWR) vs. registration weight; problems of proof.
- C. Work permits; limited driving privileges – FMCSA has consistently interpreted the statutes and regulations relating to commercial drivers to prohibit the issuance of work permit licenses and limited driving privileges to commercial drivers who have been disqualified from operating a CMV during the period of disqualification.
- privileges, to operate non-CDL class vehicles, if he or she was disqualified from operating a commercial motor vehicle. However, if he or she was suspended for a violation occurring while operating a non-CDL class vehicle he or she would not be eligible for CDL class driving privileges.
- The instructor may want to discuss whether the class perceives there to be any problems of proof regarding weight. An approach could be to poll the class on which of the following, if any, they would be willing to accept as proof of weight.
    1. Certified copy of the citation which indicates that the violation occurred in a commercial vehicle; would it make a difference if the weight was not written on the citation?
    2. Certified copy of the jurisdiction's registration record for the vehicle.
    3. Testimony of the officer as to what weight was shown on the registration plate.

**LEGAL CHALLENGES (Cont.)**

However, FMCSA has permitted the states the option of granting restricted licenses/permits to CDL holders who have been suspended or revoked because of violations, which occur in their private, non-CDL vehicles. However, not all states permit this and this denial has withstood constitutional challenge. (*See, Wilson, supra*)

D. Commerce

1. Trade, traffic or transportation within the United States between a state and a place outside the state; and
2. Trade, traffic or transportation in the United States which affects interstate commerce.

E. Electronic convictions - translation; equivalency; admissibility

1. Are the elements of the offenses equivalent? If so, the fact that the home jurisdiction may permit mitigation of the consequences that is different than the convicting jurisdiction is not relevant. (*See, Aten v. Commonwealth Department of Transportation, 649 A.2d 732 (Pa.Cmwlth. 1994).*)

4. Judicial notice that a tractor/trailer combination has a GVWR of 26,001 pounds or more.
5. What about an electronic record from another jurisdiction that only indicates that the violation was in a commercial motor vehicle?

- If the jurisdiction's laws are similar to the model law or to the UVC definition of "commercial motor vehicle" the "in commerce" issue is not relevant. However, the instructor may need to discuss the case of *Commonwealth v. Williams* (624 A.2d 171 (Pa. Super. 1993)), discussed above, where the operator of a tractor unit being operated for personal use was held to need a CDL.

The instructor should consult the jurisdiction's statutes and rules of evidence to see if there are any problems with the admissibility of "electronic evidence." Any relevant statutes or rules could be distributed to the participants.

2. Conviction of disqualifying offense can be proven by certified abstract of driver history record from foreign jurisdiction. (*See, Walck v. Commonwealth Department of Transportation*, 625 A.2d 1276, 1277 (Pa.Cmwlt. 1993).)
  3. Certified abstract of driving records maintained in an electronic database are sufficient to establish a *prima facie* case for suspension of driving privileges; burden is on the driver to show that records are not accurate. (*See, McDonald v. Department of Revenue and Taxation*, 846 P.2d 694 (Wyo. 1993).)
- F. Collateral Attack - Driver cannot collaterally attack the propriety of a conviction received in another jurisdiction in a license review proceeding in his or her home jurisdiction. (*See, McDonald, supra; Commonwealth Department of Transportation v. Barco*, 1995 WL 127045 (Pa.Cmwlt. 1993)).

## VII. CONCLUSION

- A. The key to accomplishing the purposes of the CMVSA of 1986 is a complete effort by all parties. This is represented by enactment of appropriate laws, issuance of

**PowerPoint Slide No. 75**  
**[What is Required to Achieve Goals of the CMVSA]**

citations for violations, convictions for those violations and the imposition of the mandated, uniform sanctions.

B. If any piece of the system is not in place, the program will not be effective.

C. Honorable James Dowd, Circuit Judge, City of St. Louis, Missouri.

“The complete solution is not achieved with enforcement effort alone. The circle of enforcement effort is not complete without the full support and cooperation of the courts. Many times the ‘judicial remedy’ or action in a given enforcement case is the most important part of the case history. The attitude and concern of the court regarding the gravity of commercial vehicle/hazardous materials violations is critical.”

**Web Site: FMCSA**

**Questions???**

- The instructor should end the training by emphasizing that the success of the CDL program depends upon each element doing its part. If one part fails to recognize the seriousness of commercial vehicle violations then the purposes of the CMVSA will not be accomplished
- If the instructor used the quiz, he or she should reveal the answers and discuss the statistics that support them at this time.

**PowerPoint Slide No. 76**  
**[Quote By Honorable James Dowd]**

If the instructor is able to obtain a similar quote from a local jurist, that should be substituted for the given quote.

The instructor may want to distribute copies of the article relating to a St. Louis area traffic court that received adverse press because of its “Let’s Make a Deal” attitude. If the instructor is aware of similar stories in his or her jurisdiction, those articles may be distributed.

A Course Summary, List of Case Citations, and Glossary of Terms are set forth in **Tabs C, A and A**, respectively.

**PowerPoint Slide No. 77-78**  
**[FMCSA Web Site]**

**PowerPoint Slide No. 79**  
**[End]**

