

Handling Criminal or Traffic Citations Issued to Commercial Drivers



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Introduction

- **According to the Colorado Department of Revenue, there are currently:**
 - **227,219 CDL Holders in Colorado**
 - **14,032,524 CDL Holders Nationwide**
- **Most consequences to commercial drivers convicted of traffic-related offenses have been federalized**
- **Drivers may lose CDL as a result of violations while driving any vehicle**

Relevant Statutes

Federal

- **Federal Motor Carrier Safety Regulations (FMCSR)**

49 C.F.R. pts. 300-399

- **Commercial Driver's License Standards; Requirements and Penalties**

49 C.F.R. pt. 383

Colorado

- **Commercial Driver's License Act**

C.R.S. Title 42, Art. 2, Part 4

Definition of Commercial Motor Vehicle (CMV)

C.R.S. § 42-2-402

- (4) (a) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property, if the vehicle:**
- (I) Has a gross vehicle weight rating of 26,001 or more pounds or such lesser rating determined by federal regulation; or**
 - (II) Is designed to transport sixteen or more passengers, including the driver; or**
 - (III) Is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.**

Definition of Commercial Motor Vehicle (CMV)

C.R.S. § 42-2-402

(b) "Commercial motor vehicle" does not include:

(I) Recreational vehicles;

(II) Military vehicles that are driven by military personnel;

(III) Any farm vehicles:

(A) Controlled and operated by a farmer;

(B) Used to transport agriculture products, farm machinery, or farm supplies to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; or

(D) Used within one hundred fifty miles of the person's farm;

(IV) Firefighting equipment

Driver's Violation Affecting Motor Carriers

- A driver's violations received while employed by a motor carrier applies to that carrier's SMS evaluation for twenty-four months
 - **Even if the driver is subsequently terminated**
- There is a process for motor carriers and drivers to challenge information that resides in FMCSA databases

Definition of Conviction

An unvacated adjudication of guilty, 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.

49 C.F.R. §383.5

Convictions Cont...

- **Definition of conviction does not address:**
 - **Diversion programs**
 - **Deferred prosecutions**
 - **Deferred judgments**
- **Such dispositions could be construed to violate federal regulations prohibiting the masking of convictions**

Masking Convictions

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 committed in the State where the driver is licensed or another State.

49 C.F.R. § 384.226

Disqualification of Drivers under Federal Regulations

- **49 C.F.R. § 383.51**
 - **Major Disqualifying Offenses**
 - **Serious Traffic Violations**
 - **Railroad-Highway Grade Crossing Offenses**
 - **Violations of Out-of-Service Orders**
- **49 C.F.R. § 383.52**
 - **Driver an Imminent Hazard**

Major Offenses

- **Being under the influence of alcohol as prescribed by State law**
- **Being under the influence of a controlled substance**
- **Refusing to take an alcohol test**
- **Having an alcohol concentration of 0.04 or greater while operating a commercial vehicle**
- **Leaving the scene of an accident**
- **Using the commercial vehicle to commit a felony**

Major Offenses Cont...

- **Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV**
- **Causing a fatality through negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle, and negligent homicide**

Major Offenses Cont...

- **Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance**
 - **1st conviction results in a CDL loss for life, not eligible for a ten year reinstatement**

Penalties for Major Offenses

- A **1st conviction** of all other Major Offenses:
 - non-hazardous **automatic at least one year**
 - hazardous materials **3 years**
- A **2nd conviction**
 - **life-time loss** of CDL

Serious Traffic Offenses

- **Speeding excessively (15 mph or more over)**
- **Driving recklessly**
- **Making improper or erratic traffic lane changes**
- **Following too closely**
- **Violating State or local law relating to motor traffic control (other than a parking violation) arising in connection with a fatal accident**

Serious Traffic Offenses Cont...

- **Driving a CMV without obtaining a CDL**
- **Driving a CMV without a CDL in possession**
- **Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated**
- **Violating State or local law or ordinance on motor vehicle traffic control prohibiting **texting** while driving**

Penalties for Serious Traffic Offenses

- A **1st conviction** of any Serious Offense, or even multiple violations in a single incident, has no federal consequences
- A **2nd conviction** within three years after the first conviction
 - automatic 60 day suspension of the CDL
- A **3rd conviction**
 - 120 day disqualification

Railroad-Highway Grade Crossing Offenses

- **Driver not required to always stop**
 - **Fails to slow down and check that tracks are clear of an approaching train OR**
 - **Fails to stop before reaching crossing, if tracks are not clear**
- **Driver is always required to stop, but fails to stop before driving onto the crossing**

Railroad-Highway Grade Crossing Offenses Cont...

- **Driver fails to:**
 - **Have sufficient space to drive completely through the crossing without stopping**
 - **Obey a traffic control device or the directions of an enforcement official at the crossing**
 - **Negotiate a crossing because of insufficient undercarriage clearance**

Penalties for Railroad-Highway Grade Crossing Offenses

- A **1st conviction**
→ Disqualification for no less than 60 days
- A **2nd conviction** within a three-year period
→ disqualification for no less than 120 days
- A **3rd conviction**
→ disqualification for no less than one year

Out of Service Orders

- **Two types of violations:**
 - **Violating a driver or vehicle out-of-service order while transporting **non-hazardous** materials**
 - **Violating a driver or vehicle out-of-service order while transporting **hazardous** materials**

Driver Placed Out-of-Service

Alcohol Violations

- **Used alcohol or be under the influence of alcohol, within four hours of going on duty or operating, or having physical control of a CMV**
- **Use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol while on duty, or operating, or in physical control of a CMV**

Driver Placed Out-of-Service

Alcohol Violations Cont...

- **Be on duty or operate a CMV while the driver possesses wine of not less than one-half of one per centum of alcohol by volume, beer, distilled spirits (not including wine, beer, or distilled spirits which are manifested and transported as part of a shipment or possessed or used by bus passengers)**

Driver Placed Out-of-Service

Alcohol Violations Cont...

- **While having any alcohol in his or her system, or who refuses to submit to a test to determine the alcoholic content of the driver's blood or breath while driving a CMV**

Driver Placed Out-of-Service

Maximum Hours of Service

Property Carrying CMV

- **Drive more than 11 cumulative hours following 10 consecutive hours off**
- **Drive for any period after the end of the 14th hour after coming on duty following 10 consecutive hours off duty**
- **Be on duty 60 hours in any period of 7 consecutive days if the carrier does not operate CMVs every day of the week**
- **Be on duty 70 hours in any period of 8 consecutive days if the employing carrier operates CMVs every day of the week**

Driver Placed Out-of-Service

Maximum Hours of Service

Passenger Carrying CMV

- **Drive for more than 10 hours following 8 consecutive hours off duty**
- **Be on duty 15 hours following 8 consecutive hours off duty**
- **Be on 60 hours in any 7 consecutive days if the carrier does not operate CMVs every day of the week**
- **Be on duty 70 hours in any period of 8 consecutive days if carriers operates CMVs every day of the week**

Placed Out-of-Service

- **Commercial Drivers**
 - **Driver poses an imminent hazard to the public safety**
- **Motor Vehicle/Carrier**
 - **Mechanical: because of its mechanical condition or loading, CMV would be likely to cause an accident or breakdown**
 - **Imminent hazard**

Penalties for Out-of-Service Violations Transporting Non-Hazardous Materials

- A **1st conviction**
 - disqualification for **no less than 180 days nor more than one year**
- A **2nd conviction**
 - disqualification for **no less than two years nor more than five years**
- A **3rd conviction**
 - disqualification for **no less than three years nor more than five years**

Penalties for Out-of-Service Violations Transporting Hazardous Materials

- A **1st conviction**
 - disqualification for **no less than 180 days nor more than two years**
- A **2nd conviction**
 - disqualification for **no less than three years nor more than five years**
- A **3rd conviction**
 - disqualification for **no less than three years nor more than five years**

Driver is an Imminent Hazard

49 C.F.R. § 383.5

means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

Compliance, Safety, and Accountability (CSA) Program

“An initiative to improve large truck and bus safety and ultimately reduce crashes, injuries, and fatalities that are related to commercial motor vehicles. It introduces a new enforcement and compliance model that allows FMCSA and its State Partners to contact a larger number of carriers earlier in order to address safety problems before crashes occur.”

For additional information: <http://csa.fmcsa.dot.gov/default.aspx>

CSA Program

- **Introduced in December 2010**
- **Operational Model Test (Op-Model Test):**
 - **Began in February 2008, lasted 30 months, ended in June 30, 2010**
 - **Conducted in Colorado, Delaware, Georgia, Kansas, Maryland, Minnesota, Missouri, Montana, and New Jersey**

Methodology

- **Monitor motor carrier and driver safety behaviors through Behavior Analysis and Safety Improvement Categories (**BASIC**)**
 - **Unsafe Driving**
 - **Fatigued Driving**
 - **Driver Fitness**
 - **Controlled substances/alcohol use**
 - **Vehicle maintenance**
 - **Cargo-related**
 - **Crash indicator**

Calculating Safety Rating

- **Safety Measurement System (SMS) methodology**
 - **Calculates a measure for each BASIC by assigning a time and severity – weighted value to each violation/crash**
 - **More recent violates are weighted more heavily**
 - **Severity weights reflects the relative importance of each violation**
- **SMS counts violations whether or not a citation is issued or whether there is an eventual conviction**

“New” Safety Fitness Determination (SFD) Methodology

The FMCSA intends to replace the current safety rating process, which determines safety via a compliance review (CR) with a new Safety Fitness Determination (SFD) that will use the Safety Measurement System (SMS) to determine safety ratings

(SFD) Methodology Cont...

- **Notice of Proposed Rulemaking released in 2011**
- **Until SFD becomes law, FMCSA will continue to use the current safety rating process, as outlined in **49 C.F.R. pt. 385****

(SFD) Methodology

Proposed

- **“Preventable Accidents”**
 - **motor carrier’s formal safety rating would be adversely affected by crashes only when the motor carrier is at least partially at fault.**
These are known as “preventable accidents.”
 - **To be determined by a Safety Investigator (SI)**
- **Roadside data might be a factor in determining the new SFD**

(SFD) Methodology Main Differences

New SFD	Existing SFD
Not exclusively tied to on-site investigations	Determined only via an on-site compliance review
Updated regularly	Provides a snapshot to compliance only on the date of the most recent CR
Based on violations of all safety based regulations	Based only on critical and acute violations
Labels carriers: Unfit Marginal Continue to Operate	Labels carriers: Unsatisfactory Conditional Satisfactory

Employment Consequences

- **Written and unwritten policies**
- **“Three in Three” Policy**
- **Cancellation of insurance coverage**
- **Prospective employer reviews driver’s motor vehicle history**

Pre-Employment Screening Process (PSP)

- **PSP allows motor carriers to access detailed driving records, including:**
 - Roadside inspection (**3 years**)
 - Crash Records (**5 years**)
- **Regardless of the state or jurisdiction**

Civil Liability Considerations

- **Use of traffic convictions in a civil trial**
 - **Generally inadmissible for any purpose, including habit, custom, and pattern (C.R.S. § 42-4-1713)**
 - **Unless offender is an habitual traffic offender (C.R.S. § 42-2-201)**
- **Exclusion applies only to traffic offenses under Title 42, Article 4**
- **Allowing driver to testify**

Special Considerations for Plea Bargaining

- **BEWARE of Collateral Consequences**
- **Points v. Actual Offense**

Example

- **“Following to Closely” is a Serious Traffic Offense (4 point offense in Colorado)**



Thank You

Q&A