



California Construction Trucking Association

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California Department of Motor Vehicles
Legal Affairs Division
Attn: Randi Calkins, Regulations Analyst
P.O. Box 932382, MS C-244
Sacramento, CA. 94232-3820

Re: OAL File Number Z-2014-1009-01 Commercial Driver Licenses – Disqualifications

Dear Ms. Calkins,

The California Construction Trucking Association (“CCTA”) submits these comments in response to the Department of Motor Vehicles (“DMV”) proposing to adopt Section 29.01 in Article 2.1, Chapter 1, Division 1 of Title 13 of the California Code of Regulations (“CCR”), relating to Commercial Drivers Licenses (“CDL’s”) and serious driving offenses that could lead to disqualifying a CDL holder from operating a commercial motor vehicle for a designated period of time.

The CCTA is the largest non-profit trade association of construction trucking firms in the U.S. Founded in 1941 and headquartered in Upland, California, the CCTA advocates on behalf of our members for sensible legislation and regulations. The CCTA also has an additional four conferences each designed to represent and provide for the distinctive needs of a particular segment of the trucking industry. Those conferences include concrete pumpers, heavy-haul operators, interstate property carrying motor carriers, and the Coalition of American-Latino Truckers.

The CCTA understands the necessity of California’s CDL program to conform to federal standards or the state risks decertification of its CDL program and/or possible penalty by way of a reduction in federal highway funds supplied to the state. Section 29.01(a)(1) proposes to specifically identify 33 violations of California’s Vehicle Code (“CVC”) that would be considered by California to be serious violations in accordance with Subpart D – Driver Disqualifications and Penalties (§ 383.51) contained in the Federal Motor Carrier Safety Regulations (“FMCSR’s”).

While the CCTA is supportive of the majority of violations being proposed by DMV as being consistent with corresponding federal disqualifying events, we do not agree that all proposed violations should be included as disqualifying violations and in a few instances are inconsistent with federal uniformity.

DISCUSSION:

In DMV’s Initial Statement of Reasons (“ISOR”) outlining which violations of the CVC would be considered serious to conform with § 383.51(c) of the FMCSR’s, DMV gave a stated reason for adopting a particular violation but did not cite to a corresponding violation within federal regulation. The FMCSR’s contain the following table describing “serious traffic violations” and the corresponding penalty:

Table 2 to § 383.51(c)

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV , a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder’s license or non-CMV driving privileges, for	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder’s license or non-CMV driving privileges, for
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the regulated or posted speed limit.	60 days	60 days	120 days	120 days
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	120 days	120 days
(3) Making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days
(4) Following the vehicle ahead too closely	60 days	60 days	120 days	120 days
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days
(6) Driving a CMV without obtaining a CLP or CDL	60 days	Not applicable	120 days	Not applicable
(7) Driving a CMV without a CLP or CDL in the driver’s possession ¹	60 days	Not applicable	120 days	Not applicable
(8) Driving a CMV without the proper class of CLP or CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported	60 days	Not applicable	120 days	Not applicable
(9) Violating a State or local	60 days	Not applicable	120 days	Not applicable

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

law or ordinance on motor vehicle traffic control prohibiting texting while driving a CMV ²				
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV	60 days	Not applicable	120 days	Not applicable

DMV’s proposal contains violations generally specifically to all commercial motor vehicle (“CMV”) operators but also violations specific only to CDL operators of passenger bus and agriculture vehicles. Our comments will focus on those violations pertinent to our members who typically operate non-passenger, non-agricultural CMV’s requiring a CDL.

The CCTA agrees with DMV on including the following vehicle code violations as equivalent to corresponding disqualifying violations of federal regulations.

VEHICLE CODE	OFFENSE	Part 383.51(c) EQUIVALENT
2800.1	Evading a Peace Officer	(2) Driving recklessly
2800.2	Evading a Peace Officer: Reckless Driving	(2) Driving recklessly
2800.3	Evading a Peace Officer Causing Injury or Death	(2) Driving recklessly
12524 (a)	Prohibits the operation of a vehicle hauling fissile class III shipments or large quantity radioactive material unless the driver possesses a valid license of the appropriate class and a radioactive material driver’s certificate	(8) Driving a CMV without the proper class of CDL and/or endorsement for the specific vehicle group being operated or for the passenger or type of cargo being transported
12951 (a)	Requires a driver to have in his or her possession a valid driver’s license at all times when driving a motor vehicle upon a highway ³	(7) Driving a CMV without a CLP or CDL in the driver’s possession*
12951 (b)	Requires a driver to present his or her driver’s license at the request of the peace officer	(7) Driving a CMV without a CLP or CDL in the driver’s possession*
15250	Provides requirement to be licensed as a commercial driver in California	(8) Driving a CMV without the proper class of CDL and/or endorsement for the specific vehicle group being operated or for the passenger or type of cargo being transported
15250 (a)	Prohibits operating a commercial motor vehicle unless that person is in possession of a license for the appropriate class of vehicle	(8) Driving a CMV without the proper class of CDL and/or endorsement for the specific vehicle group being operated or for the passenger or type of cargo being transported
15275	Provides endorsement requirements for commercial drivers in California	(8) Driving a CMV without the proper class of CDL and/or endorsement for the specific vehicle group being operated or for the passenger or type of cargo being transported

² Driving, for the purpose of this disqualification, means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

³ (*) Similar to the federal requirement, 12951 (a) allows that any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CLP or CDL on the date the citation was issued shall not be guilty of this offense.

15275 (a)	Prohibits operating a commercial vehicle unless that person is in possession of a license and driver has the endorsements required for the vehicle	(7) Driving a CMV without a CLP or CDL in the driver's possession*
21658 (a)	Requires a vehicle to be driven within a single lane and prohibits the vehicle from being moved from the lane until such a movement can be made with reasonable safety	(3) Making improper or erratic traffic lane changes
21703	Prohibits from following another vehicle more closely than is reasonable and prudent	(4) Following the vehicle ahead too closely
21704 (a)	Establishes the acceptable distance between vehicles by requiring a driver to keep the vehicle at a distance of not less than 300 feet to the rear of any other motor vehicle	(4) Following the vehicle ahead too closely
21705	Establishes safety measures for caravans by requiring caravans or motorcades to be driven in a manner to allow sufficient space and in no event less than 100 feet between each veh.	(4) Following the vehicle ahead too closely
22406.1 (a)	Establishes penalties for commercial motor vehicle drivers travel in excess (15 mph) of a posted speed limit	(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the regulated or posted speed limit.
23103 (a)	Provides that a person who drives a vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving	(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property
23104 (a)	Provides sanctions against persons when the reckless driving of a vehicle proximately causes bodily injury to a person other than the driver	(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property
23123 (a)	Prohibits using a wireless telephone while driving a motor vehicle unless the telephone is specifically designed to allow hands-free operation. If convicted of this violation in a commercial motor vehicle the conviction will be a serious violation	(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV
23123.5 (a)	Prohibits texting while driving a motor vehicle unless it allows voice-operated and hands-free operation. If convicted of this violation in a commercial motor vehicle the conviction will be a serious violation	(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving a CMV
23124 (a) (b)	Prohibits persons under 18 from using a wireless telephone while driving a motor vehicle. If convicted of this violation in a commercial motor vehicle the conviction will be a serious violation	(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV

The CCTA disagrees with the inclusion of the following proposed violations of the CVC as disqualifying serious violations because they either are unrelated to operating a CMV or there is no corresponding requirement under federal regulation for inclusion of these types of violations.

VEHICLE CODE	OFFENSE	OBJECTION
12500 (b)	Prohibits operating a motorcycle without appropriate endorsement	This violation is unrelated to the safe operation of a CMV.
12500 (c)	Prohibits operating a vehicle in or upon an off-street parking facility without appropriate class or certification	The closest this violation comes to a corresponding federal equivalent is (8) Driving a CMV without the proper class of CLP or CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported. We do not believe this represents a significant safety issue for CMV operators
12502 (b)	Requires nonresident commercial drivers to have in their possession a current medical	There is no equivalent disqualifying violation within § 383.51(c). Furthermore, after January 15,

	certificate issued within two years of the date of vehicle operation	2015 FMCSA will no longer require any interstate CMV operator to carry a medical certificate (see: http://www.fmcsa.dot.gov/registration/commercial-drivers-license/medical-examiner%E2%80%99s-certificate-enforcement).
21659	When operating on a three-lane highway, prohibits from driving in the extreme left lane and prohibits operating in the center lane except when overtaking and passing another vehicle	Lane restrictions have absolutely no corresponding federal equivalent as a serious violation. Many states <u>do not</u> have laws regulating CMV's to a particular lane of travel thus creating "coding" issues when this violation is reported to a CDL holders state driver's license agency.
23103 (b)	Provides that a person who drives a vehicle in an off-street parking facility in willful or wanton disregard for the safety of persons or property is guilty of reckless driving	This is a "non-highway" related issue. We do not believe this is a significant safety issue for CMV operators and expands the scope of disqualifying violations beyond federal requirements
36300	Provides that a person, while driving or operating an implement of husbandry incidentally operated or moved over a highway is not required to obtain a driver's license	This regulation requires a class "C" license if an implement of husbandry is operated in excess of 25 mph. There is no corresponding federal regulation mandating the operator of an implement of husbandry have a CDL. Also, if the focus by DMV on this violation is related to speeding as defined in § 383.51(c), federal regulation does not mandate a penalty until a violation is 15 mph or more.

The CCTA understands that federal regulations represent a "baseline" of minimal compliance by a state and that a state can have more stringent requirements than corresponding federal regulation if it so chooses. We do not think California should insist on going beyond minimal compliance to conform to federal regulations. DMV in its ISOR supporting this rulemaking minimizes the potential impact of this proposal on drivers, owner-operators and small-fleets (Economic and Fiscal Impact Determinations - Small Business Impact). The impact on small-businesses from insisting on more stringent disqualifying violations can be dramatically negative leading ultimately to bankruptcy for an individual.

Having more stringent standards than is required can have a devastating impact to smaller entities – especially on single-truck owner-operators whose families depend on them for financial support. Contrary to DMV's assertion that other drivers are readily available to take the place of a driver who has lost their driving privileges, the ability of most owner-operator to replace themselves requires approval from an insurance company, securing workers' compensation and unemployment insurance, even opening up an Employer Pull Notice contract with DMV – a process that takes anywhere between four and six weeks for DMV to approve an EPN contract – a delay itself that will cause financial ruin.

Other businesses, whether small or large can be negatively impacted by the reality that in today's over-burdensome regulatory climate, it is increasingly difficult to find qualified replacement drivers. Without browbeating DMV on this subject, a simple literature search on "driver shortage" on the internet returned over six million "hits." Clearly, the impact of adopting more stringent disqualifying violations than is required by federal regulation will have significant negative consequences not just for drivers themselves but employing motor carriers of all sizes.

UNIFORMITY WITH FEDERAL REGULATION

In DMV's Notice of Proposed Regulatory Action, the department describes the need to identify a list of violations of the CVC that can lead to someone being disqualified from operating a CMV. DMV states, "To ensure clarity and **consistency with federal regulations**, the department has determined it necessary to identify offenses determined to be serious and document them in Title 13 of the California Code of Regulations." (Emphasis added).

For both drivers and motor carriers, uniformity between state requirements and federal requirements aids compliance and understanding of the numerous rules and regulations they must follow. However, DMV's statement of needed consistency is in conflict with how California law is not in conformance with some federal requirements. For instance, California has never adopted an equivalent to § 391.11 (b)(2) – Can read and speak the English language sufficiently to converse with the general public, to understand traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records. There are other examples where California has chosen “non-conformity.” While we believe California is correct in ignoring an equivalent to § 391.11 (b) (2), it illustrates that conformity with federal requirements does not always occur in California – by choice.

Another example of non-conformance within the CVC, §15306 and §15308 which both describe the suspension penalty for CMV operators upon convictions for serious traffic offenses, neither section is reflective (consistent) of the mandatory suspension penalties contained within § 383.51(c) of the FMCSR's – California is more severe. Federal regulation only requires a suspension once there has been a conviction for two serious violations within a three year period while driving a CMV or upon the occurrence of two distinctly separate convictions for serious violations while operating a non-CMV. California law treats each serious violation (regardless of the type of vehicle operated) as equivalent for disqualification purposes.

The proposal by DMV to include as serious violations for disqualifying purposes offenses with remote or no comparable federal equivalent does not aid consistency and harmonization with federal requirements. Furthermore, it is well known that “coding” errors frequently occur when states transmit conviction data for offenses to another jurisdiction that does not have a corresponding or equivalent violation in their statutes – they very definition of “lack of harmonization.”

CONCLUSION

CMV operators understand that possessing a CDL places significant more responsibility on the holder to maintain a good and safe driving record. The fact that federal regulations also hold CDL holders accountable for certain violations that can also occur in their private vehicles in order to disqualify their CDL privileges underscores the importance of maintaining a good, clean, and safe driving history.

However, while we are supportive of a majority of DMV's proposal we believe DMV has added some unnecessary violations as serious violations warranting suspension of CDL privileges and we believe going beyond what is minimally required to comply with federal regulation is punitive. DMV's proposal if unchanged will only further clog California's already overburden court system as affected CDL holders will have no other remedy but to increasingly challenge citations issued for violations that may lead to a suspension of their CDL.

Respectfully submitted,



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