

**FEDERAL COMMUNICATIONS
COMMISSION**
47 CFR Part 1

[MM Docket No. 97-247; DA 98-354]

**Fees for Ancillary or Supplementary
Use of Digital Television Spectrum
Pursuant to Section 336(e)(1) of the
Telecommunications Act of 1996**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 18, 1997, the Commission adopted a *Notice of Proposed Rule Making* in this proceeding (FCC 97-414) ("NPRM") regarding the assessment of fees for the use of digital television bitstream for the provision of ancillary or supplementary services. Comments in this proceeding are presently due March 3, 1998, and reply comments are due April 2, 1998. On February 19, 1998, the National Association of Broadcasters ("Petitioner") submitted a Motion for Extension of Time to file comments in response to the NPRM, requesting that the Commission extend the comment deadline to May 4, 1998, and the reply comment deadline to June 2, 1998. The Motion for Extension of Time is granted.

DATES: Comments are due on or before May 4, 1998 and Reply Comments are due on or before June 2, 1998.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., room 222, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jerry Duvall, Chief Economist, Mass Media Bureau (202) 418-2600, Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418-2140, or Jonathan Levy, Office of Plans and Policy (202) 418-2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Mass Media Bureau's Order Granting Extension of Time for Filing Comments, DA 98-354 adopted February 23, 1998 and released February 23, 1998. The full text of this Mass Media Bureau Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street N.W., Washington, D.C. The complete text of this Order may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Order

On December 18, 1997, the Commission adopted a *Notice of Proposed Rule Making* in this proceeding (FCC 97-414) ("NPRM") regarding the assessment of fees for the use of digital television bitstream for the provision of ancillary or supplementary services. Comments in this proceeding are presently due March 3, 1998, and reply comments are due April 2, 1998.

On February 19, 1998, the National Association of Broadcasters ("Petitioner") submitted a Motion for Extension of Time to file comments in response to the NPRM. Petitioner contends that additional time is necessary for the preparation of research studies in response to the NPRM which have been commissioned by petitioner in conjunction with broadcast television networks. It requests that the Commission extend the comment deadline to May 4, 1998, and the reply comment deadline to June 2, 1998.

In section 1.46 of the Commission's Rules, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, because of the complexity of the instant proceeding, and the potential benefits of the petitioner's studies, we believe an extension of the comment deadline for the NPRM is warranted. In the NPRM, at paragraph 27, the Commission "encouraged[d] commenters to make specific recommendations as to the level of the fee and type of fee assessment program to which the fee is to be tied and to provide evidence to build a record supporting those recommendations." To facilitate such efforts, we will grant petitioner additional time to complete its research studies which can provide the Commission a more complete record in this proceeding.

Accordingly, *It is ordered* that the Motion for Extension of Time filed in MM Docket No. 97-247 by the National Association of Broadcasters *Is granted*. The time for filing comments *Is extended* to May 4, 1998.

It is further ordered that the time for filing reply comments *Is extended* to June 2, 1998.

This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283, and 1.45.

List of Subjects in 47 CFR Part 1

Television, Television broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98-5237 Filed 2-27-98; 8:45 am]

BILLING CODE 6712-07-P

DEPARTMENT OF TRANSPORTATION
Federal Highway Administration
49 CFR Parts 383 and 384

[FHWA Docket No. FHWA-97-3103]

RIN 2125-AE28

**Commercial Driver Disqualification
Provision**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is proposing regulations specifying that commercial motor vehicle (CMV) drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings be disqualified from operating a CMV. This proposal also would assess penalties against employing motor carriers found to have knowingly allowed, permitted, authorized, or required a driver to operate a CMV in violation of laws or regulations pertaining to railroad-highway grade crossings. This action is in response to the requirements specified in section 403 of the ICC Termination Act (ICCTA) of 1995. The purpose of this proposal is to enhance the safety of CMV operations on our nation's highways.

DATES: Comments must be received on or before May 1, 1998.

ADDRESSES: Interested persons are invited to submit written, signed comments regarding this proposal to Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David Goettee, Driver Division, Office of Motor Carrier Research and Standards, (202) 366-4001, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-0834, Federal

Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Federal Register's home page at: <http://www.nara.gov/nara/fedreg> and the Government Printing Office's database at: http://www.access.gpo/su_docs.

Background

The goal of section 403 of the ICCTA [Pub. L. 104-88, 109 Stat. 803, 956, December 29, 1995, codified at 49 U.S.C. 31310(h) and 31311(a)(18)] is to achieve safer CMV driver behavior when CMVs are crossing railroad-highway grade crossings. Section 403 amended the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 by adding subsection (h) to 49 U.S.C. 31310. The amendment requires sanctions and penalties for CMV drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings.

The amendment also requires monetary penalties be assessed against employers found to have knowingly allowed, permitted, authorized, or required an employee to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings. It requires States to adopt and enforce the Federal sanctions and penalties prescribed for CMV drivers and employing motor carriers who violate laws or regulations pertaining to railroad-highway grade crossings.

According to a March 1, 1996, U.S. Department of Transportation report on railroad-highway grade crossing accidents for the year 1994, entitled "Accidents Which Shouldn't Happen,"¹ 615 individuals were killed and 1,961 persons were injured in 4,979 collisions with trains at railroad-highway grade

crossings in the United States. The same report says:

Laws against grade crossing violations are ineffective if they are not enforced and associated with penalties that are strong enough to deter future violations. The public, enforcement officers, and judges all need to be aware of the danger associated with grade crossing violations. Grade crossing safety systems cannot prevent collisions if the parties that use and control these crossings do not act responsibly.

One of the recommendations in the report is that all States should have or enact laws levying sanctions including fines and other penalties against persons convicted of railroad-highway grade crossing violations.

The follow-up report² issued to report progress on implementation of the recommendations contained in the above report observed:

The principal finding of the Task Force report was that "improved highway-rail grade crossing safety depends upon better cooperation, communication, and education among responsible parties if accidents and fatalities are to be reduced significantly."

The FHWA believes the proposed changes contained in this NPRM will be of assistance in fostering a change in how motor carriers perceive the importance of railroad-highway grade crossings, and thus will assist in achieving greater cooperation, communication, and education regarding this important issue from the perspective of commercial drivers and their employers.

Section Analysis

Section 383.37 Employer Responsibilities

Section 403 of the ICCTA prescribes a more stringent penalty for employers regarding railroad-highway grade crossing violations than the existing sanctions for employers using a driver while disqualified. Because there is no specific prohibition in the current regulation to which the prescribed sanction would apply, the FHWA proposes to add an additional provision to 383.37 implementing this requirement.

Section 383.51 Disqualification of Drivers

Section 403 of the ICCTA requires the Secretary to establish, by regulation, sanctions and penalties for drivers convicted of violating railroad-highway grade crossing laws or regulations. The

ICCTA requires the penalty for a single violation to be not less than a 60-day disqualification, but is silent on how to treat subsequent convictions. Based on the precedents established for all other types of violations which apply a longer penalty for subsequent convictions, and the inherent authority to establish higher penalties for the violations described, the FHWA proposes to revise 49 CFR 383.51 to provide an increased period of disqualification for subsequent convictions.

In the context of other sanctions imposed in the CMVSA, violations at railroad-highway grade crossings rank higher than other serious traffic violations, which require sanctions of not less than a 60-day disqualification for the second conviction and not less than a 120-day disqualification thereafter. It is proposed therefore for a second or subsequent conviction of a railroad-highway grade crossing violation, the minimum disqualification period be 120 days. The FHWA proposes to add a new paragraph (e) to 49 CFR 383.51 that specifically establishes these driver penalties for this offense.

The ICCTA is also silent regarding the time limit between first and subsequent violations. Referring again to the required sanctions for serious traffic violations in 49 U.S.C. 31310(e), which employs a 3-year period, the FHWA proposes that any subsequent conviction for violation of a railroad-highway grade crossing law or regulation while operating a CMV be within 3 years of an earlier conviction.

Section 383.53 Penalties

The ICCTA amendment to 49 U.S.C. 31310 specifically provides that any motor carrier that knowingly allows, permits, authorizes, or requires a driver to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings must be subject to a civil penalty of not more than \$10,000. The maximum level specified in the Act for this violation reflects the concern about the potentially severe safety consequences that can result from an illegal crossing of a railroad-highway grade crossing. The FHWA therefore proposes to add a new paragraph (c) to the penalty provisions of 49 CFR 383.53 to incorporate this sanction into this section.

Section 384.223 Railroad-Highway Grade Crossing Violation

As required by the ICCTA amendment to the CMVSA, the FHWA proposes to include the requirement for the States to adopt and enforce the sanctions and penalties relating to violations of

¹ "Accidents Which Shouldn't Happen: A Report of the Grade Crossing Safety Task Force to Secretary Federico Peña," March 1, 1996. This task force report has been placed in the public docket for this rulemaking.

² "Implementation Report of the USDOT Grade Crossing Safety Task Force: Report to Secretary Rodney E. Slater," June 1, 1997, publication number FHWA-SA-97-085. This task force report has been placed in the public docket for this rulemaking.

railroad-highway grade crossing laws or regulations as specified at §§ 383.37, 383.51, and 383.53 as a new § 384.223, Railroad-highway grade crossing violation. Thus it is proposed as the twenty-third State CDL program substantial compliance requirement. This proposal follows the intent of the ICCTA which specified that States must adopt and enforce the sanctions and penalties. For State compliance purposes, existing laws or regulations that specifically apply to violation of railroad-highway grade crossing restrictions, such as reckless driving or driving to endanger, will be sufficient for complying with this requirement, provided a conviction for these offenses invokes the specified minimum disqualification periods.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the docket for new material. Nevertheless, the FHWA may issue a final rule on this matter at any time after the close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a significant regulatory action under Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating an NPRM likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Unfunded Mandates Act. The FHWA has determined that the changes proposed

in this NPRM will not have an impact of \$100 million or more in any one year.

Each of the proposed changes is a small incremental addition to an existing process. Drivers are already being disqualified as a matter of course when convicted of certain violations. This merely proposes to standardize the minimum amount of disqualification drivers must receive for violating existing laws or regulations pertaining to railroad-highway grade crossings.

There is a potential one-time minor cost to States that may need to modify existing laws to incorporate these proposed standardized railroad-highway grade crossing provisions. The ongoing costs of being in substantial compliance with the provisions in this NPRM are part of an existing State monitoring program, and therefore will have very little impact on ongoing State operations.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities. Based on the evaluation, the FHWA hereby certifies that this proposed action would not have a significant economic impact on a substantial number of small entities. This is based on the fact that the FHWA believes the overwhelming majority of carriers, including small carriers, comply with railroad-highway grade crossing laws and regulations. Further, the FHWA believes that the adoption of this proposed rule establishing driver disqualification and employer civil penalties will serve as a further deterrent for drivers and/or carriers who might otherwise have violated such laws or regulations. Accordingly, the FHWA believes the actual imposition of these fines and disqualifications will be infrequently required.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, which directs departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies, together with the directions of the CMVSA, have been taken fully into account in the development of this proposal.

The federalism implications of the commercial driver's license program were addressed in detail in the rule which established the initial minimum standards (53 FR 27628, Thursday, July

21, 1988). A summary of the points covered in that rule includes:

(a) The Congress determined that minimum Federal standards were required because medium and heavy trucks are involved in a disproportionately large percentage of fatal accidents. The States were carefully consulted in establishing the minimum standards that were established.

(b) The safety problem associated with CMVs is national in scope, requiring a consistent and reciprocal approach to licensing, which retained the basic role of the States in issuing licenses.

(c) The standard adopted deliberately allowed maximum flexibility to the States in implementation of this program.

Thus, it is certified that the specifications contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and they accord fully with the letter and spirit of the President's Federalism initiative.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities to not apply to this program.

Paperwork Reduction Act

For purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, this action contains no information requirements not already approved for the CDL program and its associated information system, the commercial driver's license information system (CDLIS).

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4211 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 383 and 384

Commercial driver's license, Commercial motor vehicles, Highways and roads, Motor carriers, Motor vehicle safety, and Railroad-highway grade crossing.

Issued: February 23, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA hereby proposes to amend Title 49, Code of Federal Regulations, Chapter III, as set forth below.

PART 383—[AMENDED]

1. The authority citation for 49 CFR Part 383 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

2. Section 383.37 is revised to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV;

(b) During any period in which the driver has more than one CMV driver's license, except during the 10-day period beginning on the date such driver is issued a driver's license;

(c) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a law or regulation pertaining to railroad-highway grade crossings.

3. In § 383.51, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(e) *Disqualification for railroad-highway grade crossing violation—(1) General rule.* A driver who is convicted of operating a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings must be disqualified for the period of time specified in paragraph (e)(2) of this section.

(2) *Duration of disqualification for railroad-highway grade crossing violation—(i) First violation.* A driver must be disqualified for not less than 60 days, if the driver is convicted of a first

violation of a railroad-highway grade crossing violation.

(ii) *Second or subsequent violation.* A driver must be disqualified for not less than 120 days, if during any 3-year period, the driver is convicted of a second or subsequent railroad-highway grade crossing violation in separate incidents.

(f) * * *

4. Section 383.53 is amended by adding a new paragraph (c) to read as follows:

§ 383.53 Penalties.

* * * * *

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(d) must be subject to a civil penalty of not more than \$10,000.

PART 384—[AMENDED]

5. The authority citation for 49 CFR Part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

6. Part 384 is amended by adding § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this title, which meet the minimum requirements of §§ 383.37(d), 383.51(e), and 383.53(c) of this title.

[FR Doc. 98-5097 Filed 2-27-98; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****49 CFR Parts 653 and 654**

[Docket No. FTA-98-3474]

RIN 2132-AA61

“Maintenance” Under Definition of Safety-Sensitive Functions in Drug and Alcohol Rules

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In response to a letter from an attorney representing a large transit system, the Federal Transit Administration (FTA) proposes to require drug and alcohol testing of all maintenance workers, including those engaged in engine, revenue service vehicle, and parts rebuilding and overhaul. This change would eliminate

the distinction between maintenance workers involved in on-going, daily maintenance and repair work and those who, on a routine basis, perform rebuilding and overhauling work.

DATES: Comments on this proposed rule must be submitted by June 1, 1998.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the United States Department of Transportation, Central Dockets Office, PL-401, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for inspection at the above address from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring the agency to acknowledge receipt of their comments should include a self-addressed stamped postcard with their comments.

FOR FURTHER INFORMATION: For program issues: Judy Meade, Director of the Office of Safety and Security (202) 366-2896 (telephone) or (202) 366-7951 (fax). For legal issues: Michael Connelly, Office of the Chief Counsel (202) 366-4011 (telephone) or (202) 366-3809 (fax). Electronic access to this and other rules may be obtained through FTA's Transit Safety Bulletin Board at 1-800-231-2061, or through the FTA World Wide Web home page at <http://www.fta.dot.gov>; both services are available seven days a week.

SUPPLEMENTARY INFORMATION:**I. Background**

On February 5, 1994, FTA issued 49 CFR parts 653 and 654, requiring recipients of certain categories of FTA funding to test safety-sensitive employees for the use of five prohibited drugs, and for the misuse of alcohol. The rules defined safety-sensitive employees to include, among others, workers who maintain revenue service vehicles or equipment used in revenue service.

In a series of interpretive letters dating from 1994, the FTA refined the definition of safety-sensitive maintenance workers, in effect creating two distinct classes of employees. On the one hand were those engaged in on-going and routine repair and maintenance of revenue service vehicles and equipment. On the other hand were those performing what the FTA has historically considered less routine maintenance such as the overhaul and rebuilding of engines, parts, and vehicles. The basis for the FTA's view lay in the rules' preambles (59 FR 7535 (alcohol) and 59 FR 7575 (drugs)), which noted that “only mechanics who repair (revenue service) vehicles or