

DISTRICT OF COLUMBIA
DEPARTMENT OF MOTOR VEHICLESNOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Motor Vehicles, pursuant to the authority set forth in Section 1825 of the Department of Motor Vehicles Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-175; D.C. Official Code § 50-904); Section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)); § 10 of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-409); § 105 of the District of Columbia Traffic Adjudication Act of 1978 (D.C. Law. 2-104; D.C. Official Code § 50-2301.05); § 9 of the International Registration Plan Agreement Act of 1997, effective September 5, 1997 (D.C. Law 12-14; D.C. Official Code § 50-1507.01); and Mayor's Order 03-58, effective April 21, 2003, hereby gives notice of the adoption, on an emergency basis, of amendments to Chapters 13 and 26 of Title 18 of the District of Columbia Municipal Regulations (DCMR) (Vehicles and Traffic). These amendments update the commercial driver's license regulations as required by the Federal Motor Carrier Safety Administration to establish conformity with federal law and established a fine for violations of the International Registration Plan requirements.

This emergency rule will expire on November 27, 2005, one hundred and twenty (120) days after its adoption, or upon publication of a notice of final rulemaking, whichever occurs first.

As to Section B of the rulemaking, the Director also gives notice of the intent to take final rulemaking action after thirty (30) days from the date of publication of this notice in the *D.C. Register* and after the expiration of a 45-day Council review period or affirmative approval by the Council in less than forty-five (45) days, whichever occurs first. This section is being submitted for a 45-day period of review by the Council of the District of Columbia pursuant to § 105 of the District of Columbia Traffic Adjudication Act of 1978 (D.C. Law. 2-104; D.C. Official Code § 50-2301.05).

Section A, amendments to Chapter 13, were separately published in a proposed rulemaking on May 27, 2005, at 52 DCR 5084, and transmitted to the Council shortly after that date for a 45-day period of review, pursuant to § 10 of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-409).

It is anticipated that the final rulemaking will encompass both Sections A and B.

The facts that constitute emergency circumstances are as follows:

As to Section A, Public Law 106-159, the Motor Carrier Safety Improvement Act (MCSIA), requires that, by September 30, 2005, the District of Columbia enforces all the MCSIA

provisions and implementing regulations, all of which pertain to the issuance of a Commercial Driver's License (CDL). The Federal Motor Carrier Safety Administration recently sent DMV a detailed assessment of the District of Columbia's CDL program and its compliance with MCSIA. The report identified what it considered to be necessary rulemaking, to be promulgated by the DMV, aimed at implementing and enforcing all of the MCSIA provisions. That rulemaking is contained in Section A, below.

A recent letter from the Federal Motor Carrier Safety Administration to DMV states that this rulemaking must be in place by September 30, 2005, to avoid "sanctions". The DMV understands from discussions with FMCSA that the sanctions referenced would be the withholding of a portion of federal highway funds.

The DMV has informally agreed with the Chair of the Council's Committee on Public Works and the Environment to wait for a Council hearing on the proposed rules before taking final action. However, DMV has recently been informed that, due to a busy September Council agenda, a hearing on the rules cannot be scheduled in time to meet the September 30th deadline. Thus, immediate action is necessary not only to ensure that MCSIA is properly implemented, but that the District's federal highway funds are not jeopardized, funds that are necessary to help ensure the safety of those who travel on the District's roads.

As to Section B, the DMV, in partnership with the Metropolitan Police Department, seeks to establish a civil fine to be adjudicated pursuant to the Traffic Adjudication Act for commercial motor vehicles that have not complied with the International Registration Plan ("IRP") (D.C. Official Code § 50-1507.01 *et seq.*). The District has recently stepped up IRP enforcement, which requires all vehicles meeting certain physical characteristics to register in their home jurisdiction but pay a portion of the registration fees of the jurisdictions through which they travel, based on the mileage traveled, or obtain a trip permit. Enforcement will also target those vehicles registered under the Plan but that have exceeded their registered weight.

Establishing the civil fine is immediately necessary due to the recent passage of legislation and a new enforcement scheme that depends on such a sanction. The District's registration fees had long been much less than other jurisdictions, and the trip permit was free. However, legislation that went into effect on April, 8, 2005 (Department of Motor Vehicles Reform Amendment Act of 2004, D.C. Law 15-307) brought the registration fees in line or higher than other jurisdictions and established a trip permit fee. This is likely to lead to an increase in the numbers of interstate vehicles trying to avoid paying the District's registration fees. While criminal penalties have been provided in the IRP statute (at D.C. Official Code § 50-1507.03), the Superior Court has not yet included them on its list of fines, and therefore MPD is without the ability to enforce the law through criminal fines. While the fine will likely be included on the Superior Court list in the near future, this action to create a civil fine is necessary to ensure the safety of the District residents until that time.

- A. Chapter 13, CLASSIFICATION AND ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, is amended as follows:

- 1) Section 1301, APPLICATION FOR A COMMERCIAL DRIVER'S LICENSE, subsection 1301.01, paragraph (d) is amended to read as follows:

(d) Applicant's certification that he or she is not subject to any disqualification, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

- 2) Section 1302, COMMERCIAL DRIVER'S INSTRUCTION LICENSE, subsection 1302.2 is amended by striking the figure "eighteen (18)" and inserting the figure "twenty-one (21)" in its place.

- 3) Subsection 1305, COMMERCIAL DRIVERS LICENSE REQUIRED, subsection 1305.2 is amended to read as follows:

1305.2 No resident under the age of twenty-one (21) may be issued a commercial driver's instruction license or commercial driver's license.

- 4) Section 1306, DISQUALIFICATION, is amended as follows:

a) Subsection 1306.1, paragraphs (a), (c), (d) and (f) are amended by striking the phrase "a commercial" wherever it appears and inserting the word "any" in its place.

b) Subsection 1306.2 is amended by adding a new paragraph (h) to read as follows:

(h) Driving a commercial motor vehicle while not in possession of a commercial driver's license.

c) Subsection 1306.10 is amended by adding at the end of the sentence the phrase "; unless the disqualification is imposed by the federal government pursuant to 49 CFR 383.52".

d) New subsections 1306.12 and 1306.13 are added to read as follows:

1306.12 Any person failing to submit the medical documentation in the time period provided by § 1327 shall be disqualified until that information is submitted.

1306.13 The Department shall act expeditiously in imposing disqualifications under this section and posting them to the driver's record.

- 5) Section 1311, DURATION OF COMMERCIAL DRIVER'S LICENSE, is amended by adding a new subsection 1311.3 to read as follows:

1311.3 Any endorsement issued pursuant to this Chapter shall not expire before the date that the license expires.

6) Section 1312, DRIVER'S LICENSE TYPE AND CLASS, subsection 1312.2(a) is amended by striking the phrase "or is a semi-trailer or trailer with two (2) or more axels".

7) Section 1314, PROCEDURES FOR LICENSING ACTIONS, is amended as follows:

a) Subsection 1314.4 is amended by striking the phrase "possesses a commercial driver's license" and inserting the phrase "possesses a driver's license" in its place.

b) Subsection 1314.6 is amended by striking the phrase "of any licensing action taken against such person's driving privileges" and inserting the phrase "or conviction for a violation that may result in the disqualification, revocation, suspension, or cancellation of the person's commercial driver's license" in its place.

c) Subsection 1314.7 is amended to read as follows:

1314.7 Whenever a person who does not hold a commercial driver's license, but who is licensed to drive by another State, is convicted of a violation in a commercial motor vehicle of any law relating to motor vehicle traffic control (other than a parking violation), the Department shall notify the licensing entity in the State where the driver is licensed of this conviction as follows:

(a) Beginning on September 30, 2005, the notification will be made within thirty (30) days of the conviction.

(b) Beginning on September 30, 2008, the notification will be made within ten (10) days of the conviction.

d) A new subsection 1314.8 is added to read as follows:

1314.8 The Department shall make driver record information available as required by 49 CFR § 225(c).

8) Section 1315 COMMERCIAL DRIVER'S LICENSE KNOWLEDGE TEST, subsection 1315.1 is amended by adding a new paragraph (i) to read as follows:

(i) An air brake test, which shall be administered to persons who apply to operate a vehicle with air brakes.

- 9) Section 1328, USA PATRIOT ACT, is amended by inserting a new subsection 1328.3 to read as follows:

1328.3 Upon receipt of a finding by the Transportation Security Administration that an applicant or permittee represents a security threat, the Director shall refuse to issue, or shall immediately revoke any hazardous materials endorsement effective 5 days after mailing a notice of revocation to the permittee's address in the Department's records.

- 10) Section 1329, EXEMPTIONS TO THE COMMERCIAL DRIVER'S LICENSE REQUIREMENTS, subsection 1329.1 is amended to read as follows:

1329.1 Persons on active military duty; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel are exempt from the requirements of D.C. law 8-161 and this Chapter.

- 11) Section 1399, DEFINITIONS, is amended as follows:

- a) The definition of "Driving a Commercial Motor Vehicle While Under the Influence of Alcohol" is repealed.

- b) By adding the following new definition:

"Conviction – means an unvacated adjudication of guilt, 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."

- B. Chapter 26, CIVIL FINES FOR MOTOR VEHICLE MOVING AND NON-MOVING INFRACTIONS, Section 2600, CIVIL FINES FOR MOTOR VEHICLE MOVING INFRACTIONS, Subsection 2600.1, is amended by adding a new heading and offenses to read as follows:

International Registration Plan [D.C. Official Code § 50-1507.03]	
Failure to register	\$500
Failure to obtain trip permit	\$500
Exceeding registered gross weight	\$500

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, to Corey Buffo, General Counsel, D.C. Department of Motor Vehicles, 95 M Street, S.W., Washington, D.C. 20024. Comments must be received not later than thirty (30) days after the publication of this notice in the D.C. Register. Copies of this proposal may be obtained by writing to the above address.