

DEPARTMENT OF SAFETY

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INTER-DEPARTMENT COMMUNICATION

TO: Virginia C. Beecher, Director of Motor Vehicles
Wesley Colby, Director of Administration
Colonel Frederick H. Booth, Director of State Police
Curtis N. Duclos, Administrator of Hearings

DATE February 12, 2009

FROM: John J. Barthelmes, Commissioner

SUBJECT: Technical Advice Memorandum **BOH-09-01**

CC: Earl M. Sweeney, Assistant Commissioner
Kevin P. O'Brien, Chief of Policy and Planning

History

I have carefully reviewed the Federal Motor Carrier Safety Regulations (FMCSR), Part 383: Commercial driver's license standards; requirements and penalties Commercial Driver Fine Schedule pursuant to FMCSR 49 CFR 383.53. The concerns are: #1.) Assuming the Department of Safety has authority to act under this federal regulation, is a Hearings Examiner permitted to set aside, place in abeyance, or continue to a future date any required fine(s) imposed once the commercial driver or commercial employer has been found in violation of an Out of Service Order? #2.) Is a Hearings Examiner permitted to use discretion when ordering a fine by finding the amount to be paid is either below, or above the minimum amount published within FMCSR 49 CFR 383.53?

After careful analysis I have determined that the language of FMCSR 49 CFR 383.53 does require payment of a fine for each violation and that the compulsory terminology of this federal regulation is mandatory; no discretion is allowed. Therefore, the Department of Safety shall consider each separate violation after finding as ordering the fee as required in the minimum amount published within FMCSR 49 CFR 383.53.

This Technical Advice Memorandum is necessary to clarify the obligations of the commercial driver or employer (Respondent) seeking knowledge of what each fine amount shall be; and, the total amount of the fine(s) required for each violation and Order of Payment issued after an opportunity for a hearing.

Technical Advice Memorandum

Each violation of FMCSR 49 CFR 383.53 shall require the Respondent to pay not more than and not less than the minimum amount as published within FMCSR 49 CFR 383.53 and the subsequent amount of \$10,000 for the employer.

This Technical Advice Memorandum is issued pursuant to Administrative Rule Saf-C 102.061, and is binding upon all members of the Department of Safety. Pursuant to RSA 541-A: 16 H (a), this Technical Advice Memorandum shall be made available to the public and , as applicable should be filed within the Bureau of Hearings Saf-C 200 series rules or in a separate file for reference.

Approved by: 
John J. Barthelmes, Commissioner