

**CDLs
&
Masking:
Taking a
Closer
Look**

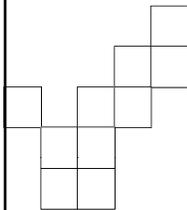


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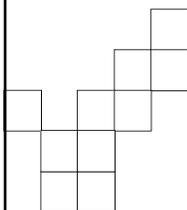
What Do the Following Have in Common?







Q: So What Can Missouri Tell Us About the Federal Motor Carrier Safety Improvement Act (FMCSIA)?



A: Apparently, more than the State of Texas 😊


 The State of Missouri requested clarification from the Federal Motor Carrier Safety Administration regarding the masking provisions outlined in the Motor Carrier Safety Improvement Act that became effective on September 30, 2005. The following scenarios were addressed and responses published on March 20, 2006.


1. What is considered “masking” under the MCSIA?

- FMCSA:** Generally, for masking or diversion to occur, there first must be a judgment of guilt. For example, masking may occur when the court holds the paperwork on a conviction for some reason and does not allow the State to take appropriate action. Diversion may occur when the court allows a driver – after an adjudication of guilt – to perform alternate services such as traffic school to get the conviction erased.


Situation #1:

CDL holder issued traffic citation in his private vehicle. Prosecutor reviews the records and determines that there is a problem with the evidence and decides not to prosecute the case, so no charges are filed with court. No conviction is entered.

Is this Masking?

■ **FMCSA:** No violation of 49 CFR §383/384. The federal CDL regulations require a conviction as defined by §383.5. In this case, the evidence did not support the burden of proof to be properly adjudicated by the prosecutor and there were no excepted actions taken to otherwise circumvent the regulations (i.e., no masking or diversion of the offense or penalty).

■ **Situation #2:** CMV operator is issued traffic citation for "Careless and Imprudent" driving. Prosecutor files charges for "Careless and Imprudent Driving". Case goes to trial and contrary evidence is presented by operator to show he was not driving in a careless and imprudent manner and court ultimately dismisses the case.
Is this Masking?

■ **FMCSA:** No violation of 49 CFR §383/384. Again, the federal regulations require a conviction and in this case the court found flawed or lacking evidence to convict the driver on the offense cited. There were no excepted actions taken by the court to otherwise circumvent the regulations (i.e., no masking or diversion of the offense or penalty). Ultimately, the driver in this case received his/her day in court and prevailed.



Situation #3: CMV operator issued traffic citation for "Improper lane change in a CMV". Prior to the citation being filed with the court the prosecutor determines to only file the charge as a "defective muffler". Final conviction is for "defective muffler" and that is the only charge ever signed by the prosecutor or filed with the court.

Is this Masking?



FMCSA: This practice is not in violation of 49 §CFR 384.226 because the violation was reduced before a judgment of guilt was pronounced. Before we can apply the conditions in 49 §CFR 384.226 to determine whether masking has taken place, there has to be a judgment of guilt (conviction) for a violation. The masking provision in 49 CFR §384.226 do not prevent plea bargaining from taking place.



Situation #4: CDL holder is issued a traffic citation for "Excessive Speed" in private vehicle (speeding 75 mph in 60 mph zone). After original charge is filed with court, prosecutor amends original charge to "Speeding 65 mph in a 60 mph zone". Final conviction is for Speeding 65 mph in a 60 mph zone.

Is this Masking?



FMCSA: This practice is not in violation of 49 §CFR 384.226 because the violation was reduced before a judgment of guilt was pronounced. Before we can apply the conditions in 49 §CFR 384.226 to determine whether masking has taken place, there has to be a judgment of guilt (conviction) for a violation. The masking provision in 49 CFR §384.226 do not prevent plea bargaining from taking place.



Situation #5: CDL holder operating a non-commercial vehicle and is issued a traffic citation for "Failure to Yield Right of Way". Prosecutor files charges for "Failure to Yield Right of Way". Court convicts person of "Failure to Yield Right of Way" and the conviction is posted in the driver's record, but allows a Driver Improvement Program in lieu of having the director assess points on the Missouri driving record.
Is this Masking?



FMCSA: The failure to assign "points" does not violate 49 CFR §383/384. However, if the federal regulations required the imposition of a disqualification period for the convicted offense and the court then allowed a Driver Improvement Program in lieu of having the director impose a disqualification for the prescribed period of time this would be in violation of 49 CFR §384.215/284.213/384.231 as a diversion deferral program.

 **Situation #6:** CMV operator is issued a traffic citation for "Operating a CMV while Suspended/Revoked/ Withdrawn". Prosecutor files charges for "Operating CMV while license suspended/revoked/ withdrawn". Final conviction is for "Operating CMV while license suspended/revoked/withdrawn. Later, court allows attorney for CMV operator to withdraw original plea and conviction and after new court hearing, court ultimately enters a conviction for "Improper CDL Class/Endorsement".

Is this Masking?

 **FMCSA:** This is not in violation of 49 CFR §384.226 because the court vacated (withdrew) the original conviction or adjudication of guilt. By granting the attorney's request to vacate (withdraw) the original plea and conviction, the court has nullified the conviction. The definition of "conviction" in 49 CFR §383.5 defines a conviction to mean "an unvacated adjudication of guilt".

 **More Q&A between Missouri and the Feds**

Why does the state disqualify a driver's commercial driving privilege when a traffic ticket is received in a personal vehicle?

According to 49 CFR 383.51, CDL drivers who are convicted of certain disqualifying offenses while operating their personal vehicle may have their CDL privilege disqualified. There are some offenses that must be committed in a CMV for disqualification action to be taken.

Why is the department so strict with CDL drivers?

The Motor Carrier Safety Improvement Act (MCSIA) states that CDL drivers are professional drivers and should be held to a higher standard. The state legislature passed a law in 2004 (Senate Bill 1233) to include the changes from MCSIA into state law. The department is only enforcing the state and federal laws.

Thanks Missouri and Thank You for your Attention





Ponder the Possibilities
