

STATE OF INDIANA  
BUREAU OF MOTOR VEHICLES

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In the Matter of [REDACTED], DL# [REDACTED]

Petitioner.

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FINAL ORDER

Donald M. Snemis, Commissioner of the Indiana Bureau of Motor Vehicles, having reviewed the Notice of Appeal submitted by Petitioner [REDACTED] ([REDACTED])<sup>1</sup>, hereby FINDS and ORDERS as follows.

Procedural History

1. This matter comes before me as a result of a Notice of Appeal filed by Petitioner [REDACTED] by letter of December 10, 2013<sup>2</sup> seeking administrative review of a decision by the CDL Programs Division of the Indiana Bureau of Motor Vehicles ("BMV") to assess ten (10) points to his Indiana Driver Record as a result of moving violations committed in the State of Maryland.
2. This matter was referred to Administrative Law Judge Pamela Walters, Esq. for review and the issuance of a Recommended Order, which was completed on January 13, 2014.
3. The CDL Programs division of the BMV objected to the Recommended Order on January 23, 2014 and urges me to dissolve the Recommended Order and deny [REDACTED]'s appeal.
4. As the duly appointed Commissioner of the Indiana BMV, I am the ultimate authority for the agency. Ind. Code § 9-14-2-1.

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<sup>1</sup> The Petitioner's first name appears as "[REDACTED]" in the BMV records and the Recommended Order, but his handwritten Notice of Appeal uses the name "[REDACTED]". This Order will use the name in the BMV's official records.

<sup>2</sup> The letter is actually dated December 10, 2012, but it was received by the BMV on December 11, 2013, so it is assumed that the handwritten date of the letter is erroneous.

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Findings of Fact and Conclusions of Law

5. The regulation of interstate motor carrier operations is accomplished by both federal and state regulation. The purpose of the Federal Motor Carrier Safety Regulations (49 CFR Chapter III, Subchapter B) is to "promote the adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety that are compatible with appropriate parts of the Federal Motor Carrier Safety Regulations." Federal law supersedes state law if the two conflict.
6. 49 CFR § 384.206(b)(1)(i) and (ii) requires the State of Indiana to (a) require applicants to disclose the names of all States in which the applicant has been licensed to operate a motor vehicle within the previous ten (10) years and (b) request the complete driver record from all such states.
7. The federal scheme requires all states to keep and share records of all convictions, disqualifications and other licensing actions for violations of State and local laws relating to motor vehicle traffic control committed while the driver was operating a commercial motor vehicle, which is known as the "Commercial Driver's License Information System" or "CDLIS," See: 49 CFR § 384.225.
8. 49 CFR § 384.206(b)(3) requires states to, "in the case of adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials or penalties that are called for" in the federal regulations.
9. In this case, ██████ applied for an Indiana Commercial Driver's License ("CDL"). In his application, ██████ identified Maryland as a State in which he previously held a driver's license. Per the requirements of 49 CFR § 384.206(b)(ii), the Indiana Bureau of Motor Vehicles ("BMV") requested and obtained a copy of ██████'s CDLIS driver record, which included information from the State of Maryland.

10. ██████'s Maryland driver record showed various traffic violations from 1988 to 2013. These included a June 20, 2012 offense for disregarding a traffic control device and a January 29, 2013 offense for failing to obey signs or markings.
11. Indiana law requires the Indiana BMV to assess points to the driving record of a person with an Indiana driver's license for those out-of-state convictions or judgments for traffic violations for which Indiana has a corresponding violation. See: Interstate Driver License Compact, adopted by the State of Indiana at: Ind. Code § 9-28-1 and the State of Maryland at Md. Code § 16-702, 703. See also: 140 IAC 1-4.5-5(b).
12. As such, the CDL Programs Division of the Indiana BMV assessed ██████'s driver record six (6) points for the first offense and four (4) points for the second, for a total of ten (10) points.<sup>3</sup>
13. On December 10, 2012, ██████ sent a Notice of Appeal to the BMV requesting administrative review of the BMV's decision to assess points to his Indiana driver record. In his Notice of Appeal, ██████ argues that the BMV cannot assess points to his driver record since his Maryland tickets were paid, and he has never received a citation while holding an Indiana driver's license.
14. On January 13, 2014, Administrative Law Judge Pamela Walters reviewed ██████'s Notice of Appeal. That same date, she issued a Recommended Order.
15. The Recommended Order cites 49 CFR § 384.213, which provides that "The State must impose on drivers of CMVs<sup>4</sup> appropriate civil and criminal penalties that are consistent with the penalties prescribed under [49 CFR § 383.51-.53]."

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<sup>3</sup> 140 IAC 1-4.5-4(d) provides that points become inactive twenty-four (24) months after the court conviction date. Since ██████'s other traffic offenses were more than twenty-four (24) months old, no points were assessed for those:

<sup>4</sup> A "CMV" is a Commercial Motor Vehicle. 49 CFR § 383.3(a).

16. 49 CFR § 383 "[e]stablishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges." 49 CFR § 383.1(b)(5).
17. 49 CFR § 383 applies to "every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States." 49 CFR § 383.3(a).
18. 49 CFR § 383.51-.53 provides various minimum and maximum penalties holders of CDLs who commit traffic offenses, such as operating a CMV or non-CMV under the influence of alcohol.
19. The gist of the Recommended Order is that since "[a]ssessing points does not appear as a penalty under CFR § 384 subpart D," the BMV cannot enforce 140 IAC 1-4.5-5(b), which requires the BMV to "assess points to the driving record of a person with an Indiana's (sic) driver's license for those out-of-state convictions or judgments for traffic violations for which Indiana has a corresponding violation." In essence, the Recommended Order takes the position that Indiana's point system is inconsistent with the federal scheme and is therefore unenforceable when a driver from another state seeks a CDL.
20. I do not agree with the analysis of the Recommended Order, which reads the federal scheme too narrowly. The BMV's regulations, including the Indiana points system, can be applied to Petitioner [REDACTED] without violating the Federal Motor Carrier Safety Regulations.
21. As discussed above, the federal regulations require states to share driver records and to implement any disqualifications, penalties, limitations, etc. that would result from adverse information in those driver records, as if the offenses had occurred in the new state. BMV regulations also require the BMV to assess points to persons with Indiana driver's licenses for out-of-state violations reported in such driver records. 140 IAC 1-4.5-5(b).

22. The purpose of 49 CFR § 383 is to "help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner." 49 CFR § 383.1.
23. If the states did not share information, and enforce violations occurring in other states, then it would be easy for drivers of commercial vehicles to move from state to state, effectively expunging their driver's records and escaping the penalties for their actions. Warding against such activities is one of the obvious purposes of the federal scheme.
24. Reading the federal regulations in a way that forbids the State of Indiana from taking action upon ██████'s Maryland violations would therefore undermine one of the central purposes of the federal scheme.
25. Further, it is worth noting that the federal scheme is only at issue here because ██████ was applying for a CDL. The federal regulations cited by the Recommended Order have no application to the issuance of regular driver's licenses by the State of Indiana. Under the system urged by the Recommended Order, the BMV would be required to impose points upon out-of-state drivers who apply for a regular Indiana driver's license, but would be forbidden to do so if an out-of-state driver also applied for an Indiana CDL. Such a system would be against all logic and was surely not intended by the federal regulations.
26. Also, the ten (10) points applied to ██████'s driving record triggers no penalties, and therefore cannot be inconsistent with the minimum and maximum penalties of the federal scheme. Under the Indiana points system, no penalty is imposed until a driver incurs eighteen (18) points on his or her license. See: 140 IAC 1-4.5-4. Points are not penalties in and of themselves, and

the ten (10) points placed on [REDACTED]'s record will not result in any penalties at all, let alone penalties inconsistent with 49 CFR § 383.<sup>5</sup>

27. It is also worth noting that six (6) points will become inactive on June 20, 2014, and four (4) will become inactive on January 29, 2015. Further, [REDACTED] can complete a Driver Safety Program, which would remove four (4) points from his driver record. See: 140 IAC 1-4.5-7. Therefore, it is very likely that the imposition of these points will never result in a penalty.

#### Judgment and Order

28. For the reasons set forth above, I do not accept the ALJ's Recommended Order, which is hereby DISSOLVED pursuant to Ind. Code § 4-21.5-3-29(b).

29. Petitioner [REDACTED]'s Appeal from the decision of the BMV's CDL Programs division is hereby DENIED. The ten (10) points assessed by the CDL Programs Division of the BMV will remain on [REDACTED]'s Indiana driver record, as required by Indiana law.

30. Petitioner [REDACTED] is hereby notified that this is a FINAL ORDER. Petitioner may seek judicial review of this FINAL ORDER by filing a petition for review with the appropriate court within thirty (30) days after the date that notice of this FINAL ORDER was served, plus three (3) days if notice is served through the United States mail. See: Ind. Code §§ 4-21.5-3-2, 4-21.5-5.

31. Pursuant to Ind. Code § 4-21.5-3-32, this FINAL ORDER shall be made available for public inspection and copying. It shall be indexed by name and subject. All identifying details shall be deleted from the public copy of this Order per Ind. Code § 5-14-3, with written justification for all deletions explained in writing and attached to the public copy of this FINAL ORDER.

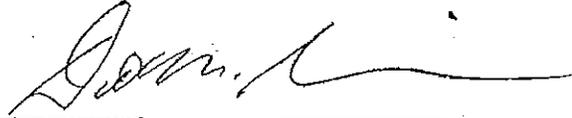
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<sup>5</sup> I have not determined whether it is possible that out-of-state incidents, alone or in combination with Indiana incidents, could potentially result in penalties inconsistent with 49 CFR § 383. However, that is clearly not the case here, so that is an issue for another day.

SO ORDERED,

2-10-2014

Date



Donald M. Snemis, Commissioner  
Indiana Bureau of Motor Vehicles

Written notice of this order shall be provided to:

████████████████████

CDL Programs Division, Indiana Bureau of Motor Vehicles  
Pamela Walters, Esq.