Hi-Way Hi-Lites

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ILLEGAL IMMIGRANTS DON'T HAVE TO GET DRIVER LICENSE TO DRIVE IN CALIFORNIA LEGALLY

BUT…WHAT ARE CALIFORNIA DRIVERS LICENSE RESIDENCY REQUIREMENTS?

By Officer Jeff Perez (Public Information Officer), CHP Victorville Office, Victorville, CA 92393

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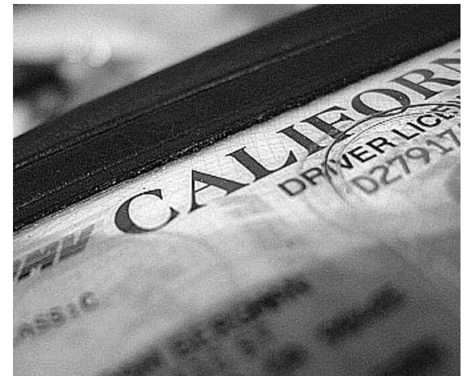
Sustaining Member

The California Highway Patrol has received numerous inquiries from the public and allied agency personnel regarding DL requirements for residents of other countries. A majority of the inquiries concern undocumented aliens from Mexico.

Pursuant to Section 12500(a) of the California Vehicle Code (CVC), any person operating a motor vehicle on a highway in this state is required to possess a California DL unless "expressly exempted under this code."

Section 12502 CVC exempts a nonresident from the requirement of possessing a California DL provided the driver in his or her immediate possession a valid DL issued by the foreign jurisdiction (i.e., state, province, country) in which he or she lives.

Although Section 516 CVC provides a definition for resident, the definition of residency contained in



Section 12505(a)(1) CVC is the applicable definition for DL purposes. Section 12505(a)(1) CVC reads: " For purposes of this division only and notwithstanding Section 516, residency shall be determined as a person's state of domicile. 'State of Domicile' means the state where a person has his or her true, fixed, and person home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent."

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ILLEGAL IMMIGRANTS

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Additionally, Section 12505(e) CVC also allows a nonresident to operate a noncommercial motor vehicle on California highways provided the person possess a valid DL issued by a foreign jurisdiction (country) having DL standards deemed equivalent to standards adopted by the California Department of Motor Vehicles (DMV). During the past several years, the Legislature has reviewed legislation, which, if enacted, would have allowed undocumented aliens to obtain a California DL. During legislative hearings, DMV personnel have consistently testified driver licenses issued by each State of Mexico which are recognized in California. Furthermore, DMV has not determined if any other country has standards, which are not equivalent to California's standards.

Section 12505(a)(1) CVC provides the following which are prima facie (on its face evidence of residency:

1. Address where registered to vote.
2. Payment of resident tuition at a public instituion of higher education
3. Filing a homeowner's property tax exemption
4. Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient."

Examples of residency under 12505(a)(1)(D) CVC would include:

1. Filed a resident income tax claim
2. Possession of a resident hunting-fishing license
3. Possession of an occupational license issued by the state (e.g., accountant, architect, contractor, nurse, repossessor)
4. Established place of business in California

A driver who possesses a valid DL by another country is not in violation of Section 12500(a) CVC. The State is required to prove a person's presence in California is more than temporary or transient in order to compel that person to obtain a California DL.

Section 12505(a)(2) CVC prohibits DMV from issuing a commercial driver license (CDL) to a nonresident (Title 49, Code of Federal Regulations, Part 384.212). Provisions contained in the Real ID Act (Public Law 109-13) preclude a state from issuing a DL to a person who possesses a DL issued by another jurisdiction until that person surrenders his or her DL.

A DL by any state of Mexico or any country, other than Canadian provinces, cannot be electronically verified through the National Law Enforcement Telecommunications System (NLETS). However, a commercial driver license issued by the Mexican Secretary of Communication and Transportation (Secretaria De Comunicaciones Y Transportes [SCT]) may be queried through NLETS.

Any questions concerning the contents of this information bulletin should be directed to the California Highway Patrol, Victorville office, at (760) 241-1186. ■

New Rules for Driver's Medical Card & DQ Files

Three years from now, the need for many CDL holders to carry a medical card will be a thing of the past. The Federal Motor Carrier Safety Administration (FMCSA) has issued a final rule merging the medical examiner's certification with the commercial driver's license. The result is that an interstate driver's medical qualification status will be instantly accessible via his or her driving record, meaning many drivers will no longer need to carry their medical cards with them in their truck or bus.

Between January 30, 2012, and January 30, 2014, all interstate drivers who hold a CDL must begin providing their medical certificates to their state driver licensing agencies. The licensing agencies, in turn, will be required to record the driver's medical certification status in the national CDL database, known as the Commercial Driver License Information System (CDLIS), which is accessible to road side enforcement personnel.

Also beginning January 30, 2012, for interstate CDL drivers, motor carriers will no longer be required to keep a copy of the driver's medical card in the driver's qualification file. However, to verify a driver's medical qualification status, employers will instead have to obtain a copy of the driver's motor vehicle record before allowing the driver to drive a commercial motor vehicle in interstate commerce.

This marks a dramatic shift from current rules, which give motor carriers 30 days from hire to obtain the motor vehicle record. The agency estimates that today it takes only about four days to obtain a driver's report.

To maintain a "paper trial", medical examiners and state licensing

agencies will be required to keep a copy of each driver's medical card for three years. Employers will also have to continue maintaining medical cards for any drivers not subject to the rule, including non-CDL drivers.

The final rule only applies to interstate CDL holders and their motor carrier employers, but states are expected to adopt similar intrastate rules in order to continue receiving federal highway funds.

In justifying the new rule, the FMCSA cited recent inspection and audit data indicating that "there remains a need to improve oversight of the medical certification process for commercial motor vehicle drivers." Among the more than 3.4 million roadside inspections conducted in 2007, for

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PROPOSED RULE WOULD LEAD TO TIGHTER CONTROL OF MEDICAL EXAMINERS

Drivers who need a medical exam in the future may first have to turn to a national database of approved doctors if a proposed new rule takes effect.

The FMCSA has proposed the creation of a "National Registry of Certified Medical Examiners" to ensure that drivers' physical exams are only performed by qualified doctors in a consistent manner. In the opinion of this writer, it's about time. I say this because I have personally shall we say brought to the attention of the FMCSA two doctors who shall we say did things questionably and since such time they have disappeared.

If finalized, the proposed rule would require eligible medical examiners to be trained by an accredited training provider and pass a test before being placed on the Registry. Drivers and motor carriers would have to refer to the Registry (via telephone or the internet) to find a qualified medical examiner, and examiners would need periodic refresher training and testing to remain on the list. I can see that the day of the $25.00 exam will be long gone because of the added training.

Under 49 CFR Part 391, all interstate commercial motor vehicle drivers must undergo a medical exam at least every two years, but current rules do not provide much detail on who can provide the exams. The result is inconsistency and, at times, incompetence.

In 2005, a survey in Indiana found mistakes on 29 percent of all examination reports collected. This writer agrees with the FMCSA that the enhancement of the knowledge and capabilities of medical examiners would have a clear and direct positive impact on both safety of CMV operations and driver health.

Interest in certifying medical examiners dates back more than 30 years, but it took an act of Congress in 2005 to require development of the proposed rule, which, by Congressional deadline, is already more than two years late.

The FMCSA is proposing to phase in the rule over a three-year period. Beginning two years after the rule takes effect, drivers who work for motor carriers that employ 50 or more drivers would have to have all future medical exams performed by registered examiners. Employees of smaller companies would have an additional year to comply.

A major concern about the Registry is its potential effect on drivers for smaller companies in rural areas who may be unable to find a qualified examiner. The FMCSA has acknowledged the concern and is asking for public input on ways to make sure examiners are accessible in rural areas and areas where the demand for certification may be low.

The FMCSA estimates that the proposed rule applies directly to approximately 4.4 million active interstate commercial drivers. The agency says about 40,000 certified medical examiners should be enough to perform the estimated 3 million driver medical exams per year, with each examiner conducting an average of 75 exams per year.

Although medical examiners will have to pay for training and testing, the FMCSA says the largest cost of the new rule would fall to drivers and motor carriers. The estimated 44,000 drivers who are screened out of the occupation due to medical issues will lose income, and motor carriers will be forced to replace those drivers at an estimated cost of $1,600 per driver.

Other costs to the industry are expected to be low once the program is running. Information for drivers, employers, and medical examiners about the Registry program would be available primarily through a free website such as NTA's, although a resource center with a toll-free phone number would also be available. On the website, drivers and employers could find names and addresses of certified medical examiners.

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PROPOSED RULE WOULD LEAD TO TIGHTER CONTROL OF MEDICAL EXAMINERS

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The proposed rule would require that all medical examiners complete training within three years after the rule takes effect. Training would be conducted by an accredited private-sector training provider such as NTA. The FMCSA would develop the core curriculum and administrative requirements and provide these to the training providers. The length of the training would vary among providers but the agency projects that it would be just one day to teach the core curriculum. The training delivery method could vary among providers and include self-paced, on-line training; the traditional classroom model; or a combination of methods.

The agency anticipates providing periodic, internet-based retraining at no charge to the examiner, but examiners would have to repeat the complete initial training program at least once every 12 years, paid for by the examiner.

In addition to passing the initial certification test, examiners would be required to pass the test again every six years.

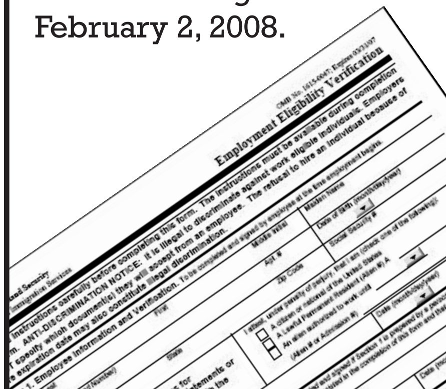
The proposed rule would also;

- ❖ Require examiners to electronically transmit to FMCSA the name and ID number for each driver who is examined.
- ❖ Require examiners to send copies of drivers' medical exam reports to FMCSA within 48 hours of request. The agency says it may use the reports to audit examiners' performance.
- ❖ Revise the medical card by adding a field for the doctor's "National Registry ID Number."
- ❖ Establish procedures for removing examiners from the Registry.

The rule will not change the list of professions qualified to perform medical exams, including medical doctors, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic. ■

FEDERAL LEGISLATIVE ALERT

The U.S. Citizenship and Immigration Services (USCIS) announced that it has delayed by 60 days, until April 3, 2009, the effective date for using the revised Form I-9, originally scheduled to go into effect February 2, 2008.



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example, the FMCSA says there were 145,000 drivers failing to have a medical certificate in their possession, 42,000 drivers operating with an expired medical certificate, 4,000 drivers in possession of an improper medical certificate, and 6,000 violations for physically unqualified drivers.

At an average price of $6.00 per MVD, the FMCSA estimates that the new rule will cost employers $3 million annually, but will prevent 288 crashes and save the country $43 million each year.

Four New Driver Categories

The rule distinguishes between four types of drivers, and each CDL driver will be expected to notify his or her state licensing agency of the type of driver he or she is or expects to be, as follows:

- ❖ **Non-excepted interstate** – operates in interstate commerce, is qualified under Part 391, and is required to obtain a medical card.
- ❖ **Excepted interstate** – operates in interstate commerce but is exempt from having to obtain a medical card under Part 391.
- ❖ **Non-excepted intrastate** – operates only in intrastate commerce and is subject to state qualification rules.
- ❖ **Excepted intrastate** – operates in intrastate commerce but is exempted from state qualification rules.

Anyone presenting himself as a "non-excepted interstate" driver will have to provide the state with a current medical card, and all future cards.

If a driver's medical card or variance expires, the state must:

- ❖ Update the CDLIS record within 10 days to show "not certified"
- ❖ Notify the CDL holder of the "not certified" status, and
- ❖ Downgrade the driver's CDL within 60 days. ■

FAQ ABOUT THE NEW CDL RULES

Q: Do drivers need new medical cards on January 30, 2012?

A: No, existing medical cards will be accepted as long as they are current.

Q: Will drivers need to renew their medical cards more frequently once the rules are in effect?

A: No

Q: Does the new rule require states to notify drivers before their medical cards expires?

A: No, it is still up to the driver to keep track of the expiration date, although states have the option to notify drivers. The CDLIS driving record will show the medical card's expiration date, so employers will be aware of the date as well. States must, however, notify drivers before downgrading their CDLs.

Q: Will drivers have to hand-deliver each new medical card to the state?

A: Not necessarily. States are free to allow fax, mail or electronic submissions.

Q: Will states charge drivers a fee for processing medical cards?

A: They can. The rule does not prohibit states from charging drivers for this. It is of the opinion of this writer that because of the financial condition of each state that you can count on them charging a fee.

Q: If an employing carrier's policy is to review each driver-applicant's MVR before hire and to require them to undergo a new medical exam, will the carrier need to obtain two MVRs?

A: No. If the carrier obtains an MVR showing one medical card expiration date and then the driver receives a new medical card expiration date, the carrier would not have to obtain a second MVR showing the new date. The applicant will have to give the new medical card to the state licensing agency, however. The employer would have to obtain a new MVR at least within 12 months, for the annual review.

Q: Does the new rule affect intrastate (in-state) drivers?

A: It could. To receive federal highway funds, states are required to have rules that are similar to the federal rules. Therefore, states are required to revise their medical certification rules for intrastate drivers to be compatible with the new rule. However, states are not required to post intrastate driver's medical certification status to the CDLIS driver record.

Q: Will the rule require employers to wait longer before putting a driver behind the wheel?

A: Possibly. As under current rules, drivers cannot operate CMVs in interstate commerce until the employer has proof they are medically qualified. Under the new rule, that "proof" will be the MVR instead of the medical card (although for new/renewal licensees, employers can use a receipt from the state licensing agency for up to 15 days after the receipt was issued.) Of course the simple solution to this, the driver should get own MVR before he applies for a job.

Q: Is a CDLIS status of "not-certified" an out-of-service condition?

A: A "downgrade" means either the state takes away the driver's CDL privileges or allows the driver to change his or her self-certification to "excepted interstate," "non-excepted interstate," or "excepted intrastate."

Mandatory Direct-Observation Testing Put on Hold

New direct-observation drug testing requirements that were to take effect on November 1, 2008, were put on hold by the U.S. Court of Appeals for the D.C. Circuit.

The court announced on October 31, 2008, that it was temporarily delaying a June 25, 2008, rule from the U.S. Department of Transportation that would have required collection sites to use "direct observation" procedures for all return-to-duty or follow-up drug tests.

The DOT had enacted the rule in an effort to clamp down on commercial drivers, railway workers, and others who might try to cheat on their drug tests. Under new procedures – part of the June 25th rule – drivers undergoing directly observed collections are asked to lower their slacks and raise their shirts so the observer can check for adulteration or prosthetics that could be used to beat the test. Such observation had always been optional – at the employer's discretion – for return-to-duty and follow-up tests, privacy concerns were raised when the DOT announced that such observation would be mandatory for those tests.

Petitioners, including a large railway, asked the court for an emergency delay while the court reviews the matter. Because the court granted the request, direct observation of return-to-duty and follow-up tests "will continue to be an employer option, rather than mandatory," according to Jim L Swart, director of the DOT's Office of Drug and Alcohol Policy and Compliance.

The delay only affects the implementation of changes to 49 CFR §40.67(b); other changes in the June 25 rule took effect as planned on August 25, 2008. The changes to §40.67(b) were delayed until November 1st so the DOT could gather more input on the change. On October 22, 2008, the DOT issued a notice saying that it would not further delay the rule beyond November 1.

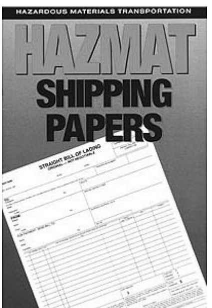
In justifying the changes to §40.67(b), the DOT said it has always tried to ensure employee privacy, but, "given the now-widespread availability and promotion of cheating devices and products, the purpose of which is to allow employees to conceal their illegal drug use while continuing to perform safety-sensitive functions, it is not practicable to turn a blind eye to the damage that cheating on drug tests can have on public safety."

Though several unions representing the rail and aviation industries argues that people who have tested positive are unlikely to try to cheat, the DOT published data showing that the violations rates for return-to-duty and follow-up tests in every regulated industry – especially rail and aviation – are higher than the random testing violation rates.

For example, "the violation rate on return-to-duty tests is almost four times as high as the random violation rate in the aviation industry," the DOT wrote, adding that "people who return to illegal drug use and realize that their jobs are at stake have strong motivation to take all necessary steps, including cheating, to avoid another positive result."

The court did not indicate when it might issue a decision on the case, but briefs will be accepted into late January 2009, with a hearing date to be scheduled after that. ■

HAZMAT SHIPPING PAPER RETENTION REQUIREMENTS



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