



## Helping Your Drivers Assure Compliance with the CDL Requirements

March 2, 2015

If you find yourself struggling with the recent changes to the Commercial Drivers License (CDL) system, you are not alone. Many motor carriers find themselves caught squarely in the middle between the driver, who has several new responsibilities in maintaining their CDL, and the federal DOT driver qualification requirements. Drivers and motor carriers alike must have a good level of understanding of the requirements and diligently work together to assure compliance. Failure to comply can subject both drivers and motor carriers to loss of driving privileges, fines and even imprisonment.

### **Successful compliance starts with the driver!**

It's important to realize that a CDL is the property of the driver. Because the CDL is the property of the driver, it places the responsibility of maintaining the license and staying qualified to drive on the driver. Under the new system, drivers are responsible for corresponding with their State Drivers License Agency (SDLA) periodically to maintain the CDL. The driver's responsibility includes assuring a current CDL of the right type, with the correct self-certification affidavits and endorsements are maintained without interruption. Motor carriers cannot correspond on behalf of the driver with the SDLA, even with the best of intentions in helping the driver.

### **Cooperation is the key to successful compliance!**

Unchanged are the age-old driver qualification requirements whereby a motor carrier must assure they are using drivers who are properly qualified. Under the new system, motor carriers cannot be sure their drivers are properly qualified until they receive the Motor Vehicle Record (MVR) from the SDLA that lists the status of the driver's CDL, medical condition, self-certification statement and driving record. If any one of the required status is missing or incorrect, the driver's ability to legally perform their driving duties on behalf of the motor carrier is negatively affected. Drivers and motor carriers must work together more closely to assure the information ultimately reported on the MVR is accurate and properly documents their qualified status for their particular driving circumstances.

**Note:** When it comes to the information reported by the SDLA on the MVRs, drivers and motor carriers should anticipate a certain amount of inaccurate or missing data due to lost correspondence, mis-keyed, mis-communicated or mis-interpreted data, etc. **Tip:** Read all correspondence, keep all receipts and proof of correspondence, proof all information closely for errors and never, ever ignore or put off actions required to maintain your CDL.

### **Why did the CDL system change?**

In 2007, federal and state authorities found over 100,000 commercial vehicle drivers were operating illegally without valid medical certificates. Commercial vehicle crash data also shows that more than 3,000 truck crashes per year result from the driver having a heart attack or other physical impairment such as a diabetic seizure. DOT was tasked by Congress to upgrade the system to prevent medically unqualified drivers from operating commercial vehicles on our highways.

## **Commercial Driver's License Information System (CDLIS)**

In 2012, DOT introduced the Commercial Driver's License Information System as a new regulation that mandates that all interstate CDL holders and applicants provide proof of their medical certification to their State Driver License Agency. The regulation required the SDLA to input the proof of certification into the CDLIS system by January 30, 2015 to provide roadside law enforcement immediate and accurate access to the driver's CDL information. Some states were not prepared for the CDLIS reporting requirement and have not complied, resulting in confusion on what exactly to do in those states.

The new system incorporates the following features to help DOT accomplish their goal of preventing medically unqualified drivers from operating commercial vehicles on our highways. Individually, each feature is a simple step; however when lumped together, it produces the confusion currently being experienced. It's important to realize that each of these features are a different issue.

- Driver's Requirement to Self-Certify Driving Activity
- National Registry of Certified Medical Examiners
- CDLIS - Drivers Required to Report to State Driver License Agencies
- CDLIS - Motor Carriers Required to Retrieve Current Motor Vehicle Record
- Sleep Apnea: DOT Prohibits Driver Screening from Guidance
- Assuring the Driver and CDL Matches the Vehicle and Cargo

Each of these issues has proven to cause confusion and this is expected to persist until everything is fully operational. The following information is offered to help drivers and motor carriers understand the requirements.

### **Driver's Requirement to Self-Certify Driving Activity**

This new federal requirement mandates CDL drivers to self-certify if they are subject to federal or state medical certification standards, and if so, whether they meet the applicable requirements. Each time the driver certifies their driving activity with the SDLA, they are establishing the limitations related to their CDL for which they as the driver and the motor carrier will be held to in the future. This is a great source of confusion as the categories and wording are very confusing.

### **So What's The Big Deal With How Your Drivers Self-Certify?**

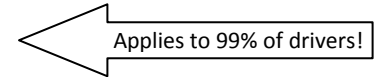
Both drivers and motor carriers have incentive to make sure their CDL drivers are self-certifying accurately to avoid violations. If your CDL driver marked "excepted interstate" or "excepted intrastate" status during self-certification in order to avoid submitting a medical examiner's certificate to his or her state of licensing, you should be concerned and take immediate action to correct the situation.

If the driver self-certifies mistakenly, they may not really possess an active CDL and be qualified to operate the motor carrier's vehicles. This declaration on their driving record could place the driver out-of-service for not having a current CDL for the vehicle operated - a situation most motor carriers need to take measures to avoid.

To add to the driver's woes, most states that downgrade the CDL to an excepted status require drivers to re-take some of the CDL tests in order to reactivate to a non-excepted interstate commerce CDL. If your driver mistakenly claimed the wrong status, he or she should contact his or her state of licensing as soon as possible to correct the situation.

Drivers are instructed to self-certify in one of these four categories:

- **Interstate non-excepted:** You are an Interstate non-excepted driver and must meet the Federal DOT medical card requirements.
- **Interstate excepted:** You are an Interstate excepted driver and do not have to meet the Federal DOT medical card requirements.
- **Intrastate non-excepted:** You are an Intrastate non-excepted driver and are required to meet the medical requirements for your State.
- **Intrastate excepted:** You are an Intrastate excepted driver and do not have to meet the medical requirements for your State.



**Note:** Most drivers employed or contracted at a farm center where fertilizer, seed and crop protection chemicals are distributed are covered under the “Interstate non-excepted” category. From experience, farm center operations routinely receive the products it sells, such as mined or manufactured fertilizer, from outside the state, and distribution to farmers are considered a continuation of interstate commerce.

Of the 4 categories of commercial motor vehicle (CMV) operation, how do you determine which category you should self-certify to with the State Driver Licensing Agency (SDLA)? For the purpose of complying with the new requirements for medical certification, it is important to know how (vehicle size, cargo, routes, etc.) you are using the CMV. To help you decide, follow these steps:

**Step 1:** Do you, or will you, use a CDL to operate a commercial motor vehicle in interstate or intrastate commerce?

Interstate commerce is when you drive a commercial motor vehicle:

- From one State to another State or a foreign country.
- Between two places within a State, but during part of the trip, the commercial motor vehicle crosses into another State or foreign country.
- Between two places within a State, but the **cargo\*\*** or passengers are part of a trip that began or will end in another State or foreign country.

**\*\*Note:** Farm center operations routinely receive the products it sells, such as mined or manufactured fertilizer, from outside the state, and distribution to farmers are considered a continuation of interstate commerce

**Step 2:** Once you decide whether you operate (or will operate) in interstate commerce or intrastate commerce, you then must decide whether you operate (or expect to operate) in a non-excepted or excepted status.

You operate in excepted interstate commerce when you drive a commercial motor vehicle in interstate commerce only for the following activities:

- To transport school children and/or school staff between home and school.
- As Federal, State or local government employees.
- To transport human corpses or sick or injured persons.
- Fire truck or rescue vehicle drivers during emergencies and other related activities.

- Primarily in the transportation of propane winter heating fuel when responding to an emergency condition requiring immediate response such as damage to a propane gas system after a storm or flooding.
- In response to a pipeline emergency condition requiring immediate response such as a pipeline leak or rupture.
- In custom harvesting on a farm or to transport farm machinery and supplies used in the custom harvesting operation to and from a farm or to transport custom harvested crops to storage or market.
- Beekeeper in the seasonal transportation of bees.
- Controlled and operated by a farmer, but is not a combination vehicle (power unit and towed unit), and is used to transport agricultural products, farm machinery or farm supplies (no placardable hazardous materials) to and from a farm and within 150 air-miles of the farm.
- As a private motor carrier of passengers for non-business purposes.
- To transport migrant workers.

According to DOT, most CDL holders who drive commercial motor vehicles in interstate commerce are non-excepted interstate commerce drivers. Intrastate commerce is when you drive a commercial motor vehicle within a State and you do not meet any of the descriptions above for interstate commerce.

#### **Special Situations:**

- If you operate in both intrastate commerce and interstate commerce, you must choose interstate commerce.
- If you drive for more than one employer, contractor or motor carrier, you operate in non-excepted interstate commerce.
- If your medical examiner's certificate is only valid with a vision, diabetes or a skills performance evaluation variance granted by DOT, you may also be asked by your SDLA to provide a copy of that variance document.
- If you operate in both excepted interstate commerce and non-excepted interstate commerce, you must choose non-excepted interstate commerce to be qualified to operate in both types of interstate commerce.

**Tip:** Assuring your drivers certify their driving activity as Interstate non-excepted will eliminate more than half of the confusion surrounding CDL compliance.

#### **National Registry of Certified Medical Examiners**

DOT has long suspected that a variety of fraudulent activities hampered the quality of medical examinations (physicals) performed by physicians. The agency sought to identify, train and register physicians or medical examiners on properly performing DOT physicals and the result was the National Registry of Certified Medical Examiners. The registry allows the agency to train practitioners according to its rules before listing them as one of the DOT's authorized providers.

Effective May 21, 2014, all DOT physicals for drivers must be performed by a medical examiner listed in the National Registry. As long as a DOT physical was taken before the May 21, 2014 date and was performed in accordance with Section 391.43, and by someone defined as a medical examiner based on the prior regulations, it is valid through its expiration date.

With the recent implementation of the registry, motor carriers are discovering that many of the medical examiners that were performing DOT physicals on their drivers have decided not to continue providing that service. The registry is expected to contain 50,000 medical examiners when fully implemented. But for now, start early in case you encounter trouble in locating an approved medical examiner for your next DOT physical. Follow this link to find a certified medical examiner close to you:

<https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam>

### **Warning: Stringent Physical Ahead!**

Very few drivers receive a full two-year certification under the new system. As an example, any prescription medication prescribed for hypertension, diabetes, etc. requires the medical examiner to issue a one-year certification. Three-month certifications with follow-up visits are now very common and this increases the amount of correspondence, paperwork and expense associated with running current MVRs.

If a driver is not satisfied with their medical examiner or the DOT physical that was performed, they can seek a second opinion. Second opinions can be requested by drivers when obtaining DOT physicals; however Chuck Horan, who oversees the National Registry of Certified Medical Examiners, recently forewarned “drivers can get a second opinion, as long as they provide a full and honest history to their medical examiners and do not cross the line into illegal doctor shopping. When we at the National Registry get two records on one particular driver, we have the capability of pulling the long form from both medical examiners and look at the long forms back-to-back.” The information given by the driver must be the same for both doctors for the second opinion to be considered credible.

**Tip:** The medical examiner that performs your DOT physical does not mail, transmit or send in any manner, the test results to your SDLA. Much confusion lies in the fact that medical examiners are required to submit a monthly report to the DOT on the medical examinations they have performed. Contrary to some medical examiners this information is not shared with the SDLA. Drivers are solely responsible to send a copy of their Medical Examiner’s Certificate to their SDLA.

### **CDLIS - Drivers Required to Report to State Driver License Agencies**

The Commercial Motor Vehicle Safety Act of 1986 promulgated a goal to improve highway safety by ensuring that drivers were qualified to operate commercial motor vehicles and to remove the unsafe and unqualified drivers from the highways. Initially, the Act required CDLs and the program has been responsible for a vast reduction in the number of drivers who have multiple licenses of any type. By limiting commercial motor vehicle operators to one license, the CDL program has thwarted the practice of spreading convictions among driver records maintained by multiple States. The Act also mandated and funded the establishment of CDLIS to serve as a clearinghouse and depository of commercial driver licensing and conviction data.

CDLIS is currently the central point for merging several important pieces of driver information such as:

- Self-certification affidavit information
- Medical examiner certificate information
- Motor Vehicle Record information
- Variance information (i.e. vision waiver)

DOT requires CDL holders to present proof of medical certification to their SDLA. Once presented to the states, CDL holders are supposed to retain the medical examiner's certificate on the road with them for no more than 15 days. Within that 15 day timeframe, the SDLA is supposed to enter the certification information into the CDLIS system.

If a driver's medical examiner's certificate requires a vision, diabetes or a skills performance evaluation waiver or variance granted by DOT in order to be valid, your SDLA will require this information to be submitted to them for inclusion in their records.

Drivers should watch for routine correspondence regarding the status of their CDL and medical examiner's certificate (physical). Most states (not all) send reminders approximately 60-90 days prior to the expiration of the driver's license or medical examiner's certificate. Failure to submit the required documentation in a timely manner will result in the driver's CDL being downgraded by the SDLA.

**Tip:** We highly recommend you continue to obtain a medical examiner's certificate (physical card) from your physician and carry it with you as you have in the past. CDL drivers will now need three copies of their medical certification: one on their person; one in their employer motor carrier's driver qualification file and one submitted to the SDLA.

**Warning: License Downgrades Ahead!**

Once the state "thinks" a driver's medical examiner's certificate has expired, the driver is no longer eligible to operate a commercial motor vehicle. We used the word "thinks" here because all that matters is what the SDLA has on record in their database - regardless of whether it is correct or not. In order to again become eligible to drive a commercial motor vehicle, the operator must submit a valid medical certification. If a valid medical certification is not submitted within 60 days of the state's notice of expiration, the CDL privileges will be cancelled and the license "downgraded" to that of a regular operator. All state notices will be sent to the driver's address on record, so be sure to keep the address on your CDL current to ensure all notices are received.

**CDLIS - Motor Carriers Required to Retrieve Current Motor Vehicle Record**

According to the requirements tying the CDL to the driver's medical qualifications, carriers must request a CDLIS Motor Vehicle Record (CDLIS-MVR) from the SDLA as proof of medical status. A current CDLIS-MVR must be generated each time the CDL holder obtains a new medical certificate. For drivers with medical conditions requiring additional monitoring, they may be issued medical certification for less than two years. In some instances, this may even be for less than one year (ex. 3 or 6 months). The motor carrier must order a CDLIS-MVR for each new medical certification, even if that means multiple reports in one calendar year.

**Note:** The question has been posed, "Can we use the CDLIS-MVR for our annual MVR review too?" The answer is yes, providing it is requested within 12 months of the previous annual MVR. You may request an annual MVR and perform the documented annual review of the driving record early, but never late.

**Sleep Apnea: DOT Prohibits Driver Screening from Guidance**

In 2008, the Medical Review Board recommended that DOT require all drivers to be screened for obstructive sleep apnea. In 2010, the National Transportation Safety Board concurred as one of the parties alleging a clear connection between driver sleep apnea and safety. In 2012, DOT published Proposed Regulatory Guidance for obstructive sleep apnea and some medical examiners prematurely

started screening for the disorder as part of their routine DOT medical examinations. DOT ultimately issued a withdrawal notice on its Proposed Sleep Apnea Guidance due to pressure by the industry and Congress. Members of Congress eventually passed legislation in the House and the Senate, requiring that DOT go through the formal rule-making process on the subject of sleep disorders. On October 15, 2013 the sleep apnea bill was signed into law by the President. The law forbids DOT from using guidance alone to address sleep apnea screening for drivers. It requires that if the agency takes action regarding sleep apnea screening, that it do so via the formal rule-making process, and not by guidance. Furthermore, the law does not require DOT to create a sleep apnea rule.

It is the responsibility of the medical examiner to use their best judgment to certify that a driver is medically qualified to perform the functions of a truck driver. A medical examiner may be, at times, justified in requiring additional testing to rule out sleep disorders. It is not however, a regulatory requirement to test every driver who exhibits a single risk factor (e.g. neck circumference, Body Mass Index (BMI), admitted snoring, etc.).

Some medical examiners are operating under the false pretense that drivers who exhibit specific risk factors (e.g. neck circumference, Body Mass Index (BMI), admitted snoring, etc.) must undergo a sleep study for obstructive sleep apnea before they can be certified. While BMI and neck size may be indicators, there are many factors that may put a driver at risk for obstructive sleep apnea and they should be viewed collectively.

There are several organizations misleading medical examiners by contending that sleep testing of all drivers is a regulatory requirement. To be clear, no such regulations or even advisory criteria specifically on obstructive sleep apnea exist.

**Note:** Risk factors for obstructive sleep apnea must be considered in aggregate. Any single factor (e.g. neck circumference, Body Mass Index (BMI), admitted snoring, etc.) alone is not an indicator. Medical examiners should use more encompassing criteria such as a thorough discussion on the issue with the driver.

### **Guidance Issued to Motor Carriers Regarding Sleep Apnea Screening**

The American Trucking Association (ATA) issued guidance designed to assist motor carriers and drivers when discussing obstructive sleep apnea with medical examiners. The guidance informs motor carriers about recent changes to the medical examiner certification process and provides suggested questions trucking companies and drivers can use to frame a discussion with doctors about reasonable expectations for sleep disorder screening and treatment. Also included in the guidance is an explanation of what is required of the medical examiner under current regulations and clarification of many common misconceptions on the issue. If you encounter medical examiners that require sleep apnea or other related testing as part of the DOT medical examination process, then we encourage you to review the ATA guidance. It may be beneficial to provide a copy of the guidance to the medical examiner. Follow these links to review the ATA's guidance.

[ATA: Choosing a Certified Medical Examiner](#)

[ATA: Obstructive Sleep Apnea and Commercial Driver Medical Qualification](#)

### **Assuring the Driver and CDL Matches the Vehicle and Cargo**

Motor carriers should satisfy themselves that the driver's CDL and endorsements meet at least the minimum legal requirements for the type of:

- Vehicle(s) they will be operating. (Example: CDL Class A, B or C)
- Accessories on the vehicles they will be operating. (Example: air brakes)
- Cargo they will be transporting. (Example: Hazardous Materials)

The penalties for operating a vehicle without a CDL fulfilling the minimum legal requirements in regard to the vehicle, accessories and cargo can be substantial for both the driver and the motor carrier.

### **Additional Resources:**

Physical Qualification Standards:

<http://www.fmcsa.dot.gov/regulations/title49/section/391.41>

Medical Examiners Handbook:

<http://nrcme.fmcsa.dot.gov/documents/FMCSAMedicalExaminerHandbook-2014MAR18.pdf>

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