

Compliance *News*

& Commentary

Q&A

When my driver went in to renew his medical certificate he received a 2-year card, but his blood pressure was 140/88. Is he qualified for one year or two?

Under current blood pressure standards, your driver is only qualified for one year. Part 391.11(b)(4), states that a person may not drive a commercial motor vehicle unless he/she is ... physically qualified ... in accordance with Subpart E."

It is in Part 391.41(b), however, where we find the list of medically disqualifying conditions. Sub-paragraph (6) disqualifies a person with a "current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial motor vehicle safely."

Even medical professionals can be confused about how to apply that standard. The answer can be found in the "Instructions To The Medical Examiner" on the reverse side of 'long form'.

Here medical examiners can refer to selected Advisory Criteria published by the FMCSA. In this case, Stage 1 hypertension is a systolic blood pressure (BP) of 140-159 and/or a diastolic BP of 90-99. In short, a driver must have a BP of *less than* 140 systolic and *less than* 90 diastolic to be certified for two years. A call to your clinician is generally all that's needed to obtain a corrected certificate.

For answers to your compliance questions, contact Standard & Best (503) 922-2009. Or logon to www.standardandbest.com



Part 40 revision enhances reporting of positive drug/alcohol test results

An Interim Final Rule published in the June 13 Federal Register permits carriers, MROs and TPAs to report test results .

■ According to a Government Accountability Office (GAO) [report](#) released in May, there are better ways to identify CDL drivers who violate drug and alcohol rules, and get them off the road. An Interim Final Rule ([IFR](#)) just announced by the FMCSA may be a step in that direction.

Currently seven states have rules that require positive drug or alcohol tests for CDL licensed drivers to be reported to the state's licensing authority. Oregon received national attention as the first to implement a program in 1999, with Washington following in 2002.

The results under the various

programs have been mixed. Washington, with 357,000 CDL holders, disqualified 4,100 drivers from 2002 to 2007, according to the government report. Oregon has posted 1,524 positive test results to driving records since 2002, but takes no action to disqualify the driver, leaving responsibility for identifying disqualified drivers with the motor carrier.

■ "Many factors contribute to the challenges of detecting drivers who are using illegal drugs and keeping them off the road," the GAO concluded. Among these being (1) the variety of approaches taken by states to identify and report offending drivers; (2) Misinformed reporting authorities who believe that they are prohibited from reporting the information; and (3) Part 40 itself before this latest IFR.

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Proposed revisions to CDL permit requirements still under review

In a June 9 announcement the FMCSA grants 30-day extension for comments

■ Barely a hundred comments have been received so far on this [proposed rule](#)—a rule, which according to some, will severely hamper their ability to attract and train new drivers. Even though sparse, comments received since the NPRM was published in April rally

around several issues.

➔ By disallowing all but passenger endorsements, drivers in training wouldn't have an opportunity to develop driving skills in some classes of CMV.

➔ Requiring third part testers to complete 50 skills tests annually to remain certified is unreasonable in circumstances where the number of tests ... (Continued on page 2)

Part 40 revision *(Continued)*

Until now, Part 40.331 limited who could release drug test information to employers and MROs. Results could only be reported to DOT agencies, the NTSB, or a duly authorized employer. Given the variety of approaches to tracking positive test results by the different states, some MROs would not report results, believing that privacy laws prohibited it.

■ For example, Oregon has required MROs to report positive test results for several years now. However, when a carrier uses a national consortium with an MRO and DHHS laboratory located out-of-state, that MRO might not report the results. Consequently, an Oregon licensed driver could have a 'clean' MVR where drug tests are concerned, when in fact he/she had tested positive.

The IFR adds section (g) to [Part 40.331](#), authorizing employers and TPAs "to comply with the State laws requiring you to provide ... information about all violations of DOT drug and alcohol testing rules ..." Under this provision, an employer who receives a positive test result may report the result directly to the state agency charged with receiving the information.

Currently, five states require the carrier to report positive results: Washington, California, Texas, North Carolina and Arkansas. Oregon and New Mexico rely on the MRO to report. Washington and North Carolina take action to suspend the license of a CDL driver who tests positive until the driver complies with the Part 40 return-to-duty process. California revokes special driver certificates for school bus and transit drivers, but not CDL drivers in general. The other states place no sanctions on CDL privileges.

Extension *(Continued)*

...usually performed each year by the third party testers (TPT) don't support that standard. This requirement could take some TPT out of

the market and shift the burden to local DMVs.

➤ The industry is already over-burdened with regulations that make it hard to attract new drivers to the industry, the new requirements would further frustrate the process.

➤ Various requirements in the rule are in conflict with existing State laws, which will require significant expense and legislative action to bring the states into compliance.

➤ Requiring a 30-day period between the issuance of a Commercial Learner's Permit (CLP) and taking the skills test is arbitrary and isn't necessary. It also fails to take into account persons who have prior CMV driving experience (military, farm, etc) who have the necessary experience to pass the skills test.

➤ Requiring proof of residency and identity would prevent states that currently permit drivers to renew their license by mail from doing so, placing added demand on DMVs.

While there is consensus that training and credentialing of new CMV drivers would benefit from standardization and procedures that keep unskilled drivers off the road, there is skepticism that the proposed rule is workable in its present form.

To comment go to www.regulations.gov and type "FMCSA-2007-27659" in the *Comment or Submission* section.

From the legal pad

Don't shortcut the training process when dispatching drivers on loads that they aren't familiar with or that require special securement procedures. Cargo securement rests with the driver, and the motor carrier is responsible for ensuring that they are instructed in the rules that apply to their position. A load loss that results in serious injuries or damage will almost always put your training and hiring programs under scrutiny and may place you in the position of having to prepare a defense against negligence with little to work with.

Stats

2007 preliminary crash [statistics](#) show:

- 136,438 non-fatal large truck crashes—a decline from last year's 141,968.
- 80,752 injury accidents.
- Fatal crash stats aren't available yet. There were 4,732 fatalities in 2006.
- 2,231 crashes involving hazmat loads.

According to FMCSA's Statistics & Analysis online:

Oregon had 1,310 non-fatal crashes, of which 413 involved injuries, and 52 involved hazmat.

Washington had 1,523 non-fatal crashes, 149 involved injuries, and 44 involved placarded loads.

Idaho had 770 non-fatal crashes, 494 involved injuries, and 10 involved hazmat loads.

High numbers: States taking honors for the most accidents—Texas had 16,942 non-injury crashes and 6,832 injury crashes; California had 10,626 non-injury and 3,734 injury crashes.

Low numbers: States reporting the lowest numbers were Rhode Island with 272 non-injury and 130 injury crashes. South Dakota had just slightly more crashes, 279, but significantly fewer injury crashes, only 30.

-Source: FMCSA Crash Statistics

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Product highlights

Do you have drivers who need to 'brush up' on their logbook skills? Standard &

Best has instructor and student manuals available that are ideal for in-house training. **Worth noting** | "Driving Study: Impact of Sleep & Crash Coun-

termeasures" [webinar](#) June 23, 10AM. "Cost Benefits of EOBR" [webinar](#) July 16, 10AM. Presented by FMCSA, but require registration.