

### **III. Federal Regulations Governing Driver Qualifications**

#### A. Pre-Employment Screening

Federal regulations require an interstate motor carrier to obtain certain background information on a driver before hiring him.<sup>1</sup> Most jurisdictions, through rules issued by a state Public Service Commission or a similar entity, have adopted the federal regulations as guidelines for intrastate carriers to complete the same background checks.<sup>2</sup> Under the federal regulatory scheme, a driver applying for employment with a trucking company must complete a comprehensive application listing any moving violations or accidents for the three-year period prior to the date of the application and identifying each motor carrier for whom the driver has worked for the past ten years.<sup>3</sup>

#### Driver's Application

**INSERT PICTURE of Driver's Application**

A Driver's Application is usually 4 to 5 pages and may include additional handouts which must be signed by the driver.

Within thirty days of hiring a driver, the trucking company must make inquiries with the driver's prior employers for the three-year period prior to the date of his employment and must obtain a moving violations report ("MVR") from any state issuing a license to the driver for the preceding three-year period.<sup>4</sup> Federal regulations specifically require motor carriers to obtain from prior employers: (1) employment verification, (2) a list of any accidents, and (3) violations of alcohol or controlled substances regulations and test results.<sup>5</sup> The prior employers are required to provide this information to the prospective employer.<sup>6</sup> The motor carrier must verify that the driver is physically able to operate a commercial vehicle by obtaining a medical examiner's certificate to this effect.<sup>7</sup>

The company must either give the driver a road test to determine his ability to operate a commercial vehicle or confirm that he has a commercial driver's license ("CDL") issued from a jurisdiction that requires the driver to pass a road test as part of its licensing procedure.<sup>8</sup>

#### Road Test

**INSERT PICTURE OF Road Test**

We have handled cases in the past where a driver failed his road test multiple times but was still hired by the company.

If the driver is given a road test, he must be tested on his skill in (1) performing pre-trip

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1 49 C.F.R. § 391 *et. seq.*

2 For example, See Transportation Rules of the Georgia Public Service Commission 4-1-391 *et. seq.*

3 49 C.F.R. § 391.21.

4 49 C.F.R. § 391.23.

5 49 C.F.R. § 391.23.

6 49 C.F.R. § 391.23(g).

7 49 C.F.R. § 391.41 & 391.43.

8 49 C.F.R. § 391.31 & 391.33.

inspections, (2) coupling and uncoupling of units, (3) placing a commercial vehicle in operation, (4) using controls and emergency equipment, (5) operating a commercial vehicle in traffic, (6) turning the vehicle, (7) braking and slowing the vehicle, and (8) backing and parking the vehicle.<sup>9</sup> A company is also required to make sure that the driver is knowledgeable of the proper manner of securing cargo before allowing him to operate a commercial vehicle.<sup>10</sup> These regulations provide only a minimum standard, and a motor carrier can adopt more stringent requirements for its drivers.<sup>11</sup>

**\*\*Practice Pointer:** Verify that the trucking company actually contacted the driver's prior employers and examine closely any gaps in a driver's employment history.

## B. Federal Minimum Standards for Driver Qualifications

The federal regulations provide a minimum standard for determining the qualifications of a driver.<sup>12</sup> According to these regulations, a driver is qualified to operate a commercial vehicle if he (1) is at least 21 years old; (2) can read and understand the English language sufficient to complete necessary reports, converse with the public and understand traffic signs; (3) can by reason of experience and/or training operate safely a commercial vehicle; (4) is physically qualified to operate a commercial vehicle; (5) has a valid CDL; (6) has completed the driver's application for employment and has provided the company with the required list of prior moving violations and accidents; (7) is not disqualified under any federal regulation; and (8) has successfully completed a road test or has a CDL from a jurisdiction that requires the driver to pass a road test as part of its licensing procedure.<sup>13</sup>

In addition to these specific qualifications, commercial drivers are also required to have the requisite skill and knowledge to operate a commercial vehicle safely.<sup>14</sup> Drivers must have knowledge of (1) safety regulations, (2) commercial motor vehicle safety control systems, (3) safe vehicle operations and control, (4) the relationship of cargo to vehicle control, (5) vehicle inspection procedures, (6) minimal hazardous materials knowledge, and (7) air brake operations and control.<sup>15</sup> A driver must be familiar with the proper manner of securing cargo and be able to secure properly any cargo transported by him.<sup>16</sup>

## C. Entry Level Drivers

An entry level driver is a driver with a CDL with less than one year of experience operating a commercial motor vehicle in interstate commerce.<sup>17</sup> Entry level drivers must receive training from the motor carrier on (1) driver qualifications, (2) hours of service, (3) driver wellness, and (4) whistleblower protection.<sup>18</sup> A carrier must ensure that each entry level driver has a training certificate as proof that he received his entry level training.<sup>19</sup> A copy of the driver's training certificate must be kept in the driver's qualification file.<sup>20</sup> The regulations governing entry level drivers have been held to

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9 49 C.F.R. § 391.31(c).

10 49 C.F.R. § 391.13.

11 Cassara v. DAC Services, Inc., 2002 WL 59687 (10<sup>th</sup> Cir. 2002).

12 49 C.F.R. § 391.1.

13 49 C.F.R. § 391.11.

14 49 C.F.R. § 383.110.

15 49 C.F.R. § 383.111.

16 49 C.F.R. § 391.13.

17 49 C.F.R. § 380.502.

18 49 C.F.R. § 380.503.

19 49 C.F.R. § 380.505.

20 49 C.F.R. § 380.509.

be constitutional although critics claim that the rules do not contain enough substantive training requirements.<sup>21</sup>

#### D. Driver Disqualification

Commercial drivers are disqualified for various lengths of time for serious traffic violations.<sup>22</sup> Under this comprehensive scheme, drivers are disqualified from operating a commercial vehicle for 60 days for any second conviction within a three year period of any combination of any offense committed in a commercial vehicle of (1) speeding in excess of 15 mph over the speed limit, (2) driving recklessly, (3) making improper or erratic lane changes, (4) following the vehicle ahead too closely, (5) violating any motor vehicle traffic control law arising in connection with a fatal accident, or (6) driving without a commercial driver's license.<sup>23</sup> A driver is disqualified for one year for driving under the influence of alcohol or controlled substances or leaving the scene of an accident, whether the offense occurs in a commercial vehicle or a non-commercial vehicle, and for causing a fatality as a result of the negligent operation of a commercial vehicle.<sup>24</sup> A driver is also disqualified for a year if he continues to operate a commercial vehicle after having been disqualified.<sup>25</sup> Drivers are also subject to disqualification for in excess of 60 days for violations of railroad crossing regulations and for violations of out-of-service orders.<sup>26</sup> The penalties increase for multiple offenses or repeat violations of the same offense.<sup>27</sup> A motor carrier has an obligation to make sure that a disqualified driver does not operate a commercial vehicle.<sup>28</sup>

**\*\*Practice Pointer:** Request copies of any records of disqualifications or out-of-service citations concerning the driver.

#### E. Commercial Driver's Licenses

A driver may not operate a commercial vehicle unless the driver has obtained a valid commercial driver's license ("CDL").<sup>29</sup> A driver may have only one CDL at any time.<sup>30</sup> CDLs are divided into three separate motor vehicle groups. Group A is for the operation of any combination of vehicles with a gross vehicle weight rating ("GVWR") in excess of 26,000 lbs. provided the GVWR of the vehicle(s) being towed is in excess of 10,000 lbs.<sup>31</sup> Group B is for the operation of any single vehicle with a GVWR in excess of 26,000 lbs. or any vehicle towing a vehicle not in excess of 10,000 lbs.<sup>32</sup> Group C is for the operation of any vehicles not covered in Group A or B which is designed to transport 16 or more passengers or is used in transporting hazardous materials.<sup>33</sup> The requirement for a CDL may be waived by State law in regards to farmers, firefighters, emergency response vehicles, drivers removing ice and snow and the fireworks industry.<sup>34</sup>

**\*\*Practice Pointer:** Make sure the driver is not hiding prior violations by maintaining more than one

<sup>21</sup> Advocates for Highway & Auto Safety v. FMCSA, 429 F.3d 1136 (D.C. 2005).

<sup>22</sup> 49 C.F.R. § 383.51.

<sup>23</sup> 49 C.F.R. § 383.51.

<sup>24</sup> 49 C.F.R. § 383.51.

<sup>25</sup> 49 C.F.R. § 383.51.

<sup>26</sup> 49 C.F.R. § 383.51.

<sup>27</sup> 49 C.F.R. § 383.51.

<sup>28</sup> 49 C.F.R. § 383.51(a).

<sup>29</sup> 49 U.S.C. § 31302.

<sup>30</sup> 49 U.S.C. § 31302; 49 C.F.R. § 383.21.

<sup>31</sup> 49 C.F.R. § 383.91(a).

<sup>32</sup> 49 C.F.R. § 383.91(a).

<sup>33</sup> 49 C.F.R. § 383.91(a).

<sup>34</sup> 49 C.F.R. § 383.3.

CDL.

#### F. Endorsements to CDL

Special endorsements to a CDL are required in order for a driver to operate certain commercial vehicles such as double/triple trailers, passenger vehicles, tankers or vehicles transporting hazardous materials.<sup>35</sup> A driver must demonstrate special knowledge about coupling and uncoupling double/triple trailers to obtain a double/triple trailer endorsement.<sup>36</sup> In order to have a passenger endorsement, a driver must have knowledge about proper procedures for unloading/loading passengers, use of emergency exits, proper responses to emergency situations such as fires or unruly passengers, proper procedures at railroad crossings and drawbridges, and appropriate braking procedures.<sup>37</sup> A driver with a tank vehicle endorsement must understand (1) causes, prevention and effects of cargo surge on motor vehicle handling, (2) proper braking procedures when the tank is empty, full and partially full, (3) differences in handling baffled/ compartmental tank interiors versus non-baffled ones, (4) differences in cargo surge for each kind of liquid, (5) effects of road grade and curvature on motor vehicle handling, (6) proper use of emergency systems, and (7) retest and marking requirements.<sup>38</sup> In order to obtain a hazardous materials endorsement, a driver must demonstrate that he has knowledge of hazardous materials regulations, hazardous materials handling, operation of safety equipment, and emergency response procedures.<sup>39</sup> School bus drivers must demonstrate the ability to deal with passengers and skills in loading and unloading children to obtain an endorsement.<sup>40</sup>

#### G. Physical Requirements

A driver is not physically qualified to operate a motor vehicle if he (1) has lost a foot, leg, hand or arm or has an impairment of his foot, leg, hand or arm which interferes with his ability to drive; (2) has diabetes mellitus requiring insulin for control; (3) has a serious heart condition; (4) has a history of respiratory dysfunction; (5) has high blood pressure or joint or muscular problems which interfere with his ability to drive; (6) has epilepsy or any other condition which might cause a loss of consciousness; (7) has a mental or psychiatric disorder which interferes with his ability to drive; (8) has less than 20/40 vision with corrective lenses; (9) has significant hearing loss; (10) takes a controlled substance which interferes with the ability to drive; or (11) has a clinical diagnosis of alcoholism.<sup>41</sup> As part of SAFETEA-LU, the FMCSA must grant an exemption to insulin dependent diabetics who have demonstrated that they have control over their diabetes for at least 2 months if Type I diabetes and at least 1 month if Type II Diabetes until the regulations are amended to remove the disqualification for insulin dependent diabetes.<sup>42</sup>

The driver's physical exam must be repeated every two years or whenever a physical or mental injury or disease impairs his ability to perform his normal duties.<sup>43</sup> Currently, the medical exam can be performed by any state licensed provider of medicine including doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses and doctors of chiropractic.<sup>44</sup> As part of

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35 49 C.F.R. § 383.93.

36 49 C.F.R. § 383.115.

37 49 C.F.R. § 383.117.

38 49 C.F.R. § 383.119.

39 49 C.F.R. § 383.121.

40 49 C.F.R. § 383.123.

41 49 C.F.R. § 391.41.

42 Pub. L. 109-59, August 10, 2005, 119 Stat. 1144.

43 49 C.F.R. § 391.45.

44 49 C.F.R. § 391.43.

SAFETEA-LU, medical examiners will eventually have to be certified by a federal agency in order to perform examinations.<sup>45</sup>

### Medical Card

#### INSERT PICTURE OF MEDICAL CARD

An accident can be the result of a driver having a medical condition such as sleep apnea, seizures or diabetes.

If a driver is determined by a medical examiner not to be qualified to drive and the driver locates another physician to dispute the finding, the driver may apply to the Director of Office of Motor Carrier Research and Standards to resolve the conflict in medical evaluations.<sup>46</sup> A driver may also apply for a waiver of certain physical defects which would otherwise result in disqualification.<sup>47</sup>

**\*\*Practice Pointer:** Request copies of the driver's medical records to determine his physical qualifications.

### H. Annual Review of Driving Record

During the course of a driver's employment, the trucking company must perform an annual review of the driver at least every twelve months to determine if the driver is still qualified to operate a commercial vehicle.<sup>48</sup>

### Annual Review

#### INSERT PICTURE OF Annual Review

The company must continually monitor the performance of the driver in order to avoid a negligent retention claim.

In conjunction with this review, the driver must provide a certified list of all moving violations and accidents for the preceding twelve-month period.<sup>49</sup> The company is required to run an MVR on the driver to verify this information.<sup>50</sup> The company must then consider the driver's accident record and driving history in deciding if the driver is still qualified to operate a commercial vehicle.<sup>51</sup> The trucking company must give great weight to violations that indicate that the driver has exhibited a disregard for the safety of the public, such as speeding, reckless driving, or operating a vehicle while under the influence of alcohol or drugs.<sup>52</sup>

**\*\*Practice Pointer:** Make sure the trucking company conducted an annual review of the driver and actually considered whether he was qualified to continue operating a vehicle.

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45 Pub. L. 109-59, August 10, 2005, 119 Stat. 1144.

46 49 C.F.R. § 391.47.

47 49 C.F.R. § 391.49.

48 49 C.F.R. § 391.25.

49 49 C.F.R. § 391.27.

50 49 C.F.R. § 391.25.

51 49 C.F.R. § 391.25(b)(2).

52 49 C.F.R. § 391.25(b)(2).

## I. Maintenance of Driver's Qualification File

The trucking company is required to maintain a driver's qualification file on each driver.<sup>53</sup> The driver's qualification file must contain: (1) the driver's application for employment; (2) a written record of inquiries to prior employers and any responses received from them; (3) the pre-employment MVR on the driver; (4) results of any road test or a copy of the driver's CDL; (5) the driver's annual review; (6) the MVR on the driver related to the annual review; (7) the driver's certified list of moving violations and accidents provided in conjunction with the annual review; and (8) the medical examiner's certificate of physical qualification.<sup>54</sup> The documents in the driver's qualification file must be kept by the company for as long as the driver is employed by the company and for an additional three-year period, except that documents related to the annual review may be discarded following a subsequent annual review and the medical examiner's certificate may be discarded every two years following the replacement with a new certificate.<sup>55</sup> A motor carrier does not have to maintain a driver's qualification file on any driver who is not regularly employed by the carrier if the driver is employed regularly by another carrier and the other carrier certifies in writing that the driver is fully qualified to operate a commercial vehicle.<sup>56</sup>

**\*\*Practice Pointer:** Request the entire driver's qualification file.

## J. Driver's Duty to Notify His Employer of Violations

**Within one business day after the date of the action, a driver must notify the trucking company if his driver's license is revoked, suspended or canceled, if he loses the right to operate a commercial vehicle for any reason or if he is disqualified from operating a commercial vehicle.<sup>57</sup> A driver must notify the company of any violation of any State or local law concerning motor vehicle traffic control within thirty days after the date the driver is found to have committed the violation.<sup>58</sup> A motor carrier may not allow a driver to operate a commercial vehicle if the driver's license has been revoked, suspended, or canceled or the driver has more than one driver's license.<sup>59</sup> The Surface Transportation Board maintains a database on the licensing, identification and disqualification of commercial drivers.<sup>60</sup>**

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53 49 C.F.R. § 391.51(a).

54 49 C.F.R. § 391.51(b).

55 49 C.F.R. § 391.51(c).

56 49 C.F.R. § 391.65.

57 49 U.S.C. § 31303(b); 49 C.F.R. § 383.33.

58 49 U.S.C. § 31303(a); 49 C.F.R. § 383.31.

59 49 U.S.C. § 31304; 49 C.F.R. § 383.37(a)&(b).

60 49 U.S.C. § 31309.