

Reguletter

Drivers Beware! Misinformation May Lead to Downgraded CDL

The required use of Medical Examiners (MEs) appearing on the National Registry of Certified Medical Examiners (NRCME) for all interstate driver physical examinations performed as of May 21, 2014, has resulted in a common myth circulating in the transportation industry. Many drivers and motor carriers have incorrectly come to believe the MEs will submit proof of medical certification to State Driver Licensing Agencies (SDLAs) on behalf of CDL holders. This is untrue. MEs have not been assigned this task. CDL holders that mistakenly believe this is taking place may find their CDLs downgraded if they fail to personally submit the medical examiner's certificate.

Where is this misconception originating? It may have its roots in one of two sources. MEs are required to submit to DOT a monthly report on the exams they have performed during the previous month. This information is submitted on the federal level and is not shared with individual state licensing offices.

The other possible source for the incorrect understanding of the NRCME rule is a proposed rule from May 2013. The DOT's proposed rule would require MEs to submit, on a daily basis, driver physical examination results to the DOT. The proposal calls for the electronic transmission of driver identification, examination results and restriction information from the National Registry system to the SDLAs. However, it is important to note that is still a proposal and the agency has not gone forward with its concept. (Asmark Institute)

DOT Issues New Guidance for Drug Testing Process - Refusals

DOT has issued new guidance explaining when DOT-regulated employees can leave a urine collection site without violating the testing rules. The new question-and-answer guidance clarifies:

- When a collector may give an employee permission to leave a collection site, and
- What happens if an employee leaves the collection site before testing is complete.

According to DOT, the new guidance "constitutes official and authoritative guidance and interpretation" concerning its drug and alcohol testing rules in 49 CFR Part 40. The guidance was issued on July 3, 2014, by the DOT's Office of Drug and Alcohol Policy and Compliance. According to the new guidance, the testing process is complete when the chain of custody form (CCF) has been filled out and the urine specimens have been sealed in plastic bags, as specified in Sec. 40.73(a)(1)-(6).

If an employee leaves the collection facility before that process is complete, the collector must inform the employer who then must decide whether the employee's actions constitute a refusal to test. "To make this determination," the guidance states, "the employer should consider the information documented on the CCF and the advice and information received from the collector and service agents, as well as any supporting information provided by the employee (i.e., in the event of a medical emergency, copies of hospital admission records/EMS records/police records, etc)."

"The employer must document its decision and the solid reasoning for the decision, in all collection site refusal determinations. Copies of these decisions and the information relied on in making those decisions, must be maintained in accordance with Sec. 40.333 and the applicable modal recordkeeping requirements." The guidance goes on to state that if a DOT auditor finds that the employer has not properly documented their "refusal" determinations, they may be subject to penalties. (Asmark Institute)

EPA Draws Fire on WPS Proposal

EPA's proposed modernization of its agricultural workers protection standard, designed to protect farm workers from pesticide exposure, drew increasing fire recently even as the official comment period on the proposal closed. The rule, not updated since 1992, increases training frequency and updates prevention and treatment requirements in pesticide exposure situations. It also says workers under 16 years old cannot handle any pesticide. EPA estimates the new rules will cost farms about \$5 per worker per year, a figure the agency said is the average calculated across all farms without regard to pesticide use or whether they hire outside labor.

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On one hand, over 70 Democrat House members told EPA in a letter the proposed rule is too weak, protections should be as stringent as in other work areas, and that the rule contains “serious flaws... that perpetuate inequity and continue to leave the men, women and children who produce our food less protected than other workers.” The lawmakers want more stringent requirements for emergencies, child-specific protections, including raising the age limit on handling pesticides from 16 to 18 years old, as well as medical monitoring of workers and protection from retaliation if a worker reports the misuse of a chemical. On the other hand, the National Association of State Departments of Agriculture (NASDA) compiled the results from a task force of 30 state departments of agriculture who reviewed the proposed rule. NASDA told the agency the current rule works well and that many of the proposed agency changes are covered in existing federal and state law. Further, EPA did not adequately take into account how much the changes will cost the states to implement and urged the agency to rescind the rulemaking and focus “the necessary resources to work with state lead agencies and agriculture stakeholders to enhance the effectiveness of the current worker protection standards.” (Asmark Institute)

EPA Forced to Release WOTUS Maps - Details Expansive Plan

House Committee on Science, Space and Technology Chairman Lamar Smith, R-Texas, recently announced the release of maps produced by the EPA that detail all the waters and wetlands of each of the 50 U.S. states. The maps had previously remained private, but former EPA Deputy Administrator Bob Perciasepe agreed to release them following Smith’s requests. According to the National Cattlemen’s Beef Association (NCBA), the maps “appear to detail the extent of the Waters of the United States proposal.” “These maps show the EPA’s plan to control a huge amount of private property across the country,” Smith said in a letter sent this week to EPA Administrator Gina McCarthy. “Given the astonishing picture they paint, I understand the EPA’s desire to minimize the importance of these maps. But the EPA’s posturing cannot explain away the alarming content of these documents.” Smith urged McCarthy to release additional information explaining the existence of the maps and why taxpayer money was used to create them, “just days after the EPA announced its Waters of the U.S. rule (WOTUS).” Knowledge of the maps came as the Committee was doing research in preparation for a hearing regarding the proposed WOTUS rule, NCBA said.

“It is deplorable that EPA, which claims to be providing transparency in rulemakings, would intentionally keep from the American public a taxpayer-funded visual representation of the reach of their proposed rule,” Ashley McDonald, NCBA environmental counsel, said in a statement. “Unfortunately, it is just another blatant contradiction to the claims of transparency this Administration insists they maintain.”

NCBA said the maps show individual states could face upwards of 100,000 additional stream miles that could be regulated under the proposed rule. “This is the smoking gun for agriculture,” McDonald said.

“These maps show that EPA knew exactly what they were doing and knew exactly how expansive their proposal was before they published it.”

Requests have since been sent to EPA asking they keep the public comment period open for at least 60 days to provide adequate opportunity review. The American Farm Bureau Federation is also planning to release its own maps detailing the extent of the WOTUS proposal in September, says American Farm Bureau’s Senior Director of Regulatory Relations Don Parrish. The EPA maps are available on the House Science Committee website at: <http://science.house.gov/epa-maps-state-2013#overlay-context>. (Asmark Institute)

OSHA Extends Comment Period for Injury/Illness Recordkeeping

OSHA has announced it will extend the comment period on the proposed rule to improve the tracking of workplace injuries and illnesses to October 14, 2014. The proposal, published on November 8, 2013, would amend the agency’s recordkeeping regulation to add requirements for the electronic submission of injury and illness information that employers are already required to keep.

OSHA is soliciting comments on whether to amend the proposed rule to: 1) require that employers inform their employees of their right to report injuries and illnesses; 2) more clearly communicate that any injury and illness reporting requirements established by the employer must be reasonable and not unduly burdensome; and 3) provide OSHA additional means to prohibit employers from retaliating against employees for reporting injuries and illnesses. (Asmark Institute)

DOT Proposes Harmonization with International Standards

DOT is proposing to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Comments must be received by DOT by October 24, 2014. Visit: <http://www.gpo.gov/fdsys/pkg/FR-2014-08-25/pdf/2014-19161.pdf> to view the notice in the Federal Register. (Asmark Institute)

Nurse Tank Inspection Program Reminder

On February 1, 2011 DOT issued its final rule incorporating the special permit SP-13554 into the hazardous materials regulations. As a result of this final rule, anhydrous ammonia nurse tanks with missing or illegible data plates no longer need to be marked with the special permit sticker, but the requirements outlined in the special permit for continued operation still need to be met. This means for these tanks, there is a five year inspection and testing cycle that must be performed to continue to keep these tanks in service. Visit: <http://www.nursetank.org/forms/SP-13554-Regulation.pdf> to review the requirements contained in Section 173.315 (m) (1) and (2) for operating nurse tanks with missing or illegible data plates. Have you tested/inspected your nurse tanks with missing or illegible ASME data plates? (Asmark Institute)