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Albany, New York

October 12, 2023

TO: All Magistrates

SUBJECT: CLP/CDL Anti-Masking and Mandatory Reporting Requirements

The Department of Motor Vehicles is reminding all Magistrates of the following federal and state requirements pertaining to holders of commercial learner permits (CLP) and commercial driver licenses (CDL).

Anti-Masking

Federal regulation 49 CFR Section 384.226 mandates that the state must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation committed in any type of motor vehicle of a state or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the Commercial Driver's License Information System (CDLIS) driver record, whether the driver was convicted for an offense committed in the state where the driver is licensed or in another state. While any and all convictions are subject to the anti-masking rules and must be reported, specific information regarding disqualification for major offenses can be found in federal regulation at 49 CFR Section 383.51.

The U.S. Department of Transportation (USDOT) considers it masking, for example, to dismiss a ticket for a violation of the Vehicle and Traffic Law, or a local law, rule, or ordinance related to traffic (other than parking, standing, or stopping) because the defendant completes a driver safety diversion program if the offense was committed by the holder of a CLP or a CDL or the offense was committed in a commercial motor vehicle.

Additionally, Section 170.55 of the New York Criminal Procedure Law provides that a court may not issue an adjournment in contemplation of dismissal if the offense is for a violation of the New York Vehicle and Traffic Law related to the operation of a motor vehicle (except one related to parking stopping or standing) or for a violation of a local law, rule, or ordinance related to the operation of a motor vehicle, (except one related to parking, standing, or stopping) if the offense was committed by the holder of a CLP or CDL **OR** was committed in a commercial motor vehicle, as is defined in Section 501-a(4) of the New York Vehicle and Traffic Law.

**Mandatory reporting requirement for out-of-state CLP and CDL holders
and for out-of-state licensees committing violations in commercial motor vehicles**

Section 514(1)(d) of the Vehicle and Traffic Law requires that courts report to DMV, **within 96 hours of the imposition of sentencing**, convictions for any violation of the New York Vehicle and Traffic Law, or any law, rule, ordinance or regulation relating to traffic (except one related to parking, stopping or standing) if the person convicted holds a CLP or CDL issued by another state **OR**, if the person does not hold a CLP or CDL but holds a license issued by another state and is convicted of a violation committed in a commercial motor vehicle, as is defined in Section 501-a(4) of the New York Vehicle and Traffic Law. Convictions for violations by out-of-state CLP or CDL holders committed in any type of motor vehicle must be reported. Federal regulations and Section 514-c of the Vehicle and Traffic Law require DMV to report such convictions to the home state **within 10 days**.

If USDOT determines that masking is occurring in New York State, it may result in a finding against DMV. In the strongest possible terms, therefore, DMV encourages that such convictions be promptly transmitted electronically to DMV, to enable DMV to take required license and permit actions and ensure our compliance with the **10-day** federal mandate. For more information on electronic transmission please contact the Unified Court System/Office of Court Administration at helpcenter@nycourts.gov.

Courts' failures to comply with federal and state law undermine traffic safety and jeopardize federal highway funding for New York State. They may also risk the decertification of New York State's CDL program and New York State's ability to issue a federally-recognized commercial driver license.

A summary of the Federal Regulations is attached for your reference.

Please share this information with appropriate staff. Thank you.

Mark J.F. Schroeder
Commissioner

Attachment

49 C.F.R § 383.5 – Convictions

A conviction is “an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.”

49 C.F.R. § 384.208, § 384.209, § 384.225 - Prompt Reporting of CDL Convictions

The Code of Federal Regulations requires states to report CDL convictions promptly (within 10 days) for CDL holders or those who should have held a CDL because of the nature of their violations. This includes reporting to the Commercial Driver’s License Information System (CDLIS) and reporting all violations for out-of-state drivers to their home state (State of CDL issuance). Courts are the first link in this chain of events, so prompt and accurate reporting of violations is critical. Additionally, please be aware that some crimes other than traditional “traffic offenses” (drug trafficking, any felony committed in any type of vehicle) carry mandatory CDL disqualification (*see* 49 C.F.R. § 383.51) and must be reported. Any time a vehicle is involved, a prosecutor or court should inquire if the defendant holds a CDL.

49 C.F.R. §384.226 - Prohibition on Masking Convictions

The state must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state.