



# Memorandum

**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General

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**Subject:** **INFORMATION:** Need to Establish a Legal  
Presence Requirement for Obtaining a  
Commercial Driver's License

**Date:** June 4, 2004

**From:** Kenneth Mead  
Inspector General

**Reply to** J-3  
**Attn of:**

**To:** Deputy Secretary  
Chief of Staff  
General Counsel  
Administrator, FMCSA

In order to enhance aviation security following the terrorist attacks of September 11, 2001, the Federal Government implemented the US-VISIT program under which non-U.S. citizens arriving at U.S. airports and seaports are photographed, fingerprinted, and subject to search. Since the program began in January, over 4.5 million people have been processed. According to the Department of Homeland Security, it has proven to be an effective tool in identifying persons with known or suspected links to terrorist organizations. This program will be expanded by December 2005 to cover all land crossings.

While these steps are being taken to enhance security by screening visitors to the United States, we believe it is time to consider whether additional measures are needed that would strengthen controls over the process for obtaining a commercial driver's license (CDL). We are concerned that vulnerabilities exist within the current CDL program which allow persons to obtain a license without being legally present in the United States.

## Legal Presence Requirements For Obtaining CDLs

- DOT CDL regulations do not ensure that all operators of interstate motor vehicles are U.S. citizens or otherwise legally present in the United States. Only commercial drivers applying for a CDL with a *hazardous material endorsement* (hazmat endorsement) are required to provide proof of citizenship or lawful

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permanent residence.<sup>1</sup> Applicants can demonstrate such proof through a variety of documents.<sup>2</sup>

- Under DOT regulations, applicants for CDLs without a hazmat endorsement do not have to provide proof of citizenship or legal presence. Specifically, non-hazmat CDL regulations only require an applicant to provide a social security number (SSN). This, in and of itself, does not ensure the applicant's citizenship or their legal presence.
- Since nearly 70% of the 11 million CDLs issued since 1989 do not carry a hazardous materials endorsement, this presents a very large loophole. Given our current environment and the efforts to enhance security, we question why the legal presence measures are limited to just those CDL applicants seeking hazmat endorsements.
- Our 2002 audit report of CDL programs recommended that *all* CDL applicants demonstrate citizenship or legal presence.<sup>3</sup> We did not recommend that the specific requirements for hazmat endorsements be applied to all CDL applicants.
- The Federal Motor Carrier Safety Administration (FMCSA) agreed to this recommendation and stated that it would address this issue through a planned rulemaking in October 2003. The draft May 2004 DOT regulatory agenda indicates that the issuance of this proposed rule has now moved to May 2005. We are concerned that the continuing delay in issuing this proposed regulation exposes us to increased risk.

### Need for Federal Regulations

- Each state establishes controls for issuing CDLs and ensuring the identity and qualifications of applicants. Some states have taken actions to tighten controls, such as verifying the validity of applicants' SSNs.

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<sup>1</sup> See 49 U.S.C. § 5103a. In addition to citizenship requirements, applicants for the hazmat endorsements must be deemed not to pose a "security risk." See 49 C.F.R. § 383.71(a)(9). Criminal background checks, citizenship checks, and fingerprinting are all required for CDLs with a hazmat endorsement. A *permanent resident* is someone who can legally reside on a permanent basis as an immigrant in the United States in accordance with the immigration laws. 8 U.S.C. § 1101(a)(20).

<sup>2</sup> For U.S. citizens these include: U.S. passport, certificate of birth, certification of birth abroad, certificate of naturalization, or a certificate of U.S. citizenship. For lawful permanent residents, proof may be shown by: permanent resident card, temporary stamp in foreign passport, temporary stamp, or a reentry permit. 49 C.F.R. § 383.71(a)(9).

<sup>3</sup> *Improving the Testing and Licensing of Commercial Drivers*, May 8, 2002; Report No. MH-2002-093. [http://www.oig.dot.gov/show\\_pdf.php?id=781](http://www.oig.dot.gov/show_pdf.php?id=781).

- However, simply requiring an SSN on a CDL application, without additional verified documentation, does not demonstrate that the applicant is a U.S. citizen a permanent legal resident<sup>4</sup>, or otherwise legally present in the United States.
- A recent OIG-led investigation in Utah uncovered CDL testers that had passed applicants who were either not qualified, had faulty documentation, or both. Half of the 39 individuals indicted for fraudulently obtaining CDLs were illegal aliens.<sup>6</sup>
- The Department's current regulations do not provide a remedy should a state discover that a CDL holder is illegally present in the United States. The two regulatory provisions for potentially revoking a CDL are silent on legal presence requirements:
  - Disqualifying offenses are limited to infractions such as serious traffic violations, railroad-highway grade-crossing violations, and violations of out-of-service orders.<sup>7</sup> Driving in an illegal-resident status is not a disqualifying offense.
  - Providing any false information on a CDL application may result in revocation and suspension of the license.<sup>8</sup> These penalties, however, do not explicitly revoke a CDL upon determination of non-legal presence.

### Options for Consideration

- While CDLs with hazmat endorsements necessarily require a strict standard, we would recommend, at a minimum, that *all* CDL applicants demonstrate that they are either a U.S. citizen, a permanent legal resident, or otherwise legally present in the United States. One opportunity to address these concerns is through the FMCSA planned rulemaking.
- Having a requirement for verification of SSNs or for fingerprinting when issuing a CDL would help prevent fraud in the program and further enhance security by verifying applicants' identification.

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<sup>4</sup> 42 U.S.C. § 405.

<sup>6</sup> *Driver License Case Upsetting*, Desert News, December 6, 2003, at A10.

<sup>7</sup> See 49 C.F.R. § 383.51.

<sup>8</sup> See 49 C.F.R. § 383.73(g).

- The Department should also consider the potential effect on the CDL program of the Administration's proposal to provide temporary work visas to certain aliens. While details are still being developed, it appears that workers with temporary work visas, should they be issued SSNs, would be eligible to obtain a CDL, but not a CDL with a hazmat endorsement since hazmat CDLs require citizenship or permanent residency.

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