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Federal Motor Carrier Safety Administration

Docket No. FMCSA-1997-2210¹⁶⁴ - RIN 2126-AA10

Comments on Proposed Rulemaking

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Submitted by: Richard Wilson, Transportation Resources, P. O. Box 458, Ottsville, PA 18942

Phone: (610) 868-9783

Fax: (610) 866-1923

Email: rwilson@4fmcsahelp.net

Opening Statements:

Having read the proposed rules, and based on my experiences in performing examinations as a medical examiner, conducting quality control reviews, and assisting motor carriers and occupational health providers on FMCSA and state-mandated examinations and regulations, I have some concerns. While certainly the goal is overall reduction of crashes and enhanced public safety, I am unsure about a number of issues and foreseeable problems in implementation (with appropriate comments), as follows:

1. Verification of exam & quality by the motor carrier/National Examiner Certification Registry

- While I note the intent to establish a national registry for examiner certification, it is my experience that even supposedly knowledgeable examiners in occupational health programs routinely omit required items from the exam form such as:
 - ✓ Horizontal fields of vision
 - ✓ Color vision
 - ✓ Monocular vision designation
 - ✓ Checking the corrective lenses boxes on the form & medical certificate ("wallet card")
 - ✓ Proper designation of hearing aids, waivers, SPE certificates & intrastate limitations, etc.

How are these corrections made if there are errors when the Medical Certificate is submitted to the State and the motor carrier does not monitor them?

Additionally, since 391.43 is a set of guidelines, many examiners have their own "interpretations" which may often be in conflict with the motor carrier's. Surprisingly, some motor carriers favor more strict medical requirements in areas such as blood pressure, cardiac conditions & diabetes as a matter of risk management. Exams performed by Family or personal physicians, even if certified, are likely to be skewed to benefit the driver and not the motor carrier. Many times the long forms are incomplete and often completed from medical information and not an actual examination. I applaud FMCSA for taking a national registry certification requirement but favor a certification test that emphasizes completing the form fully in the format FMCSA requires to avoid errors such as:

- ✓ Listing horizontal fields of vision in each eye, then adding the totals. (Most examiners do not know how to conduct the test), ergo I see many drivers with "180" degrees horizontal vision in each eye, totaled and "360" degrees written beneath
- ✓ Numeric decibel levels derived from hand-held otoscopes that emit tones or number of feet at which a forced whisper is detected listed as "Normal". The likelihood of a Family physician having an audiometer calibrated to the ANSI standard is remote.

2. Presentation of the Medical certificate to state SDLA

Under the current proposal a driver need only present a medical certificate to the State, which is not obligated to verify it's correctness or authenticity, and by not requiring the motor carrier to retain a

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copy of the medical certification in the driver qualification file for CDL drivers, the motor carrier can't verify correctness or authenticity either. *In the event of an accident the motor carrier bears substantial liability if the exam does not meet the medical requirements and/or the previous exam is expired and the state's downgrade is still in process.*

RECOMMENDATION:

1. *Maintain the requirement for the motor carrier to keep the current medical certificate in the file and give the motor carrier the authority to obtain the long-form, HIPPA exempt, as indicated in the Federal Register Vol. 65, No. 194, Thursday, October 5, 2000 p59369. After all, the new proposal would require the motor carrier to monitor the expiration date on the CDL license, especially with short certification periods such as 3 month blood pressure certificates – no different than maintaining the certificate in the qualification file and it would allow the motor carrier to monitor crucial medical conditions.*

3. State posting of medical certification data

- The two days posting requirement for medical certification is an admirable goal, but the realistic proclivity of state employees to practice passive resistance to short-term deadlines makes it impractical.

Consideration of a 3-business day posting may be more likely, but date-stamping the certificates on receipt would verify compliance by the driver if the information is not posted in a timely manner.

Also, the motor carrier could forward the medical certificates via fax or mail on the driver's behalf, subject to the required deadlines, or else the medical examiner could transmit the info as another option.

4. State retention of medical certification data

- Consistent with current motor carrier requirements, it is my opinion that the certificates be maintained for the duration of certification or until a new certificate from a certified examiner is received and posted.

5. State posting of CDL downgrades

- I feel that 2 days should be the standard for posting downgrades in the best interest of public safety.

6. State downgrades of CDL

- I feel that 60 days before downgrading a CDL is unconscionable. I would favor 14 days plus the posting period, for a total of 16 days to send a notice of intention to downgrade to the driver with such downgrade to take effect 30 days from medical certificate expiration unless a valid certificate is received and processed by that time. Drivers have a tendency to procrastinate for various personal reasons, sometimes just to get time off, and it is a common practice to wait until the last day before expiration of certification to obtain a new exam. It may be prudent to require drivers to recheck or obtain a new exam within 14 days of the medical examination certification to allow for additional medical information if necessary and/or providing the new certificate to the SDLA.

7. *Potential impact on Motor Carriers employing CDL drivers*

- The requirement for a motor carrier to obtain the CDLIS MVR prior to allowing a CDL driver to operate in interstate commerce is a good idea, however, some states, like the Commonwealth of Pennsylvania, place restrictions on obtaining this information in a timely manner, resulting in an employer's failure to hire timely as well. If this is to be the requirement, force the states to make this information available to the motor carrier more readily, electronically or by fax following a request in 1-2 business days.

8. *Availability of medical status information to enforcement personnel*

- In theory, the ability of enforcement personnel being able to verify medical certification electronically in the field is also a good idea. In practice it may be unrealistic to local, regional and municipal officers who may not have access to equipment with the capability to do so due to budget constraints or lack of training or knowledge. It has been our experience that local, regional and municipal officers are the least knowledgeable of FMCSRs and issue many citations that are ultimately revoked due to the lack of knowledge of the citing officer. This practice puts an unfair burden on smaller employers whose drivers are put out of service because the officer is "used to" asking for and receiving a medical certification. Case-in-point: the lack of knowledge of these officers of the "100 mile radius" exemption. Most of the citations issued because logs are not available are overturned and put unnecessary time, manpower and financial burdens on employers due to the issuing officer's lack of understanding of this rule. I foresee the same issues with a request for a medical certification, or worse, the driver has obtained a new exam and it hasn't been posted.

To avoid this type of problem may require consideration of more extensive training for local, regional or municipal officers at the state level with a certification written exam on FMCSRs & forcing the township, borough or municipalities to purchase required equipment and demonstrate proficiency in it's use.

9. *Adding a disqualifying offense to Table 2 of 383.51(c)*

- Yes, this should be added and enforced unless the driver can produce a valid certificate to the enforcement officer, but this scenario brings us back to my recommendations in items #1 and #8.

Respectfully submitted,

A black rectangular box containing a white handwritten signature that reads "Richard M. Wilson".