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Federal Motor Carrier Safety Administration
Docket Management Facility
U. S. Department of Transportation
400 Seventh Street, S W, Nassif Building, Room PL-401
Washington, DC 20590-0001

Re: Docket No. FMCSA-1997-2210

Dear Sir/Madam:

Thank you for the opportunity to provide comment to this proposal. J.B. Hunt Transport, Inc. (J.B. Hunt) is very interested in the issues that affect the safety of drivers and the motoring public and applauds the efforts of the FMCSA to develop reasonable and responsible regulations and policies in this area.

While J.B. Hunt would welcome reductions in the records required to be managed and stored, our primary concern is that unsafe drivers are not allowed to "fall through the cracks." Even if the responsibility to monitor driver medical qualification were completely removed from motor carriers, which is what this proposal appears to do, only if the system ensures that only safe, qualified drivers are permitted to operate commercial vehicles can it be supported.

The proposed rule looks like it will help enforcement. However, some of the provisions will likely have some unintended negative consequences for the safety-oriented motor carriers. From enforcement's perspective, recording the physical certification information on the CDLIS MVR rather than have the driver carry a copy would be an improvement. However, motor carriers must have a way to ensure every driver has a valid medical examiner certificate and should be required to retain a copy in the driver qualification file. Because an MVR is only run annually, in most cases, a driver could continue operating after the certification period has expired if carriers are not required to track this independent of the MVR.

Further, motor carriers should be permitted to require drivers to take a new physical when they hire the driver to ensure the driver has not shopped for a DOT Medical Examiner who will pass the driver regardless of medical issues. J.B. Hunt has an established procedure that helps ensure that only medically qualified drivers are permitted to operate. Almost all of our pre-employment physicals are conducted at less than 15 clinics. The medical examiners in these clinics have been made aware of the regulations, the medical regulatory guidance and conferences published by DOT, and J.B. Hunt's desire that a conservative approach, erring on the side of safety, be taken when evaluating issues that could have a negative impact on the driver's ability to operate safely. J.B. Hunt also requires a functional test of all newly hired drivers to help the medical examiner better evaluate "Section 7 – Physical Examination" items 10 and 11 on the physical. When the physical is complete, the documentation is imaged and the expiration dates are entered into a tracking system to ensure physicals are renewed prior to expiration.

There are a few areas of the proposed rulemaking that will be problematic including:

1. Only requiring the Medical Examiner's Certificate to be provided to the SDLA.
 - a. California and Indiana require that the "long form physical" be provided to the State. The State of Indiana reported that they found a very low percentage of physicals that were complete and legible and that processing these problematic physicals required a large administrative staff.

- i. Many of the medical examiners used by J.B. Hunt are sending the physicals of Indiana licensed drivers to the Indiana DMV electronically. The software used for this ensures that the document is complete and legible. It also performs field level validation to minimize the number of physicals completed with readings that should render the driver unqualified. However, the system permits the medical examiner to override the notices and warnings since it is the medical examiner, and not the computer system, that must determine if the driver meets standards.
 - ii. This system or a similar one should be considered for all medical examiners reporting to a SDLA.
 - b. If the “long form” is not reviewed, errors and/or omissions could permit unsafe and unqualified drivers to operate. A perfect example of this was a driver applicant who, upon examination was found to not meet standards due to a variety of musculoskeletal, pulmonary, and cardiac issues. That physical was provided to the State of Indiana. After being turned down, the driver applied at another company and was certified for two years. When that physical was sent to the State of Indiana, it was found that many of the medical issues identified on the first physical were not listed on the second. The State contacted the DOT Medical Examiner who performed our exam and was told that it was improbable that the driver would ever regain a qualified status due to serious, uncorrectable issues. Had the State not retained and reviewed the “long forms,” this driver would be a crash waiting to happen.
- 2. Only requiring retention for 6 months.
 - a. Qualification periods may be up to 2 years.
 - b. Should a system error improperly mark a driver as not qualified after the 6 month retention period, the State would not have the documentation necessary to quickly correct the error. This would create a severe penalty to the driver whose operating privileges are erroneously revoked.
 - i. With a retention that is at least as long as the certification period, an error can be corrected with a phone call, followed by a record review by the state.
 - ii. Without the document in file, the driver, who has done nothing wrong, would be forced to contact the DOT Medical Examiner who did the exam to get another copy for the State. In an over the road operation, this could mean several days without making a living.
- 3. Having a different process to administer the CDL/Medical Exam system in each state will likely lead to confusion, errors, and omissions. This could result in medically qualified drivers being unable to drive or being shut down for an extended period. This would prove costly for carriers and drivers.
 - a. A standard reporting process for all states would reduce confusion.
 - b. It is suggested that the *National Registry of Medical Examiners* be established and that medical examiners be responsible for submitting the required data to the state DMV electronically. This would reduce the burden on the driver and ensure that all exams, whether qualified or unqualified, are reported.
- 4. Many drivers are typically away from home for extended periods of time. Notifying them by mail will create administrative challenges and increase costs.
 - a. Motor Carriers should be notified so that drivers can be contacted more expeditiously (i.e. by phone, on-board computer, etc.) and so that motor carriers can assist in getting the driver in for a recertification physical or assist in resolving any problems with/for the driver.
 - b. J.B. Hunt is a staunch supporter of a National Employer Notification System (ENS) whereby motor carriers are immediately notified anytime a driver’s driving record or

qualification status changes. It is believed that only through such a system can many of the safety goals set by the Federal Motor Carrier Safety Administration be achieved.

5. The proposed rule attempts to make the medical exam generic for all CMV drivers regardless of the driver's job responsibilities, the work environment, and non-driving responsibilities.
 - a. The current "Instructions to Medical Examiner" contain a requirement for the examiner to only certify a driver if they are safe to drive and able to perform non-driving job responsibilities that may be required. Some carriers run "line haul" and the drivers rarely have to load or unload freight. Others in the local delivery and in the over-the-road segment have to perform medium to heavy labor, loading and unloading as well as carrying chains, pulling trailer tandem slide pins, etc.
 - b. By making the DOT Physical Exam generic, carriers would find it more challenging to ensure that driver applicants are capable of performing the duties of the carrier's particular jobs. This change would also likely result in drivers, who were deemed unqualified under the current rules, being found medically qualified under the proposed rules. This will result in more accidents and injuries and these costs have not been recognized or accounted for in the NPRM.

In addition to the problem areas above, J.B. Hunt would like to make the below recommendations that may make the program more effective.

At a minimum, each long form physical should be reviewed for completeness. Then every physical with an identified medical condition should be reviewed by a medical professional knowledgeable of the physical demands, driving and non-driving, of the driving profession as well as the most current medical guidance promulgated by the DOT, FMCSA, and the medical community. If the driver has a condition likely to render him/her unsafe and the physical does not include test results or other medical documentation that would indicate that the driver is safe despite the condition, the physical should be returned to the medical examiner for further justification for the issuance of the medical certificate. If the issuance can not be justified, the certification should be revoked and the motor carrier and driver notified of this action.

The regulations should specifically allow motor carrier to require a new examination when hiring drivers. J.B. Hunt has selected and trained the Medical Examiners that perform our drivers' physicals on the FMCSR pertaining to medical qualifications, the specifics of the driving and non driving tasks performed by a driver, and on proper completion of the medical examination form. J.B. Hunt believes that Motor Carriers should continue to be required to maintain a copy of the Medical Examiners Certificate. However, the Medical Examiner, one who is on the National Registry, should submit the results of the exam (qualified and unqualified) to the SDLA. In the event that the regulations do not permit the motor carrier to require a new physical, then the regulations need to state that the motor carrier can not be held liable for any damages resulting from events attributable to a driver's medical condition.

The regulations should also specifically state that a motor carrier's only responsibility in the medical qualification process is to ensure that they do not knowingly allow a driver whose CDL has been downgraded to operate a commercial motor vehicle. Without this specific declaration in the regulatory language, motor carriers will still be seen as liable when a driver has a disqualifying item on the long form physical but is still certified and granted a license by the SDLA. Current regulatory guidelines put the responsibility for the medical qualification of drivers on the employing motor carrier. In the new system, unless changes are adopted, the motor carrier will not even have the Medical Examiner's Certificate, much less the long form. There would be no possible way the motor carrier could monitor the driver's medical qualification or be responsible for the entries made by the medical examiners.

There should be some process that would require a motor carrier to report to the SDLA when a driver has suffered an injury or illness that would require a recertification under 391.45(c) but the driver fails to be recertified prior to returning to driving. Without a notification system, the driver could simply change employers if the motor carrier attempts to push the issue and require a new physical. The CDL would still be in full force because the SDLA would not know the driver is not qualified.

FMCSA research has indicated that there is a 15.4 to 1 benefit to cost ratio of notifying motor carriers of motor vehicle convictions and license status changes. The research also reveals that required self reporting by the driver to the motor carrier is deficient. Combining the notice to motor carriers of medical exam expirations dates approaching, unqualified drivers, and downgrades of CDLs will further increase the ratio of benefit to cost by allowing the motor carrier to participate in the process of ensuring only medically qualified drivers are permitted to operate a CMV and that unqualified (less safe) drivers are removed from operation until medically qualified. An Employer Notification System (ENS) should be implemented prior to merging the medical examiner certificate with the CDL.

J.B. Hunt agrees with placing a driver out-of-service or imposing fines on non-compliant drivers as a disincentive to operating when not medically qualified. Page 66731 of the NPRM suggests that placing drivers out of service has little impact on motor carriers. This may be true for carriers who have little or no regard for safety. However, safety-conscious motor carriers take every safety exception seriously and want to do everything possible to avoid a non-compliant situation.

Whenever a driver is place out of service, management's time is consumed to investigate and take corrective action. Additionally, when this happens, the load is likely to deliver late which would have a negative impact on the motor carrier's profitability. Motor Carriers have a vested interest in ensuring that out-of-service violations are reduced. As a result, motor carriers must be kept in the loop to ensure that only medically qualified drivers are permitted to operate CMV.

Currently drivers carry a medical examination certificate that has an expiration date on it. Additionally, motor carriers are required to ensure that drivers are medically qualified to drive. As a result, motor carriers track expiration dates of driver medical certifications and remind drivers of the need for a recertification physical in advance of expiration. Often motor carriers will route drivers to locations where recertification physicals can be performed. The system should either provide motor carriers with advance notice of upcoming expirations, or motor carriers should continue to track the expirations as in time past. The same is true for the driver. Either the system should provide notice of an upcoming expiration, or the driver should be required to carry a card.

Requiring the medical examiner to submit to the SDLA all physicals would reduce the likelihood of doctor shopping and would provide the agency with data that would allow them to identify drivers that may be doctor shopping or withholding relevant health history from subsequent medical examinations. Additionally, the agency could identify doctors that routinely qualify drivers with previously identified disqualifying conditions.

Consequences for drivers who provide false information or who fail to provide complete and accurate medical history information should be severe enough to deter this behavior. Perhaps the penalty should be similar to violating out of service orders or committing railroad grade crossing offenses.

Currently, drivers can verify and correct information on their CDLIS MVRs by visiting their state DMV and obtaining a copy of it. However, this system would not be sufficient when the driver's CDL has been downgraded in error. The drivers will need immediate access to their information to ensure the problem is corrected quickly. They should be able to get a free copy on-line similar to obtaining a copy of their credit reports at no charge.

Sincerely,

David Whiteside
Senior Director of Compliance