

Before the

DEPARTMENT of TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Docket No. FMSCA – 1997 – 2210

*MEDICAL CERTIFICATION REQUIREMENTS
as PART of the CDL*

Comments of the
AMERICAN MOVING and STORAGE ASSOCIATION

AMERICAN MOVING and
STORAGE ASSOCIATION

1611 Duke Street
Alexandria, Virginia 22314

(703) 683 - 7410

Dated: February 14, 2007

Before the

DEPARTMENT of TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

Docket No. FMSCA – 1997 – 2210

*MEDICAL CERTIFICATION REQUIREMENTS
as PART of the CDL*

Comments of the
AMERICAN MOVING and STORAGE ASSOCIATION

The American Moving and Storage Association (“AMSA” or “Association”) submits its following comments in response to the referenced notice of proposed rulemaking, appearing at 71 Fed. Reg. 66723 (November 16, 2006), issued by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”). In its notice, the Agency solicits public comment on its proposal to merge information from a commercial motor vehicle operator’s medical certificate into the Commercial Driver’s License.

The Agency's proceeding responds to section 215 of the Motor Carrier Safety Improvement Act by requiring CDL holders who are subject to the physical qualification requirements of the Federal Motor Carrier Safety Regulations to submit their medical examiner's certificate to their state driver licensing agency, which would thereafter make the information available to enforcement personnel and others who view a driver's motor vehicle record to ascertain that they are medically qualified to operate a commercial motor vehicle.

I. IDENTITY of COMMENTOR

AMSA is the only national trade association representing the household goods moving and storage industry. AMSA has approximately 3200 members, including international and national van lines with agency networks; independent national and regional van lines; and local agents affiliated with a van line network. AMSA's members are domiciled, and provide relocation and warehousing services, throughout North America and strategic points throughout the world. The moving and storage segment of the motor carrier industry operates more than 50,000 tractors, trucks, and other vehicles which are operated by more than 22,000 competent, qualified commercial motor vehicle ("CMV") operators, almost all of whom are subject to FMCSA's medical certification requirements.

II. OVERVIEW of COMMENTS

AMSA does not disagree with the concept of integrating the commercial drivers license and the medical certificate, but is troubled to the extent that, among other

concerns, the proposal seems to exclude motor carriers from the information loop between a driver and the state driver licensing authority; does not give drivers adequate notice of impending changes in their CDL status attributed to the validity of their medical certificate; and may promote “doctor shopping” to cure lapsed medical examination certificates.

III. SPECIFIC COMMENTS

A. Medical Certificate Validity

AMSA has very specific concerns about the qualification of drivers operating commercial motor vehicles on the nation’s highways. In addition to their ability to demonstrate competence to operate commercial motor vehicles, drivers certainly need to be medically qualified to operate those vehicles. AMSA continues to express concern, however, over a state driver licensing agency’s ability to review a document that purports to be a medical certification from a medical practitioner without concurrently determining whether the certificate is indeed valid, i.e., whether the practitioner is indeed licensed, and in fact performed an examination of the individual who presents the medical certification. Since a medical certification will become part of a commercial driver license (“CDL”), there ought to be the same concern about fraudulent acquisition and presentment of medical certifications as there is currently with fraudulent acquisition of CDLs.

This concern, however, is beyond the scope of this proceeding, which seems to address itself to the mechanics and logistics of integrating two documents – the

commercial motor vehicle operator's license and a medical certificate – into one so that law enforcement authorities, among others, will be able to determine whether a vehicle operator meets not only the operating requirements, but also the medical requirements, for operating a commercial motor vehicle.

B. Timeliness of Notice is Critical

As for the simple logistics of integrating the two documents, one concern is over the continued validity of the integrated document when one of the subparts expires. Since commercial licenses are issued for periods of up to five years, and medical certificates are valid for only up to two years, an integrated CDL will be rendered invalid if an operator fails to keep current his or her medical certificate up to date. License invalidity is a possibility now with the two requirements (operating and medical requirements) evidenced by separate documents. AMSA does not condone a CDL holder's operating a vehicle without having complied with the applicable medical requirements. However, AMSA is concerned about CDL holders receiving timely and sufficient advance notice about the expiration of the medical portion of their CDL before their license is downgraded and invalidated.

CDL holders in the household goods segment of the industry are often away from their homes and unable to physically retrieve mail for weeks and even months at a time, particularly during the summer moving season which extends generally from May through September. Drivers may not timely receive a notice mailed by a state driver licensing agency ("SDLA") because they may not be home to retrieve their mail. Drivers

also may not appreciate that their CDL has become invalidated because a medical certificate has lapsed. Even assuming that a driver receives notice that his medical certificate is expiring, it may not be possible to obtain a new medical certificate and deliver it to a DVLA within the prescribed timeline to avoid a downgrade since he or she may not be dispatched through their home state. To expose a driver to a possible traffic offense violation, leading to a conviction and CDL disqualification, is too harsh of a result without considering how other means, such as email or telephonic notification, can be employed to keep a CDL holder more timely apprised of the status of the medical certificate and specific corrective action that must be taken to keep the CDL in force.

C. Keeping the Employer Informed is Essential

Notice to the driver raises another concern, specifically relating to the driver's employer being excluded from knowing the current status of a driver's CDL. If all communications on the validity of a CDL occur between the SDLA and the driver, the motor carrier has a diminished involvement in ensuring that a qualified driver is operating its vehicles. In fact, by eliminating the driver's employer from the information loop, a carrier may be totally surprised to learn that its vehicle has been shut down by an enforcement officer because the carrier's driver was placed out of service owing to an invalidated CDL. Such a result would be unacceptable for carriers since it is the carrier's responsibility to ensure that its drivers are qualified to operate commercial motor vehicles. Further, it is the carrier's safety rating that will suffer from the use of a medically unqualified driver. It is absolutely essential for employers to be included in the chain of communications contemplated between driver and SDLA. This can be

accomplished by adding another contact – i.e., a driver’s employer – to the list of contacts to be notified of an impending CDL invalidation.

D. “Doctor Shopping” Is Not In The Public Interest

A driver’s concern about his CDL being invalidated because of a medical certificate expiration may lead that driver to engage in “doctor shopping”; that is, in order to expediently retain his CDL, a driver may seek out any doctor who will sign the certification, even though that doctor might not generally conduct DOT medical examinations or does not appear on the National Registry of Certified Medical Examiners. A driver in this situation might be less than forthcoming about his or her physical or medical history in order to obtain a clean medical certificate, and any such “masking” of medical information cannot well serve the nation’s highway users.

E. Retention Period

It is also not clear that a medical certificate should be subject to any governmental retention period. Apart from privacy arguments, once a state has received a medical certificate and entered the essential data into its database, no reason exists for its continued retention of the physical piece of paper. The medical examiner who performed the examination and provided the certificate will retain a copy, and the CDL holder will likely retain a copy. It seems burdensome – and potentially invasive – for states to retain paper medical certificates as well, especially in light of the fact that copies are readily available from the digital image on file with the medical examiner.

This analysis does not apply, however, for motor carriers employing or using drivers. Under the proposal motor carriers would no longer be required to place a copy of a medical examiner's certificate in a driver qualification file. The Motor Carrier Safety Improvement Act of 1999, the authority for this proceeding, does not prescribe that this requirement should be omitted, but the proposal seems to eliminate the requirement. AMSA believes that revoking or suspending the practice of retaining a medical certificate in a driver qualification file would undermine the current regulatory framework in which carriers take an active role to ensure that their drivers are medically qualified to operate commercial motor vehicles on the public highways. Moreover, absent retaining the requirement that carriers maintain a copy of a driver's medical certificate, a carrier would be put in the position of having to monitor the status of all of its drivers, hopefully on a publicly-accessible DVLA website, on a daily basis to ensure that a medical certificate is current on any given day. For carriers with hundreds of drivers, this is an insurmountable, unreasonable, and overly-burdensome task.

F. SDLA Obligations

A two-day time period for updating CDL information with newly-acquired medical information is stringent, and would be beneficial to the enforcement community and to motor carriers alike, but it is not clear that the SDLAs have the resources to comply with this timeframe. A motor carrier may need to act on updated information, such as suspending a driver whose medical certificate has expired, but two days is insufficient time for a carrier to contact its driver and determine whether an expired medical certificate has been corrected but has not been reflected by the state's DVLA.

IV. CONCLUSION

For the foregoing reasons, AMSA requests that the proposed rulemaking be amended to reflect and incorporate the foregoing comments.

Respectfully submitted,

AMERICAN MOVING and
STORAGE ASSOCIATION

A handwritten signature in black ink, appearing to read 'R. Rothstein', is written over a horizontal line. The signature is cursive and stylized.

By: ROBERT G. ROTHSTEIN
Vice President and General Counsel

Dated: February 14, 2007

fmcsa97 – 2210.ogc