

**United States Department of Transportation**  
**Federal Motor Carrier Safety Administration**

Docket No. FMCSA – 2008-0363

RIN 2126—AA 97

Comments of the American Bus Association

And

The Bus Industry Safety Council

On the Notice of Proposed Rulemaking

National Registry of Certified Medical Examiners

**January 30, 2009**

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The American Bus Association (ABA) and the Bus Industry Safety Council (BISC) appreciates this opportunity to comment on the Federal Motor Carrier Safety Administration’s (hereinafter “FMCSA” or “Agency”) Notice of Proposed Rulemaking (NPRM) in the above entitled proceeding. The ABA is the premier private bus industry trade association. The ABA is home to some 3800 member companies and organizations and approximately 800 bus operator companies. The bus operator members provide all manner of transportation services to the public, including fixed route scheduled service, charter and tour, airport shuttle and commuter services. The Bus Industry Safety Council (BISC) is the ABA supported council composed of the safety, security and maintenance chiefs of many ABA bus operator members. BISC exists for the purpose of examining government and private industry proposals which BISC determines implicates the safety and security of over-the-road bus (OTRB) operations, maintenance and passenger comfort. BISC discharges its duties by referring all such proposals to one or more of

several BISC committees for the committees' review and discussion. Thereafter the committees' recommendations are submitted to BISC and then to the initiator of the proposal. Following this procedure the NPRM has been reviewed by the BISC Human Performance and the Government Review Committees ("Committees") and the committees' conclusions form the core of these comments. As this recitation of structure of ABA and BISC demonstrate, ABA and its member companies are fully committed to safety. This commitment is also demonstrated by the exemplary safety record of the private bus industry. It should also be noted that on several occasions senior FMCSA officials have commented on and commended the safety record of the private bus industry. ABA's commitment to safety also led the association and the council to be early champions of a national medical registry that would allow the public to find qualified medical personnel to conduct medical examinations for commercial motor vehicle drivers.

ABA and BISC then fully support the establishment of the National Registry of Certified Medical Examiners (NRCME) as notice in the Federal Register at 73 Fed. Reg. 73219 (December 1, 2008). As given in the NPRM, the NRCME would require interstate drives of CMVs "who are required by the FMCSRs to receive medical examinations to obtain them from examiners listed on the NRCME" (73 Fed. Reg. 73131). While ABA and BISC support the establishment of the NRCME the organizations do have some concerns with aspects of the proposal and its implementation and wish to make those concerns known to the agency.

First, in setting forth the major elements of the proposal the NPRM suggests that the medical examiner certification testing (73 Fed. Reg. 73133) include a requirement

that applicants for the medical registry provide certain information “such as the applicant’s medical profession, State medical license or certificate number, business address...and medical examiner training provider. In addition...provide several statements that the applicant is capable and willing to comply with FMCSA requirements...and training.” ABA and BISC ask the agency to also consider requiring applicants to provide letters of recommendation from professional colleagues and associations to which the applicant is a member. ABA and BISC suggest that these letters of recommendation provide information relevant to the applicant’s professional competence as well as the applicant’s honesty and abilities.

Second, the NPRM proposes that a medical examiner listed on the NRCME would have to recertify by “passing the medical examiner certification every six years” (73 Fed. Reg. 73133). The Commenters believe that six years between recertification is too long a period of time. ABA and BISC note the speed with which advances in medicine and medical treatments occur today. The medical certification process should be able to incorporate new medical advances and techniques as soon as possible. One way to do this is to require a more aggressive schedule of recertification. Thus, the Commenters request that the Agency consider providing that medical examiners be required to recertify every three years rather than six years.

Third, the BISC Committees are particularly concerned with the implementation of the medical examiner proposal. FMCSA proposes to split the implementation into two parts. In the first phase, “drivers who work for larger employers to have the medical examinations performed by medical examiners listed on the NRCME, because these drivers are less likely to have problems locating a medical examiner”. For the purpose of

phase one; FMCSA proposes to define large employers as motor carriers that employ fifty or more CMV drivers and to begin the phase in two years after the effective date of the final rule. The second phase would expand the requirement to the remaining “drivers not covered in phase one” and would begin three years after the effective date of the final rule (73 Fed. Reg. 73134). The agency believes that “the additional time allowed for other drivers would allow for growth in the number of medical examiners who have completed the proposed certification process and have been listed on the NRCME” (73 Fed. Reg. 73134).

BISC is concerned that the proposed implementation period may create a “bottleneck” for drivers and carriers. The dual implementation period could result in only a few examiners being listed in the short term. Such an eventuality could lead to delays for carriers and drivers who wish to expediently obtain medical examiner’s certificates. To alleviate the possibility of a bottleneck the Commenters suggest that the agency consider just one phase in period. A single phase in period of two years should allay the agency’s concern of fewer medical examiners in the short term and provide some comfort for carriers and drivers who wish to obtain their medical certificates as quickly as possible.

Finally, and perhaps most importantly, both ABA and BISC are concerned about how the training and curriculum for medical examiners would be established and implemented. The NPRM proposes that “the FMCSA would develop the core curriculum specifications with the advice of the Medical Review Board and the Chief Medical Examiner” (73 Fed. Reg. 73132) as required by Section 31149, enacted by section 4116(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A

Legacy for Users, Pub. L. 109-59, 119 Stat. 1726 (Aug. 10, 2005) (SAFETEA-LU).  
Section 4116(a) requires that the Medical Review Board be comprised of five members “selected from medical institutions and private practice” and “the membership reflect expertise in a variety of medical specialties relevant to the driver fitness requirements” of the agency. Section 4116(b) requires that the Chief Medical Examiner be an employee of the FMCSA. While Commenters have no objection to these requirements or to the establishment of these positions, their duties or qualifications, we respectfully request that in so far as possible, the agency, the Medical Review Board and the Chief Medical Examiner call upon the private bus industry whenever issues relating to bus operations and driver wellness are implicated in establishing the curricula for medical examiners. The private bus industry’s decades of experience may be helpful to the agency and we ask to be of service.

Respectfully Submitted,

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