

DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

**DOCKET NO. FMCSA – 1997-2210, RIN 2126-AA10:
Medical Certification Requirements as Part of the CDL**

**Comments of the Bus Industry Safety Council (BISC)
and the American Bus Association(ABA)**

On the Notice of Proposed Rulemaking

February 12, 2006

The Bus Industry Safety Council (BISC) and the American Bus Association (ABA) appreciate the opportunity to comment on the Federal Motor Carrier Safety Administration’s (“FMCSA”) Notice of Proposed Rulemaking (“NPRM”) in the above titled proceeding. The ABA is the premier private bus industry trade association. The ABA is home to some 3500-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 an ABA supported organization composed of the safety, security and operations chiefs of private bus carriers and organizations in the United States . Each organization has serious concerns about the Federal Motor Carrier Safety Administration (FMCSA) proposal to “amend the Federal Motor Carrier Safety Regulation (FMCSRs) to merge information from the medical certificate into the Commercial Driver’s License (CDL) process” 71 Fed. Reg. 66723.

ABA and BISC have no basic argument against the of merging the CDL and the medical certificate per se and recognize that such a merger is a statutory requirement under section 215 of the Motor Carrier Safety Improvement Act of 1999. However, ABA and BISC have a number of observations and concerns with the NPRM as currently proposed.

In 1996, ABA was a party to the Federal Highway Administration, Office of Motor Carriers, attempts to merge the CDL and the medical certificate through the process of a negotiated rulemaking. Unfortunately, the negotiating parties failed to reach a consensus on the issue so the matter was returned into the formal rulemaking process. One issue that was discussed at great length by the parties, during the negotiations was the absolute need to have assurance that all medical providers conducting DOT physical examinations of CDL holders be knowledgeable of the FMCSRs that govern the driver's medical qualifications. At the time a majority of the parties determined that a national certification and registration program for DOT medical providers, based somewhat on the Federal Aviation Administration's (FAA) program model, was the best way to be certain that any driver be examined to the DOT requirements. Indeed many involved in the negotiation process assumed that any future rulemaking would contain such a provision. Unfortunately, over time the issue has been split into two separate components; one being the above captioned proposal, and a separate rulemaking, which proposes to create a national registry of certified DOT medical examiners. ABA and BISC believe it is imperative that the national registry rulemaking be completed, and medical examiners be certified, prior to any attempt to merge the CDL and the medical certificate under this proposal. ABA and BISC believe if this sequence is not followed a serious degradation to the FMCSR medical qualification standard will follow, primarily due to drivers continued ability to engage

in “doctor shopping”.[1]

ABA and BISC note that the current NPRM is silent on a motor carrier’s ability to continue to conduct and manage its own in-house medical qualification programs. The FMCSR make it clear that it is the motor carrier that bears the primary responsibility of making certain that the medically unqualified do not get behind the steering wheels of their vehicles. As such, any final rule needs to make it absolutely clear that the motor carrier’s ability to manage their drivers’ medical qualification programs be allowed to continue unimpeded. This management function must include the right of the motor carrier to obtain a driver’s medical certification documents directly from the medical provider without waiting for processing by a State Drivers Licensing Agency (SDLA). ABA and BISC believe if a motor carrier is limited to obtaining medical certification information from the SDLA it will, at best, take several weeks after the driver takes a physical examination before the information would be available to the carrier. Potentially this situation could allow a medically unqualified driver to operate a vehicle until the information could be acted on by the carrier. This represents a totally unacceptable situation for the public, the motor carrier and the carriers’ insurer. ABA and BISC agree that linking the medical process with CDLIS can provide enforcement personnel at the roadside with a useful tool in making certain that a commercial vehicle driver is physically qualified to driver; however, this should be viewed as a supplemental improvement only and not a substitute for a sound employers medical certification program.

[1] “Doctor Shopping” is best described as a situation where a commercial driver knowingly goes from medical provider to medical provider until he/she finds one that will qualify them to drive when he/she knows of a condition that would significantly limit, or completely disqualify, he/she from driving a commercial motor vehicle.

At this point it also appropriate to question exactly how many States are currently in full compliance with the CDL program.[2] It has been widely reported for many years that not all States are equally compliant with the CDL program. To add another layer to the CDL program without assurance of full compliance by all States may lead to degradation in the medical certification process rather than an improvement.

It should also be noted that under the current proposal drivers would be required to mail a copy of their medical certificate to the SDLA. ABA and BISC see a fundamental flaw in this proposal as there is no apparent mechanism for capturing information on a driver whose medical condition may change to an unqualified status during the two year period, that the medical examination is valid, if they do not report it to their employer or a medical examiner. Drivers have strong economic reasons for not reporting medical conditions that may disqualify them from earning a living. Should a driver's medical condition deteriorate immediately after being qualified that driver could conceivably have up to two year's freedom to drive in an unqualified condition. This underscores the need for the motor carrier to be allowed to continue to oversee their drivers' medical programs.

ABA and BISC have reviewed the comments to this NPRM filed by Greyhound Lines ("Greyhound") and are in full agreement with them. In its comments Greyhound states that it checked the records of its 332 California based drivers and found that 36 of those drivers were re-examined before the expiration date of their current physical,

[2] ABA and BISC requests the FMCSA to submit a current State CDL compliance report into the docket of this rulemaking.

with 5 of those drivers being disqualified and a further ten receiving reduced time medical certificates. Greyhound makes a solid case regarding the lack of notification under the current proposal versus its ability to capture this information under the current regulatory scheme. ABA and BISC want to add that under the proposed rule Greyhound would now have to query the SDLA for these driver's records at a cost of some \$270, whereas under the current standard the driver is required to report to the carrier, which carries no cost. If this model is extrapolated across the entire commercial driver pool these additional costs could be well above that currently estimated by the FMCSA. These additional costs must be factored into any final cost/benefit analysis. According to the U.S. Small Business Administration (SBA) more than 90 percent of the bus industry is comprised of companies that meet the SBA's definition of a small business. Any addition cost burden to a small bus company has an effect far greater than that on a large business. ABA and BISC ask the FMCSA to pay close and serious attention to this matter when conducting the final economic analysis for this rulemaking.

In conclusion, the current medical qualification rule works well and is an essential component in the motor carrier's safety management program. ABA and BISC urge the FMCSA to leave this standard as it is and simply supplement it by adding the SDLA reporting component, bearing in mind the addition proposal's potential cost burden to the motor carriers. We also urge the FMCSA to take no final action on this proposal until the National Medical Provider Registry and certification training program rulemaking has been completed and a sufficient pool of qualified medical providers are available to all motor carriers and the State Driver Licensing Agencies.

**The ABA and BISC appreciates the opportunity to submit these
comments in this very important rulemaking proceeding.**

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Clyde J. Hart, Jr.", written in a cursive style.

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