

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

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COMMENTS OF THE  
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

IN RESPONSE TO A REQUEST FOR PUBLIC COMMENTS

DOCKET NO. FMCSA-2008-0363

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**INTRODUCTION**

The Owner-Operator Independent Drivers Association, Inc. (“OOIDA”) submits these comments in response to the March 16, 2011, notice published by the Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “the Agency”), at 76 Fed. Reg. 14366, soliciting comments in docket FMCSA-2008-0363 on a proposal to require motor carriers and others employing commercial motor vehicle (“CMV”) drivers to verify for all such drivers that the individual performing a medical examination on the driver is listed on the proposed National Registry of Commercial Medical Examiners (“NRCME Registry”) and, in each case, to place a record of such verification in the driver qualification file.

When FMCSA issued an NPRM proposing the creation of a NRCME Registry, OOIDA supported the proposal as a way to ensure that individuals performing CMV driver medical exams were properly trained and qualified for that task. OOIDA also felt that such a Registry would help end the doctor-shopping and improper issuance of medical certificates that sometimes occurs under the current medical examination system. OOIDA did not oppose any specific information collection components of the Registry program, instead emphasizing that the Registry must operate in a way that does not violate the privacy rights of the involved drivers.

However, for the reasons discussed more fully below, OOIDA must object to the current proposal to impose an additional verification and information collection requirement in connection with the NRCME Registry system. Instead of issuing this follow-up to the initial NRCME Registry

proposal in response to the commenter asking what a motor carrier had to do to verify that a medical examiner's certificate was issued by a listed examiner, the FMCSA should have simply noted the requirements of the State Drivers License Agencies ("SDLA") before acting on a CDL application. Those requirements are for them to obtain the original or a copy of any CDL applicant's medical examiner's certificate, to verify that the involved driver is medically "certified," to date stamp and retain a copy of the Certificate for three years, and to record in the electronic Commercial Driver License Information System ("CDLIS") the medical certification status information, which would include the medical examiner's unique Registry number if the NRCME Registry system is implemented as currently proposed. *See Medical Certification Requirements as Part of the CDL*, 73 Fed. Reg. 73096 (Dec. 1, 2008); 49 C.F.R. §§ 383.71(h) & 383.73(j).

The SDLAs are also the party charged with taking action should a driver present any falsified information, including a fraudulent medical examiner's certificate. 49 C.F.R. § 383.73(g). Accordingly, once the NRCME Registry is operational, the SDLAs should be verifying that the examiner is in fact listed on the Registry. After a CDL is issued and the medical examiner's certification information is entered in the CDLIS system, it will then be available to motor carriers or other employers who are required to check a driver's CDLIS motor vehicle record ("MVR") and put a copy in the driver's qualification file. Requiring them to independently check the examiner's assigned number against the NRCME Registry list would be redundant and unnecessarily burdensome.

OOIDA is a not-for-profit corporation incorporated in 1973 in Missouri with its principal place of business located at 1 NW OOIDA Drive, Grain Valley, Missouri 64029. The more than 152,000 members of OOIDA are independent owner-operators, small-business motor carriers, and

professional truck drivers (“small-business truckers”) located in all 50 states and Canada. These groups have a significant presence in the trucking industry: One-truck motor carriers represent nearly half the total number of active motor carriers operating in the United States while approximately 93 percent of active motor carriers operate 20 or fewer trucks.

OOIDA is the largest international trade association representing small-business truckers. The Association actively promotes their views through its interaction with state, provincial and federal government agencies; legislatures; courts; other trade associations; and private businesses to advance an equitable and safe working environment for them. OOIDA also actively represents the positions of this group on all aspects of highway safety and transportation policy in numerous committees and various forums on the local, state, national, and international level.

This proposed information collection requirement, if added to the NRCME Registry rules, will have a direct effect on every one of OOIDA’s members who operate CMVs in interstate commerce as small-business motor carriers. As motor carriers, these members would be required to perform the unnecessary NRCME Registry check on themselves. If they are a new entrant motor carrier, adoption of this provision could unduly subject them to the automatic failure provisions of § 385.321 in a new entrant audit should the auditor deem this redundant paperwork omission as violating § 391.11(b)(4) knowingly using a physically unqualified driver.

### **DISCUSSION**

- I. SDLAs should be responsible for verifying that medical examiners are listed on the NRCME Registry as part of the CDL process.

In a rulemaking proceeding completed in 2008, the FMCSA merged the medical certification requirement with the CDL process by requiring CMV drivers to provide their State Drivers Licensing Agency (“SDLA”) with an original or copy of their medical examiner’s certificate

(“Certificate”) in order to obtain a CDL. *See Medical Certification Requirements as Part of the CDL*, 73 Fed. Reg. 73096 (Dec. 1, 2008); 49 C.F.R. § 383.71(h). The rule contains additional requirements applicable to the SDLA’s processing of the certificate which were created to “ensure that accurate and up-to-date information about the CDL holders medical examiner’s certificate will be contained in the electronic CDLIS driver record that is maintained by States. . .” 73 Fed. Reg. at 73096.

Specifically, the SDLA must “verify” that the driver has been medically “certified” before taking any licensing action. 49 C.F.R. §§ 383.73(a)(3)(v), (b)(6), (c)(5), (d)(3). Once that is done, the SDLA is required to date stamp the certificate and, after making a copy that will be maintained in the SDLA files for 3 years, provide it to the driver as a receipt. *Id.* at § 383.73(a)(5) & (j)(1)(ii). Finally, the SDLA is required to enter information from the certificate onto the CDLIS driver record within 10 days, and to update the medical certification status should the driver’s status change or the certificate expire. *Id.* at (j)(1)(iii) & (j)(2)-(4). Information entered into CDLIS must include information about the examination results, including whether the driver’s status is certified or not-certified and whether there are any medical variances or restrictions. *Id.* at § 383.73(j)(1)(iii). It must also include information about the medical examiner, including the examiner’s name, telephone number, state-issued license or certificate number, the name of the issuing state, the date of expiration, and the National Registry identification number, if the NRCME Registry, once established, requires such a number. *Id.*

Importantly, in this regard, the proposed Registry rules under consideration in the present rulemaking do indeed require FMCSA to issue a unique identification number to each applicant who is ultimately certified and listed on the Registry. 73 Fed. Reg. at 73135 (proposed 49 C.F.R. §

390.109). The proposed rules also require the medical examiner's certificate now in use to be modified to include a field where the medical examiner will enter that unique National Registry number. 73 Fed. Reg. at 73137 (proposed 49 C.F.R. § 391.43). Thus, the SDLA will be reviewing the certificate, verifying the certified status, and entering the information from the certificate onto the CDLIS record for each driver.

When SDLAs commenting on the medical certification/CDL merger questioned the necessity of including information about the examiner in CDLIS, the FMCSA justified the requirement as follows:

The Agency chose to require the SDLA to post on the CDLIS driver record the contact information for the ME who conducts the examination. This will help deter driver fraud by enabling FMCSA and the SDLA to contact the ME directly to verify the identity of the ME and details of the ME's certificate if the Agency or the SDLA suspects there is a problem, or to obtain a copy of the supporting Medical Examination Report.

73 Fed. Reg. at 73099. SDLAs are not only positioned to contact examiners about individual certificates that appear suspicious but, because they see and verify so many certificates, are also uniquely situated to detect patterns suggesting fraud. Motor carriers and other employers viewing only isolated certificates are not likely to detect such wrongdoing. Accordingly, it would only be logical to have the SDLA as part of the already existing verification process to check that the examiner issuing the certificate was listed on the NRCME Registry before it enters the driver's information into the CDLIS record.

II. Having employers perform the verification function would not substantially deter driver fraud in the medical certification process.

Requiring the motor carrier or other employer to independently verify the status of the medical examiner listed on a driver's certificate does not make sense for several reasons. First,

unless a driver has applied for a CDL within the prior 15 days, the carrier/employer must obtain a copy of the CDLIS MVR to check all information in that record including, but not limited to, the fact that the involved driver is medically “certified” to drive a commercial motor vehicle and must place a copy of the MVR in the driver’s qualification file. 49 C.F.R. § 391.23(m). If the SDLA has already checked the medical examiner’s qualifications while verifying the CDL applicant’s certification status, then a “certified” notation on the MVR would resolve the matter. An additional verification by the motor carrier/employer would be duplicative and unnecessary.

Second, if a motor carrier determines that a driver’s certificate is fraudulent or otherwise invalid and refuses to hire the driver as a result, that individual may apply for a position with another employer who might not check the records as carefully and may not catch the error. The FMCSA’s fraud-prevention goal would be circumvented. Finally, simply comparing the medical examiners name and likely registration number against the database proves nothing about the validity of the Certificate presented. That information could be easily forged.

In striking contrast, if the SDLA determines that a driver’s certificate is invalid or fraudulent, the “not-certified” status will be entered into the CDLIS system for **all** potential employers to see and the CDL license will be downgraded. 49 C.F.R. § 383.73(j)(iii)(F). The SDLA is also required to penalize a driver for such conduct by suspending, canceling, or revoking his CDL or disqualifying him from operating a CMV for some period of time. 49 C.F.R. § 383.73(g). The increased likelihood of being caught plus the more severe consequences should a problem certificate be detected would have a far greater deterrent effect and ultimately keep more drivers who are not physically qualified off the roads.

Third, the FMCSA must keep in mind that approximately half of the motor carriers subject

to the medical certification rules own only one truck. Thus, the proposed motor carrier/employer verification requirement would have hundreds of thousands of one-truck motor carriers “verifying” their own certificates! Certainly any driver intent on fraud is not going to self-identify the defective nature of his own medical certification. An objective third-party must perform the verification if the process is to have any meaning in such cases. That third-party, as discussed above, should be the SDLAs that issue CMV drivers their CDLs.

III. The costs and administrative burdens of the proposed information collection can not be justified by any safety gains.

In proposing that motor carriers and other employers verify for each driver that the examiner issuing a medical examiner’s certificate is listed on the NRCME Registry and place a written confirmation of the verification in the driver’s qualification file, FMCSA has estimated that it will take administrative personnel 4 minutes to complete the verification process. 73 Fed. Reg. at 14367. Stated in minutes per transaction, this does not seem significant or particularly burdensome. However, as FMCSA also notes, approximately 4,622,925 verifications and recordkeeping actions will be required annually, requiring approximately 308,195 hours of administrative time annually. *Id.* Moreover, this is in addition to the many other administrative recordkeeping obligations imposed on motor carriers with respect to each driver that is hired (which includes single truck operators employing only themselves). They must also check a potential driver’s safety records for serious or disqualifying traffic violations or accidents, require and then check the driver’s drug test results, have a completed application for employment on file for each driver including many other requirements contained in §§ 391.21 and 391.23. Thus, FMCSA must consider the current proposal within this broader context in which it would exist.

FMCSA should also consider that the added costs associated with this proposal, like all

additional costs incurred by motor carriers as a result of new regulations, will either be passed through to the public in terms of higher shipping costs or, more likely, will be passed through-along with other costs associated with the new medical certification process - to already financially-strapped drivers. Such costs and burdens should clearly be avoided where, as here, there is little to suggest that motor carrier/employer verifications will produce any measurable improvements in highway safety.

### CONCLUSION

OOIDA reiterates its support for a NRCME Registry program that will improve the driver qualification process by ensuring that those performing driver medical examinations and determining whether they should be medically certified to drive are themselves properly trained and qualified to make such determinations. OOIDA also supports safeguards that will eliminate fraud from the medical certification process. However, for all the reasons discussed above, OOIDA believes that the information collection obligation on employers now being proposed is not only unnecessary, but is not the most efficient way to achieve these goals. Placing the obligation to verify the validity of medical examiner's certificates on the SDLAs that are already verifying the certified status and entering the driver's information into CDLIS is not only more efficient as an administrative matter, but is more likely to catch those drivers who should not be on the road for medical reasons.

Respectfully submitted,

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