



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**

**James L. Oberstar**  
**Chairman**

**Washington, DC 20515**

**John L. Mica**  
**Ranking Republican Member**

David Heysfeld, Chief of Staff  
Ward W. McCarragher, Chief Counsel

James W. Coon II, Republican Chief of Staff

July 23, 2008

**SUMMARY OF SUBJECT MATTER**

**TO:** Members of the Committee on Transportation and Infrastructure

**FROM:** Committee on Transportation and Infrastructure Oversight and Investigations Staff

**SUBJECT:** Hearing on "FMCSA's Progress in Improving Medical Oversight of Commercial Drivers"

**PURPOSE**

The Committee will meet on Thursday, July 24, at 2:00 p.m. in room 2167 Rayburn House Office Building for a hearing on "FMCSA's Progress in Improving Medical Oversight of Commercial Drivers." The hearing will focus on the Federal Motor Carrier Safety Administration's (FMCSA) efforts to address eight outstanding National Transportation Safety Board (NTSB) recommendations and several congressional mandates to ensure that commercial driver's license (CDL) holders are medically fit to drive.

**BACKGROUND**

In 2007, National Highway Traffic Safety Administration (NHTSA) reported that "heart attack or other physical impairment of ability to act" was a "critical reason" in 3 percent (approximately 4,000) of all serious truck crashes in which the truck was assigned the critical reason for the crash.<sup>1</sup> Another 7 percent (5,000) were attributed to the driver being "actually asleep," which could have occurred for a variety of reasons including sleep apnea. Untreated sleep apnea causes a person to stop breathing repeatedly during sleep. If untreated, sufferers often experience daytime sleepiness and fatigue associated with significant levels of sleep disturbance. According to a recent study by the University of Pennsylvania and sponsored by the Federal Motor Carrier Safety

---

<sup>1</sup> Large Truck Crash Causation Study. According to NHTSA's estimate, there were approximately 120,000 fatal and injury crashes nationwide during the 33-month study period that involved at least one large truck; 141,000 large trucks were involved in those crashes. The study took place between April 2001 and December 2003.

Administration and the American Transportation Research Institute of the American Trucking Associations, 28 percent of commercial truck drivers have mild to severe sleep apnea.<sup>2</sup>

Over the past several years, NTSB has reported on serious flaws in the medical certification process of commercial vehicle drivers. NTSB has stated that these flaws can lead to increased highway fatalities and injuries for commercial vehicle drivers, their passengers, and the motoring public.

In 2001, NTSB recommended eight safety actions to improve the medical certification process, in response to a bus crash that killed 22 people in Louisiana. In 2003, NTSB placed CDL medical oversight on its "Most Wanted" list of safety improvements in the transportation industry. Although NTSB considers FMCSA's response to three of its recommendations "acceptable," all eight recommendations remain open and NTSB considers FMCSA's overall response to the issue of CDL medical oversight "unacceptable."

The recommendations were focused on the following five objectives:

- Establish a comprehensive medical oversight program for interstate commercial drivers.
- Ensure that examiners are qualified and know what to look for.
- Track all medical certificate applications.
- Enhance oversight and enforcement of invalid certificates.
- Provide mechanisms for reporting medical conditions.

### **Current Regulations for Medical Oversight of Commercial Drivers**

Commercial vehicle drivers who operate in an interstate capacity are required to obtain a valid medical examiners certificate indicating that he or she is physically qualified to drive a commercial vehicle. The regulations require the driver to carry a copy of this certificate and be able to produce it if asked in a roadside inspection.

Some medical conditions are cause for outright disqualification, including those specified by regulation. For example, the regulations unequivocally disqualify a person with total hearing loss. However, for many serious medical conditions, including cardiovascular disease, a medical examiner may determine that the condition is sufficiently stabilized and certify the driver. Ultimately, certification is at the professional discretion of a licensed medical examiner of whether the nature

---

<sup>2</sup> Pack, A.I., Dinges, D.F., and Maislin, G. A Study of Prevalence of Sleep Apnea Among Commercial Truck Drivers. Report No. DOT-RT-02-030. Federal Motor Carrier Safety Administration, U.S. Department of Transportation, May 2002.

and severity of an individual's condition will likely affect the driver's ability to operate a commercial motor vehicle safely and is decided, in accordance with policy, on a case by case basis.

According to the regulations, individuals who have lost limbs may still qualify to operate a commercial vehicle if they are able to pass a State-administered Skills Performance Evaluation. The driver must demonstrate that the impairment does not interfere with his ability to safely operate a commercial vehicle.

Current FMCSA regulations allow licensed medical examiners to perform DOT medical examinations. These include Doctors of Medicine (MD), Doctors of Osteopathy (DO) Physician Assistants (PA), and Doctors of Chiropractic (DC). There is currently no registry of certified medical examiners. Currently, there is no program to train examiners how to conduct DOT-physicals or to certify that examiners are qualified to perform these exams. FMCSA's website advises commercial drivers to use the Yellow Pages and the Internet to locate a medical examiner.

### **FMCSA Has Made Initial Efforts to Improve Medical Oversight of CDL Holders**

**Medical Review Board.** In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users, which required FMCSA to establish a Medical Review Board to provide "medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research." In October 2005, FMCSA announced the establishment of a Medical Review Board (MRB) to begin reviewing all Federal Motor Carrier Safety Regulation medical standards. The MRB has held quarterly public meetings and has worked with research panels to examine medical issues affecting commercial motor vehicle drivers in order to develop new science-based standards and guidelines regarding a variety of medical conditions.

**Linking the Medical Certificate with the CDL.** In December 1999, the Motor Carrier Safety Improvement Act (MCSIA) directed the Secretary to, "initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses."<sup>3</sup>

In November 2006, FMCSA issued a Notice of Proposed Rulemaking to merge information from the medical certificate into the CDL process. States are currently required to ensure that drivers meet FMCSA's standards for medical fitness, which they do through the licensing process. Some States require copies of the certificate, which they keep on file, but 25 States only require drivers to self-certify that they meet the Federal requirements. The proposed rule requires drivers to submit a copy of their most recent medical certificate to the State driver licensing agency. States will then enter information from the certificate into the Commercial Driver License Information System (CDLIS).<sup>4</sup> As a result, inspectors will be able to identify and fine drivers who do not have a current medical certificate on file. Also, States will downgrade a CDL if a certificate is more than 60 days out of date. According to FMCSA, the final rule will be issued soon.

---

<sup>3</sup> Public Law 106-159, The Motor Carrier Safety Improvement Act.

<sup>4</sup> The Commercial Driver License Information System contains data on commercial drivers as entered by state drivers licensing agencies. The system, accessible by motor carrier inspectors, enables inspectors to access information regarding licensing status.

**Establishing an Examiner Registry.** In August 2005, SAFETEA-LU<sup>5</sup> established a legislative mandate for the Secretary, acting through the Federal Motor Carrier Safety Administration to, “establish and maintain a current national registry of medical examiners that are qualified to perform examinations and issue medical certificates.” FMCSA is developing a National Registry of Certified Medical Examiners (NRCME). The NRCME will require medical examiners to receive training and pass a certification test before being listed on the registry. The NRCME program is designed to produce trained, certified medical examiners who fully understand the medical standards in the Federal Motor Carrier Safety Regulations (FMCSRs). Medical examiners will be expected to understand how the standards relate to the mental and physical demands of operating a commercial motor vehicle. Once the NRCME program is established, FMCSA will require all interstate commercial drivers to obtain their medical certificates from a medical examiner listed on the NRCME. FMCSA estimates that approximately 40,000 medical examiners will be necessary to service the motor carrier industry. According to FMCSA, a Notice of Proposed Rulemaking (NPRM) has been drafted and will be issued soon.

Interest in certifying medical examiners to evaluate interstate commercial motor vehicle drivers dates back to at least 1978 when the National Highway Traffic Safety Administration commissioned a feasibility study on the issue. In 1999, MCSI did not mandate that FHWA, or its successor<sup>6</sup> create a registry. Members of the Committee on Transportation and Infrastructure believed that FHWA was creating a registry voluntarily in fiscal year 2000.<sup>7</sup> At that time, the Committee “endorsed” the “prompt establishment” of such a program, asserting that, “a registry of such examiners will provide a reliable, national listing of medical professionals qualified to perform driver examinations.”<sup>8</sup>

## Several NTSB Recommendations Remain Outstanding

**No Mechanism to Track Prior Applications for Medical Certification.** FMCSA has still not created a process to review or track medical certification examinations or decisions. The lack of such a mechanism enables drivers with serious medical conditions to “doctor shop.” Drivers with disqualifying medical conditions can go from doctor to doctor until they find one who will certify them as medically fit to operate a commercial vehicle. That doctor may not be aware of the DOT restrictions regarding certain medical conditions or the driver may not disclose that condition during the exam. NTSB has recommended that FMCSA set up a means for every prior application for a medical certification to be recorded and reviewed so that medical examiners can determine whether a driver they are examining has been previously denied a medical certificate.

**Limited Protection Against Falsified Certificates.** NTSB is also concerned that because the medical certificate form is not a controlled document, has no standard format, and can be freely reproduced, that there needs to be a means for States and inspectors to verify the certificates’

---

<sup>5</sup> Public Law 109-59, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Section 4116.

<sup>6</sup> Before FMCSA was formally created as a separate agency in 1999, motor carrier safety issues were managed by the Office of Motor Carriers within the Federal Highway Administration (FHWA).

<sup>7</sup> September 1999 Report by the Transportation and Infrastructure Committee to accompany H.R. 2679, the Motor Carrier Safety Act of 1999. “FHWA’s Office of Motor Carriers intends to establish a voluntary medical registry program in fiscal year 2000.”

<sup>8</sup> Ibid.

authenticity. NTSB believes, however, that FMCSA's proposed rule will allow inspectors to more easily determine whether a driver has a medical certificate and whether that certificate is still current.

### GAO Study on Medical Oversight of Commercial Drivers

In March 2007, the Committee requested that GAO perform data matching with federal medical disability program databases to determine the number of current CDL operators receiving benefits for medical disability. While the fact that a driver qualifies for full medical disability pay does not mean he or she is medically unqualified to drive a commercial vehicle, it may be an indication that the individual has a serious medical condition. If such a condition exists, the individual should be evaluated appropriately during the medical certification process and monitored accordingly. It should be noted that not all serious medical conditions interfere with the safe operation of a commercial vehicle.

GAO's initial data match found that about 563,000 individuals – or 4 percent of all drivers in the DOT database<sup>9</sup>, were receiving full medical disability. We asked GAO to investigate a sample of these cases and report to the Committee on whether these individuals had been medically reviewed in accordance with FMCSA's regulations and advisories. GAO profiled 15 of the most extreme cases which they believed illustrated where weaknesses in the medical oversight program enabled drivers to continue driving without appropriate medical oversight. The 15 cases are not representative of the commercial driver population or that portion of the driver population receiving medical disability.

#### Sample GAO cases:

- A Maryland bus driver with an aneurysm of the aorta and valvular heart disease used a forged medical certificate to obtain a CDL just 3 months after being declared completely disabled.
- A Virginia driver with an amputated leg was deemed medically fit after demonstrating that he could push the doctor across the room in a rolling chair.
- A Florida bus driver with chronic obstructive pulmonary disorder stated that he "occasionally blacks out and forgets things."
- A Minnesota driver with epilepsy had an agreement with his doctor that he would not drive a commercial vehicle if he felt "loopy."

In 10 of the 15 cases, the drivers either had no medical certificates or had fraudulent certificates. One driver did not disclose a medically disqualifying condition. In four cases, the medical examiners were not familiar with the requirements for driver qualifications – one doctor did not know complete hearing loss disqualifies a commercial driver. Another did not know about the requirement for a Skill Performance Evaluation for an amputee.

GAO did not attempt to assess the propriety of FMCSA's standards for any medical conditions.

---

<sup>9</sup> FMCSA's database includes approximately 13 million records. Because it is an archival database, many records represent inactive CDLs, or CDLs that have expired.

WITNESSES

**Dr. Mitchell A. Garber, M.D., M.P.H., M.S.M.E.**  
Medical Officer  
Office of Research and Engineering  
National Transportation Safety Board  
Atlanta, GA

**Mr. Gregory D. Kutz**  
Managing Director  
Forensic Audits and Special Investigations  
United States Government Accountability Office  
Washington, DC

**Ms. Rose A. McMurray**  
Chief Safety Officer  
Federal Motor Carrier Safety Administration  
United States Department of Transportation  
Washington, DC