



## National School Transportation Association

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# COMMENTS

## **Docket No. FMCSA-2008-0363 National Registry of Certified Medical Examiners**

The National School Transportation Association appreciates the opportunity to comment on the Notice of Proposed Rulemaking concerning the National Registry of Certified Medical Examiners.

NSTA is a not-for-profit association of private businesses providing transportation services to public school districts and private schools across the country. Our members range from single bus owners to large multi-national corporations operating thousands of school buses in many states. Private carriers operate about a third of the nation's school bus fleet. All are committed to providing safe, efficient and economical transportation for America's school children.

NSTA commends the agency for addressing the qualifications and expertise of the medical personnel who conduct physical examinations for commercial drivers. While we believe that the incidence of unqualified school bus drivers is low, due in large part to the much greater level of daily control exercised by employers of school bus drivers compared to employers of long-distance truck drivers, we also recognize that our drivers—and all of us—share the roads with commercial drivers who may not meet qualification requirements. This increases the risk for all of us.

NSTA wants to be sure, however, that FMCSA understands the potential effect of this rulemaking on school bus carriers. To that end, we make the following points:

- 1) While the NPRM states that the requirement to use a certified examiner applies only to interstate drivers subject to the FMCSRs, all but two states adopt the FMCSRs for intrastate drivers as well. Therefore, the estimate of 3 million annual examinations that the agency uses to determine the necessary number of certified examiners is significantly understated. In addition, all school bus drivers are required by most states to have a physical examination annually, not biennially. This doubles the number of exams required for school bus drivers over your estimates.
- 2) In its cost-benefit analysis, FMCSA assumes that there is no cost to motor carriers from this rulemaking; all costs will be borne by drivers. This may be true in the trucking industry, but it most definitely is not true in the school bus industry. Not

only do employers pay the cost of physical exams for school bus drivers, but they also pay drivers for the time they spend in traveling to the exam site and in undergoing the examination. Therefore, any increase in the cost of physicals and in the time required to travel to a certified examiner will accrue to employers, the majority of whom are small businesses. An informal survey of NSTA members indicates that costs of current DOT physicals range from \$55-\$75 in urban areas, and from \$110-\$120 in rural areas where there is less competition. The national average hourly starting wage for school bus drivers is more than \$14. At three hours per physical exam, including travel and waiting time, the cost to school bus companies for each exam currently ranges from \$100-\$170.

- 3) The agency proposes to phase in the requirement to use a certified examiner, starting with large companies that employ more than 50 drivers, under the assumption that these companies are located in urban areas where the incidence of certified examiners will be higher. Most large school bus companies operate facilities in multiple locations, many of which are small and may be in low-population areas. For example, a company that employs 2,000 drivers overall may have individual locations where only twenty drivers are employed. Those small operations would fall into the second phase of implementation if considered separately, but will be pulled into the earlier phase because they are part of a larger company. This will cause a hardship for countless rural school bus operations.
- 4) While school bus driver hiring, training, and licensing is a year-round activity for school bus carriers, it peaks in a short period of time during the summer when companies are hiring new drivers for the start of school. On average, 20% of a carrier's driver force is new each year, and most of these drivers are hired and licensed in August. If the pool of available medical examiners in a given area is insufficient to handle the demand for physical exams during this peak period, it will cause a serious impediment to our ability to deliver school bus service when schools begin in the fall.

In order to address these concerns, NSTA recommends the following:

- 1) Cap the amount by which a certified medical examiner can increase physical exam fees as a result of certification. This would guard against an examiner's exploiting a lack of competition in rural areas where there may be few—or only one—certified examiner. In addition, add a demonstrated pattern of price gouging to the list of grounds for removal of an examiner's certification.
- 2) Phase in implementation by population density rather than by company size. Require drivers employed in larger population centers, where the number of certified examiners is likely to be greater, to meet the first deadline and those in areas of lower population density to meet the second deadline. Alternatively, consider facility size rather than company size. That would allow locations within a large company where fewer than 50 drivers are employed to fall into the second phase.

- 3) Provide a safety valve for carriers and drivers where there is no certified medical examiner within a reasonable distance of the carrier's location, or when the number of certified examiners within a reasonable distance is insufficient to provide examinations within a reasonable period of time. It is not reasonable, for example, for a driver to travel 50 miles for an exam, or to wait six weeks for an appointment. Adding a 100-mile round trip to the time already required for a physical exam would make a driver unavailable for at least half a day, requiring the carrier not only to pay the driver's wages and exam costs, but also to pay for a substitute driver to cover the missed runs. Similarly, forcing a driver applicant to wait six weeks for an appointment with a certified examiner before he can be licensed means that the carrier must pay the applicant while he waits even though he cannot drive, or the applicant will find another job. NSTA recommends that FMCSA address these consequences of too few certified examiners through a waiver process. Allow a carrier to apply for a waiver to use a state-approved medical examiner in lieu of a certified examiner by submitting documentation to show that the requirement creates an undue hardship on the carrier and the driver or driver applicant. We also strongly recommend that FMCSA monitor the registration of certified examiners as the deadlines for implementation approach, and extend either or both deadlines if it appears that the number of registrations will fall short of the goal.

Thank you for the opportunity to comment on this proposal. For further information, please contact our Industry Specialist, Robin Leeds, at 800-560-1645 or [rleeds@yellowbuses.org](mailto:rleeds@yellowbuses.org).