

**Federal Motor Carrier Safety Administration  
Notice of Proposed Rulemaking on the Establishment of a National  
Registry of Certified Medical Examiners (NRCME)  
(Docket No. FMCSA-2008-0363)**

*Submitted by:*  
**American Trucking Associations, Inc.  
950 N. Glebe Rd.  
Arlington, Virginia 22203**

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*Primary contact:*  
**Christina Cullinan, Director, Workplace & Fleet Safety  
Safety, Security & Operations Department  
(703) 838-1905**

The American Trucking Associations, Inc. (ATA) is pleased to submit the following comments to Federal Motor Carrier Safety Administration (FMCSA) in response to the Agency's notice of proposed rulemaking (NPRM) which would establish and maintain a National Registry of Certified Medical Examiners (NRCME). The NPRM would also require that all medical examiners (MEs) who conduct medical examinations for interstate commercial motor vehicle drivers be trained and certified to effectively determine whether a commercial motor vehicle driver's health meets FMCSA's medical standards.

**ATA Position**

As the national trade association representing the American trucking industry,<sup>1</sup> ATA is vitally interested in matters affecting the nation's trucking fleet, including commercial motor vehicle (CMV) drivers' fitness-for-duty. The NRCME was endorsed by ATA's Executive Committee and Board of Directors as part of the association's comprehensive Safety Taskforce recommendations. Our policy support of the NRCME is contingent upon the following criteria: 1) the ME certification requirements should not be overly burdensome 2) the supply of CMEs must be sufficient in all areas of the country and 3) the system must allow for a sufficient level of information-sharing.

A centralized database of MEs that are certified by FMCSA to conduct DOT physical exams will likely improve the physical health and fitness of the nation's commercial motor vehicle drivers which would ultimately result in safer highways. However, ATA recommends that FMCSA address a number of issues before finalizing

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<sup>1</sup> ATA is a united federal of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2000 trucking companies and industry suppliers of equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

this rule. Specifically, we are seeking modifications to the rule that we believe would result in a more efficient and cost-effective means of structuring and implementing the national registry.

### **Issue I - Cost-Effective Training and Testing Delivery to Medical Examiners**

In the Regulatory Evaluation of the NPRM, three alternatives for training, testing and credentialing MEs were considered: a public-private partnership; the FAA's Medical Examiner Program; and, the Department of Transportation's program requirements for Medical Review Officers (MROs). While all three models are worthy of consideration, ATA believes that a public-private partnership model offers the most flexibility and cost-effectiveness to the ME community. However, ATA would strongly urge FMCSA to consider delivery of training and testing via a web-based program over a traditional classroom model. Web-based training and testing would reduce travel and certification costs to MEs. As a result, MEs may be less likely to pass these costs along to the driver and/or motor carrier in the form of higher DOT physical exam fees.

However, CMEs may still seek to recoup their training, testing and certification costs by charging higher fees for the DOT physical exam. DOT physical exam costs to CMV drivers in remote locations could be over and above those administered to CMV drivers within larger, metropolitan areas. CME's operating in rural locations may seek to regain their investment in training and certification over a smaller base of drivers by imposing higher DOT physical exam fees. Conversely, CMEs in densely populated areas would be able to offer the DOT physical exam at a lower rate due to area competition among CMEs.

The NPRM also states that the Agency is considering accreditation of its ME certification program and, at the same time, is seeking qualitative, cost-efficient alternatives to accreditation. As the Agency noted in the NPRM, accreditation is a time-consuming process. It is also costly and can be quite burdensome. If accreditation would mean a substantial delay in the implementation of the NRCME program, ATA would oppose it. Instead, we recommend that the Agency consider having its ME training and testing program subject to a third-party certifying body. Or more simply, self-certify its credentialing program through periodic program evaluation/audits conducted by a designated oversight authority.

### **ATA Recommendation**

FMCSA should devise a comprehensive credentialing curriculum for the training and testing of ME's which ensures that the ME is knowledgeable and capable in the application of the FMCSA's medical regulations to CMV driver medical certification. Any such program should be provided to MEs through the most cost-effective means possible—so as not to deter them from seeking certification. Web-based training and testing should be the preferred delivery method to CME candidates.

## **Issue II - Availability of Certified Medical Examiners to Service the CMV Driver Population**

ATA does not support the Agency's phased-in implementation approach to medically qualifying drivers through the national registry. Under the proposed rule, CMV drivers of larger carriers with 50 drivers or more would be required to access a CME from the NRCME two years after the effective date of the final rule. For smaller motor carriers with less than 50 drivers, the compliance date is three years after the rule's effective date. We believe that is unfair to require drivers of large motor carriers to bear the costs of compliance for one year longer than drivers of smaller motor carriers.

ATA is equally concerned about the availability of CMEs throughout the country, particularly in rural areas and those locations that are already underserved by DOT physical examiners. We believe that CMV drivers employed by motor carriers in remote areas of the country could have limited access to a CME, which would require these CMV drivers to travel considerably farther than those situated at or near a metropolitan location. Extensive travel, either within a large state or to another state, to become medically qualified to drive will likely result in a loss of wages/revenue to the CMV driver and to the motor carrier, respectively.

Additionally, unless the certification of MEs is as seamless and cost-effective as possible, ATA believes that many current MEs will opt out of performing DOT physical exams. For example, one of the largest clinics located in the state of Washington announced that, after 20 years, it would no longer provide DOT physical exams to CMV drivers. This was largely a business decision made by clinic practitioners in anticipation of the implementation of the NRCME. They believe that efforts to become certified and listed on the NRCME in order to provide DOT physicals will be burdensome, costly and therefore, not necessarily worth the effort.

### **ATA Recommendation**

Geographical challenges may prevent CMV drivers from obtaining a DOT physical exam from a CME, particularly if the certification process and its associated costs will discourage MEs from seeking certification. For these reasons, FMCSA should provide a credentialing process that is not burdensome and costly. Further, the Agency should ensure that the Registry is sufficiently populated with CMEs throughout the U.S. before imposing requirements on drivers/motor carriers to access a CME from the Registry.

## **Issue III - Medical Information-Sharing**

Perhaps one of the most significant problems with the medical qualification of CMV drivers is that many of them never see the same ME more than once or twice. When a CMV driver visits an ME for the first time, the ME knows nothing about the CMV driver's medical history other than what the driver self-reports. This is particularly true of those CMV drivers who have medical issues that could impact their medical qualification—such individuals usually have reason to withhold such pertinent health information.

For these reasons, ATA believes that CMEs, (and only CMEs) must have access to a CMV driver's previous medical information/history through the NRCME website. They must have the capacity to check electronically within the Registry all previous CME medical qualification forms of the driver, either prior to or during the DOT physical exam. By doing so, the CME charged with medically evaluating a driver would have enough of the CMV driver's relevant health information to make a sound medical determination as to the driver's fitness to operate a commercial motor vehicle.

Providing the CME with a CMV driver's medical history would allow the CME to more easily detect disqualifying illnesses not reported by the CMV driver, including pre-existing conditions that would impact a driver's fitness-for-duty. Additionally, the ability of CMEs to obtain the DOT physical exams performed by other CMEs would serve as a built-in quality-assurance mechanism: holding all CMEs on the National Registry to the highest standard of care when qualifying a CMV driver.

On initial exams performed in accordance with this rulemaking, FMCSA should require that CMV drivers provide the ME with his/her previous medical history records. Or, the CMV driver should, as a condition of medical qualification, explicitly authorize his/her previous treating physician and CME to freely consult and exchange the CMV driver's medical health information.

#### **ATA Recommendation**

FMCSA should provide CMEs access through the NRCME website to any or all previous DOT exams contained in the Registry that correspond with the driver to be examined. Without this ability, CMEs will not be able to make comprehensive medical evaluations of the CMV driver.

#### **Issue IV - NRCME Website**

The NRCME website should serve as THE primary resource in the administration and oversight of the Agency's medical program for CMV drivers, motor carriers, CMEs, enforcement personnel and, for the FMCSA's Chief Medical Examiner. The construction, operational management and organization of such a website will likely be a large and fairly complex undertaking.

#### **ATA Recommendation**

ATA suggests that the Agency solicit competitive bids from third-party vendors that have demonstrated capability and experience to build and maintain the NRCME website. Any such contractor chosen for this project should be tasked with monitoring and updating the National Registry to reflect daily CME status additions/changes, new medical standards, medical guidance and providing technical support. In addition to the data elements referenced in the NPRM, the NRCME website should also contain a secure, centralized repository for the storage of completed CMV driver DOT physical exams. Such reports would be centrally located, secure, with access authorized only to motor carriers, CMEs, state licensing agencies and to the FMCSA. After the three year

record retention period (currently proposed by the NPRM), the records of the CMV drivers' DOT physical exams would be purged.

### **Issue V - Electronic Transmittal of a Uniform Medical Examination Form**

The burden of qualifying CMV drivers and ensuring that they meet or exceed FMCSA's medical standards falls upon the individual trucking companies and MEs that perform DOT physical exams. The qualification process has met with several challenges, including accurate documentation of the driver's medical qualification in handwriting, on a paper long form.

In some instances the actual DOT physical exam is quickly performed by an ME who lacks a comprehensive understanding of the FMCSA's medical qualification regulations or the job requirements of CMV drivers. Subsequently, DOT physical exam results can be inconsistent and/or inaccurate which increases the liability of all concerned parties and compromises highway safety. In many instances, motor carriers will request the CMV driver's long form from the ME to double-check it for errors and or omissions.

The paper-and pencil method of documenting the CMV driver's long form is challenging in this context. It is burdensome and often times results in incomplete DOT physical exams and illegible documentation on the CMV driver's long form. Further, storage of this information at CMEs' offices throughout the country will make it extremely difficult, if not impossible, for the CME performing the exam to review a CMV driver's previous medical history. The CME will be, in most cases, totally dependent upon the CMV driver to give truthful responses to questions regarding medical history and potentially disqualifying medical conditions. As a result, a CMV driver may be given a DOT medical certificate who does not meet the FMCSA's medical regulations and/or medical advisory criteria.

### **ATA Recommendation**

In addition to soliciting competitive bids for the construction and administration of the primary, larger-scaled NRCME website, ATA suggests that the Agency consider soliciting competitive bids for the construction of a fully-integrated data entry and document storage system that provides an efficient method for applying and monitoring the components of the DOT physical exam as required under Section 391.43. Such a web-based application would be housed within the larger NCRME website and would allow for:

- Efficient management of and access to CMV driver exam records by the CME, the state licensing agency, law enforcement personnel and the employing the motor carrier through a secure, encrypted web application within the NRCME website
- Easy customization to changes in FMCSA's medical regulations and guidance
- Uniformity among medical forms
- Documents to be legible, secure and easily retrievable

- A complete physical: logic within such a system should not allow a CME to certify a driver unless all required components of the DOT medical exam form are complete
- The ability to review prior CME examinations from the database in order for the CME, who is evaluating a driver, to more adequately assess the driver's fitness-for-duty
- Electronic submission to state driver licensing agencies and to the FMCSA Chief Medical Examiner
- Electronic access to the CMV driver's current long form by motor carriers that request it in lieu of a paper long form requested directly from the ME
- The ability of the state/carrier/driver to be electronically notified of the renewal of the DOT driver's medical certificate renewal
- Authorized users only of the database to generate statistical reports on all components of medical exam information AND to allow for an analysis/audit of CMEs compliance with FMCSA's certification standards to deter fraud

### **Conclusion**

ATA reiterates its support for the creation of a National Registry for Certified Medical Examiners. However, any such program must also take into account its impact on motor carriers and their drivers with respect to cost-effectiveness and geographic availability of CMEs. Further, any final rule should include the following:

- Use of web-based program delivery to train and test examiner candidates that will keep costs across-the-board to a minimum
- Implementation of the final rule to begin only after the NRCME is sufficiently populated with CMEs throughout the country
- CME's capability/authority to electronically access a CMV driver's previous DOT medical exam(s) or medical history in order to make a comprehensive medical assessment of the driver's health
- Solicitation of competitive bids from third-party vendors that have a demonstrated capability and experience to build and maintain the NRCME website
- Solicitation of competitive bids for the construction of a fully-integrated, secure, data entry and document storage system that allows authorized users an efficient method for applying and monitoring the components of the DOT medical examination. Such a web-based application would be housed within the larger NCRME website
- Electronic access to a CMV driver's current long form by motor carriers that request it

ATA thanks FMCSA for the opportunity to provide comments on the proposed rule and welcomes the opportunity to further discuss our recommendations.

