

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Parts 390 and 391****[Docket No. FMCSA–2008–0363]****RIN 2126–AA97****National Registry of Certified Medical Examiners****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes to establish and maintain a National Registry of Certified Medical Examiners (NRCME) and to require that all medical examiners who conduct medical examinations for interstate commercial motor vehicle drivers complete certain training concerning FMCSA physical qualification standards, pass a test to verify an understanding of those standards, and maintain competence by periodic training and testing. Following establishment of the NRCME and a transition period, FMCSA would accept as valid only medical examiners' certificates issued by medical examiners listed on the NRCME. The FMCSA is developing the NRCME program to improve highway safety and driver health by requiring that medical examiners be trained and certified to determine effectively whether a commercial motor vehicle driver's health meets FMCSA standards. The program implements requirements in 49 U.S.C. 31149 and supports FMCSA's goal to improve safety and reduce fatalities on our Nation's highways.

DATES: Send your comments on or before January 30, 2009.**ADDRESSES:** You may submit comments [identified by DOT Docket ID Number FMCSA–2008–0363] by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process,

see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476) or you may visit <http://DocketInfo.dot.gov>.

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT:

Linda Phillips, Physical Qualifications Division (MC–PSP), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (202) 366–4001. E-mail: linda.phillips@dot.gov.

SUPPLEMENTARY INFORMATION: This document is organized as follows:

- I. Legal Basis for the Rulemaking
- II. Background
 - A. Role of Medical Examiners
 - B. Prior Developments Related to Medical Examiners
- III. General Discussion of the Proposals
 - A. Existing Medical Requirements and the Role of the Proposed NRCME Program
 - B. Major Elements of the Proposed NRCME Program
 - C. Medical Examiner Training
 - D. Medical Examiner Certification Testing
 - E. Listing on the NRCME

F. Implementation of the NRCME Program
G. Changes in Medical Examination Procedures

H. Removal from the NRCME and Appeal Process

IV. Section-by-Section Discussion of the Proposals

- A. Section 390.5, Definitions
- B. Subpart D of part 390, National Registry of Certified Medical Examiners
 1. Section 390.101, Scope
 2. Section 390.103, Eligibility requirements for medical examiner certification
 3. Section 390.105, Medical examiner training programs
 4. Section 390.107, Medical examiner certification testing
 5. Section 390.109, Issuance of the FMCSA medical examiner certification credential
 6. Section 390.111, Requirements for continued listing on the NRCME
 7. Section 390.113, Reasons for removal from the NRCME
 8. Section 390.115, Procedure for removal from the NRCME
 9. Appendix A to part 390, Medical examiner application data elements
- C. Section 391.42, Schedule for use of medical examiners listed on the National Registry of Certified Medical Examiners
- D. Section 391.43, Medical examination; certificate of physical examination

V. Regulatory Analyses and Notices

I. Legal Basis for the Rulemaking

The primary legal basis for the National Registry of Certified Medical Examiners (NRCME) program comes from 49 U.S.C. 31149, enacted by section 4116(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109–59, 119 Stat. 1726 (Aug. 10, 2005) (SAFETEA–LU). Subsection (d) of this section provides that:

The Secretary, acting through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

(2) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued under this section;

(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners; and

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles.

In addition to implementing the provisions in subsection (d), which specifically directs the establishment of a national registry of qualified medical examiners, FMCSA proposes to implement through this rulemaking certain other provisions from new section 31149 related to a national

registry. First, subsection (c) requires FMCSA, with the advice of the Medical Review Board and Chief Medical Examiner (established by subsections (a) and (b), respectively), to develop, as appropriate, specific courses and materials for training required for medical examiners to be listed on a national registry. Medical examiners would be required to undergo initial and periodic training and testing in order to be listed on the national registry. (Section 31149(c)(1)(A)(ii) and (D)). Second, FMCSA would also implement requirements for medical examiners to transmit to FMCSA on a monthly basis certain information about completed Medical Examination Reports of commercial motor vehicle (CMV) drivers. (Section 31149(c)(1)(E)). Third, the proposed rule would require medical examiners to provide to FMCSA copies of Medical Examination Reports and medical examiner's certificates within 48 hours of the request, to enable FMCSA to investigate patterns of errors or improper certification by medical examiners, in accordance with 49 U.S.C. 31149(c)(2). Finally, the proposed rule would establish the procedures and grounds for removal of medical examiners from the national registry, as authorized by section 31149(c)(2) and (d)(2).

SAFETEA-LU also revised the statutory minimum standards for the regulation of CMV safety to ensure that medical examinations of CMV drivers are "performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation * * * is established, are listed on such registry." (49 U.S.C. 31136(a)(3), as amended by section 4116(b) of SAFETEA-LU). The statute continues to require FMCSA, in developing its regulations, to consider both the effect of driver health on the safety of CMV operations and the effect of such operations on driver health (49 U.S.C. 31136(a)).

In addition to its general rulemaking authority in 49 U.S.C. 31136(a), FMCSA is specifically authorized by section 31149(e) to "issue such regulations as may be necessary to carry out this section." Authority to establish and implement the NRCME program has been delegated to the Administrator of FMCSA. (Section 1.73(g) of Title 49, Code of Federal Regulations (49 CFR)).

II. Background

A. Role of Medical Examiners

The FMCSA's primary mission is to reduce crashes, injuries, and fatalities

involving large trucks and buses. In carrying out its safety mandate, FMCSA develops and enforces regulations that enhance safety in the operation of CMVs. The FMCSA proposes to develop the NRCME program to improve highway safety and driver health by requiring that medical examiners be trained and certified to determine effectively whether an interstate CMV driver meets FMCSA physical qualification standards under 49 CFR part 391. Medical examiners are health care professionals who conduct the medical examinations as specified in subpart E of part 391.

With limited exceptions, all drivers who operate CMVs, as defined in 49 CFR 390.5, in interstate commerce must comply with the qualification requirements of part 391 (§ 391.1). Each driver subject to the physical qualification requirements must be examined and certified by a medical examiner, as defined in § 390.5, at least once every 2 years. For certain drivers, such as those with severe cases of hypertension or other acute medical conditions, more frequent medical reexamination by a medical examiner may be required to determine whether the driver can still be certified.

A medical examiner documents the results of the examination on a Medical Examination Report specified in § 391.43(f) (also referred to as the "long form"). If the medical examiner determines that a driver is physically qualified in accordance with § 391.41(b), the examiner certifies that the driver meets the physical qualification standards by completing a medical examiner's certificate that complies with § 391.43(g) and (h). This certificate also contains check boxes to indicate whether the driver is subject to any restrictions while operating a CMV, such as wearing corrective lenses or a hearing aid, or whether the driver has been granted a medical variance requiring the certificate to be accompanied by a medical exemption document or a skill performance evaluation (SPE) certificate.

B. Prior Developments Related to Medical Examiners

National Highway Traffic Safety Administration (NHTSA) Study. Interest in certifying medical examiners to evaluate interstate CMV drivers dates back to 1978, when NHTSA commissioned a feasibility study on the issue [Feasibility of Certifying (Designating) Medical Examiners for Interstate Commercial Vehicle Drivers, National Highway Traffic Safety Administration, Final Report—June

1978].¹ This study addressed the primary weakness in the overall medical program for CMV drivers—the lack of understanding by medical examiners of the relationship between the driver's physical condition and the task of operating CMVs.

Amendment of the Definition of "Medical Examiner." In 1992, the Federal Highway Administration (FHWA) (which was responsible for motor carrier safety until the fall of 1999) amended the Federal Motor Carrier Safety Regulations (FMCSRs) to expand the definition of "medical examiner" to allow other medical professionals such as physician assistants, advanced practice nurses, and doctors of chiropractic, in addition to medical doctors and doctors of osteopathy authorized previously, to perform medical examinations of CMV drivers (57 FR 33276; July 28, 1992). As a result of this action, the number of potential medical examiners increased. All medical examiners were required to be licensed, registered, or certified by their States to perform physical examinations, and to be proficient in the use of, and to use, medical protocols necessary to perform the examination in accordance with the FMCSRs.

Merger of Medical Certification and Commercial Drivers License (CDL) Processes Negotiated Rulemaking. In 1996–97, FHWA convened a negotiated rulemaking committee to consider merging the medical certification with the CDL function. Several of the proposals submitted included models for a national registry and for certification of medical examiners. (See 61 FR 18713, April 29, 1996, and 61 FR 38133, July 23, 1996.) However, the negotiated rulemaking committee was unable to reach a consensus and no rulemaking relating to a national registry resulted.

Motor Carrier Safety Improvement Act of 1999. When the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748 (Dec. 9, 1999)), established FMCSA in the Department of Transportation (DOT), the idea of a national registry was again raised. A Senate version of MCSIA directed the Secretary of Transportation to initiate rulemaking to establish a national registry of preferred medical providers. However, the enacted legislation did not retain this language. MCSIA did direct the Secretary to

¹ Because of its age, FMCSA is not relying on this study in developing the proposed rule. However, because it is only available from the National Technical Information Service (NTIS Order No. PB-293 809/0), a copy has been placed in the docket solely for the limited purpose of convenient access by interested parties.

initiate rulemaking for the required medical certification to be made part of the CDL. The FMCSA published an NPRM to accomplish this combination on November 16, 2006 (71 FR 66723). The NPRM comment period closed on February 14, 2007, and a final rule is in development.

National Transportation Safety Board (NTSB) Public Hearing. The idea of a national registry was again discussed during a January 21, 2000, public hearing conducted by the NTSB concerning a 1999 multiple-fatality crash. It was determined that the CMV driver in this incident had several life-threatening and disqualifying medical conditions. The NTSB concluded that medical examiners might not have the knowledge and information necessary to make appropriate decisions about driver fitness. In its "Highway Accident Report, Motorcoach Run-Off-The-Road Accident, New Orleans, Louisiana, May 9, 1999" (NTSB/HAR-01/01, PB 2001-916201, Notation 7381, August 28, 2001), the NTSB recommended that FMCSA "develop a comprehensive medical oversight program for interstate drivers * * *" that includes requirements to ensure "individuals performing medical examinations for drivers are qualified to do so and are educated about occupational issues for drivers." (Recommendations H-01-017 through H-01-024)

In 2003, NTSB added these recommendations for medical certification of commercial drivers to its "Most Wanted" list of Transportation Safety Improvements. In subsequent updates to this list, NTSB provided additional details regarding the recommendations. According to the 2008 NTSB Most Wanted Transportation Safety Improvements brochure, FMCSA should act to prevent medically unqualified drivers from operating commercial vehicles. This task includes: Establishing a comprehensive medical oversight program for interstate commercial drivers; ensuring that examiners are qualified and know what to look for; tracking all medical certificate applications; enhancing oversight and enforcement of invalid certificates; and providing mechanisms for reporting medical conditions.

SAFETEA-LU. Congress included a number of provisions in SAFETEA-LU to improve the quality of the medical certification of CMV drivers. Among those provisions is the establishment of a Medical Review Board and appointment of a Chief Medical Examiner to advise FMCSA on the qualifications and training for medical examiners to be listed on a national

registry. When the prescribed provisions are fulfilled, all required medical examinations of CMV drivers would be performed only by trained and qualified medical examiners listed on the national registry, and their performance would be monitored by FMCSA. S. Rep. No. 109-120, at 2, 22 (2005) and H. R. Rep. No. 109-12, at 434 (2005).

Public meetings and listening sessions. During FMCSA's 2005 and 2006 public meetings and listening sessions,² a number of medical providers and industry representatives expressed concern about the idea of an NRCME, and about the current quality of the CMV driver medical examinations. Representatives provided anecdotal evidence about drivers qualified by health care providers who were clearly unaware of the medical standards, guidelines, and other information needed to properly determine whether a driver can safely operate a CMV.

Informal State analyses. In August 2005, informal FMCSA staff contacts with the State of California Department of Motor Vehicles (CDMV) revealed that of the 66,000 Medical Examination Reports received by CDMV between January and June of 2005, 10% of the drivers were issued certificates as physically qualified by the medical examiner even though the Medical Examination Report indicated that the driver should not have been qualified or should have received a medical certificate valid for a shorter time period than the certificate the medical examiner granted to the driver. Additionally, information obtained in July 2005 from the State of Indiana's CDL program indicated a general finding of mistakes on 28% of all Medical Examination Reports collected. These findings may be an indicator that some unqualified drivers are inappropriately being determined physically qualified.

III. General Discussion of the Proposals

A. Existing Medical Requirements and the Role of the Proposed NRCME Program

The physical qualification standards and medical examination process currently required under §§ 391.41 and 391.43 apply to drivers who operate CMVs, as defined in § 390.5. In other words, the medical requirements apply to drivers who operate: Trucks with a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of 10,001

pounds or more; passenger-carrying vehicles (either nine or more passengers for compensation or 16 or more passengers not for compensation); and vehicles used to transport hazardous materials that require placards on the vehicle.³ After a transition period to establish the NRCME program, this proposal would require interstate drivers of CMVs who are required by the FMCSRs to receive medical examinations to obtain them from examiners listed on the NRCME. Under current rules, all such CMV drivers are required to obtain medical certification at least once every 2 years, although drivers with certain medical conditions must obtain medical certification more frequently. This requirement is unchanged by the proposed rule.

The Agency estimates that there are 3.1 million interstate CDL holders currently working as CMV drivers, and 1.3 million interstate CMV drivers who are not required to hold a CDL. The proposed rule applies to both categories, and would therefore apply directly to approximately 4.4 million active interstate commercial drivers.

All CMV drivers must be certified at least every 2 years, and as previously mentioned, some drivers are certified more frequently. For example, some carriers contract with occupational health clinics to examine the drivers they employ, and these carriers often insist that newly-hired drivers receive an examination from one of their medical examiners, even if the newly-hired driver already has a current valid medical certification. In addition, the FMCSRs advise medical examiners that drivers with certain medical conditions should receive more frequent monitoring, and drivers who have these conditions may be required to be examined more frequently than every 2 years (for example, 49 CFR 391.43(f) and instructions on high blood pressure and neurological disorders). Finally, drivers whose ability to perform their normal driving duties has been impaired by injury or disease are required by § 391.45 to be reexamined before resuming such duties. The FMCSA estimates that these exceptions to the

³ There are several limited exceptions and exemptions from the medical certification requirement provided by §§ 390.3(f), 391.2, 391.62, and 391.68(c). However, future implementation of section 4136 of SAFETEA-LU limits the exception in § 390.3(f)(6)(ii) for drivers of small passenger-carrying vehicles within a 75 air-mile radius of the driver's normal work reporting location. Canadian and Mexican drivers operating in the United States will continue to be governed by the provisions of existing reciprocity agreements with Canada and Mexico, because they are not in conflict with 49 U.S.C. 31136(a)(3) and 31149. See 67 FR 61818, 61819 (October 2, 2002) and 57 FR 31454, 31455 (July 16, 1992).

² Notices published May 18, 2005 (70 FR 28596), and May 18, 2006 (71 FR 28912).

biennial examination schedule increase the total number of examinations conducted per year by 31 percent over that which would result if all drivers were examined every 2 years. This increase in examinations due to exceptions to the biennial certification requirement is based on limited industry data on driver turnover and medical certifications issued for time periods of less than 2 years. If we assume that half of the 4.4 million drivers described previously in this section would require examination each year, that is, 2.2 million drivers, and increase this number by 31 percent to account for drivers who are examined more frequently than every 2 years, an estimated 3 million examinations would be conducted annually. The FMCSA requests comment on how frequently drivers are examined more often than every 2 years.

Health care professionals in a general practice setting commonly examine 8 to 10 patients per day, and the Agency is aware of medical examiners who currently conduct over 1,000 medical certifications of drivers per year. The FMCSA estimates that 40,000 certified medical examiners would be sufficient to perform the estimated 3 million medical examinations per year. Each of these examiners would conduct an average of 75 examinations per year, which is a feasible volume for examiners in all types of practices.

Drivers are permitted by current regulations to be examined and certified by medical examiners in any State, and FMCSA does not propose to remove this flexibility with the implementation of the NRCME program.

B. Major Elements of the Proposed NRCME Program

In general, under this proposal, FMCSA would develop core curriculum specifications and administrative requirements for medical examiner training and provide these to private-sector training providers for their use. It would also develop a certification test for medical examiners and provide it to private-sector testing organizations. Under this proposal, training and testing would be delivered by these private organizations to medical examiners who meet specified eligibility requirements.

After a qualified applicant completes required medical examiner training and passes an FMCSA certification test, FMCSA would certify the applicant as a medical examiner and list that person on the NRCME. To ensure that medical examiners remain knowledgeable about driver qualification requirements as they are updated, examiners would be required to comply with periodic

training and recertification requirements in order to remain listed on the NRCME. When the NRCME program is fully implemented, FMCSA would accept as valid only medical certificates issued to CMV drivers by medical examiners listed on the NRCME.

By implementing the NRCME program, FMCSA believes that it would improve the knowledge and capabilities of certified medical examiners about FMCSA's physical qualifications standards and guidelines for operators of CMVs. Medical examiners would also be more aware of the demands that operating a CMV can make on drivers and the impact such demands can have on their health. A CMV operator who does not meet the physical qualifications standards can have a direct impact on the safety of CMV operations. In addition, the demands of such operations may impact the health of CMV drivers. Based on its own knowledge and experience, FMCSA believes that the enhancement of the knowledge and capabilities of medical examiners would have a clear and direct positive impact on both safety of CMV operations and driver health. The FMCSA encourages commenters on this proposal to provide additional examples of such impacts, derived from their knowledge and experience.

Information for drivers, employers, and medical examiners about the NRCME program would be available primarily through an NRCME Web site, and a resource center with a toll-free phone number would also be available. On the Web site, drivers and employers could find names and addresses of nearby certified medical examiners listed on the NRCME. The NRCME Web site would also provide program information about training and testing requirements to certified medical examiners and medical examiners who wish to become certified. The NRCME Web site would also disseminate information to practitioners on new medical discoveries, policies, or requirements relevant to the examinations. FMCSA seeks comment on how the NRCME Web site and toll-free phone number could potentially be used to deliver and/or administer medical examiner testing and/or examination certification.

The FMCSA is developing the certification component of the NRCME program using the accreditation standards of the National Commission of Certifying Agencies (NCCA). NCCA is the accreditation body of the National Organization for Competency Assurance (NOCA). NOCA is the oldest and largest accreditation body for the certification industry, and is nationally recognized as

the leader in setting quality standards for credentialing organizations, particularly in the healthcare industry. The FMCSA is considering applying for accreditation for the certification component of the NRCME program to demonstrate: Ongoing quality management for certification test development and security; fairness of test administration; appropriate use of test and candidate data; and consistency with private-sector best practices in the certification industry. FMCSA seeks comment on the criteria that should be in place for private organizations to be certified for administration of training and testing. FMCSA also seeks comment on alternative training, testing, and certification methods—taking into consideration applicable Federal requirements, cost-effectiveness, administrative simplification, and meeting performance based standards.

A new certification program (one that has not previously received NCCA accreditation) may apply for accreditation either after 1 year of administration of the certification test or when at least 500 candidates have been assessed with that test instrument, whichever comes first. The primary rationale for this requirement is that compliance with accreditation standards cannot be determined until after the program has demonstrated completion of all critical program activities, including development and implementation of policies and procedures and development, administration and scoring of the certification test. The FMCSA must also consider other programmatic and legal issues prior to making a decision to apply for accreditation. FMCSA seeks comment on this proposal for certification and accreditation, and seeks potential alternatives.

C. Medical Examiner Training

This NPRM would require that all medical examiners complete training conducted by a private-sector training provider accredited by a nationally-recognized medical profession accrediting organization to provide continuing education credits. The FMCSA would develop the core curriculum specifications and administrative requirements with the advice of the Medical Review Board and the Chief Medical Examiner, and provide these to the training providers to develop and deliver training for medical examiners. The FMCSA would initially base the core curriculum specifications on the current regulations and guidelines for conducting CMV driver medical examinations and would periodically review and update the

requirements and core curriculum. A training provider could expand its course content to tailor the training to the needs of its target audience, but the course must include the FMCSA core curriculum specifications. The length of the training would vary among providers depending on whether a training provider expands its course to include additional scope and depth. The FMCSA projects that it would take one day to teach the FMCSA core curriculum specifications. Current private-sector medical examiner training programs are generally one day in length and use the traditional classroom-based model. However, the training delivery method could also vary among providers and include self-paced, on-line training; the traditional classroom model; or a blended format that combines more than one model. FMCSA seeks comment on potential training delivery methods. FMCSA also seeks comment on how FMCSA could offer training directly to medical examiners in a cost-effective manner.

The FMCSA plans to require accreditation of the FMCSA medical examiner training programs because it would maximize consistency and quality assurance for the training and would be consistent with practices already embraced by the medical professions for continuing education. Each of the primary professions that currently perform medical examinations under part 391 (that is, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic) utilizes nationally-recognized organizations that accredit training programs providing continuing education credits to licensed medical professionals. FMCSA seeks comment on the costs of training certification programs, and whether there are any alternatives to ensure consistency and quality. In addition, we seek comment on how certification and accreditation requirements would impact the cost of training for medical examiners. FMCSA also seeks comment on whether existing certified medical training programs would be able to adapt their continuing education programs to meet these needs.

After the initial training, a medical examiner would be required to complete periodic retraining at least every 3 years to refresh his or her knowledge of both the medical standards for CMV drivers and any changes to FMCSA examination standards or guidelines. It is anticipated that FMCSA would provide this periodic retraining at no charge to the examiner, and that the retraining would be Web-based, allowing the medical examiner to verify completion of the

training on-line. The proposed rule would also require the medical examiner to repeat once every 12 years, at a cost to be borne by the examiner, the complete initial training program (instead of the periodic retraining). FMCSA seeks comment on the cost to medical examiners, and potential training and re-training alternatives which would be more cost-effective.

D. Medical Examiner Certification Testing

The FMCSA would base the medical examiner certification test on the results of a Role Delineation Study, a rigorous methodology regularly employed in the certification and medical fields when developing a valid, reliable, and fair certification test. The FMCSA conducted an initial Role Delineation Study (the Study) that identified content for the certification test, which is intended to focus on competencies common to FMCSA medical examiners from a variety of professional backgrounds and work settings. It was completed in April 2007. The task list was validated and rated, according to importance of the task, by surveying more than 4,000 medical examiners who currently perform CMV driver medical examinations. The final report on the initial Study, when completed, will be made publicly available. The Study provided an assessment of the knowledge, skills, and abilities necessary for an FMCSA medical examiner to competently perform CMV driver medical examinations in accordance with current FMCSA standards and guidelines. The most important information derived from the Study—identification of critical tasks—is necessary to create specifications for the certification test and forms the basis of a professionally-sound quality management system that would support possible future accreditation for the certification component of the NRCME program. Therefore, a Role Delineation Study will be conducted periodically to capture relevant changes in medical practice, standards, and guidelines that affect the examination of CMV drivers in order to maintain a current and relevant certification test.

After completing the mandatory training, a medical examiner applying to be listed on the NRCME would have to pass the FMCSA medical examiner certification test. In addition to the initial certification test, medical examiners would be required to recertify by passing the medical examiner certification test every 6 years in order to remain listed on the registry.

Before taking the certification test, an applicant would provide the testing

organization with information such as the applicant's medical profession, State medical license or certificate number, business address and phone number, and medical examiner training provider. In addition, the applicant would provide several statements, including a statement that the applicant is capable and willing to comply with FMCSA requirements; that upon request he or she would provide copies of documents showing evidence of completion of training, States licenses, etc.; and an affirmation that all of the information provided is true. Proposed Appendix A to part 390 contains a list of the minimum information and statements required of an applicant. The testing organization would review this information to ensure that the applicant provided all of the required information. After an applicant completed the test, the testing organization would forward to FMCSA the results (that is, the test scores and responses) along with the applicant's application package information. The FMCSA would periodically audit a percentage of medical examiners to obtain verification of eligibility (for example, proof of current State medical licensure, registration, or certification to perform physical examinations, and proof of completion of required training).

Under the proposed NRCME program model, an applicant would take a certification test provided by a private-sector professional testing organization that meets all testing criteria proposed in this NPRM, including test delivery and secure data handling criteria. The FMCSA expects that an applicant would have to travel to a testing center to take a proctored, secure certification test. FMCSA seeks comment on alternatives which would allow medical examiners to complete the testing requirements on-line, or in a manner which would meet testing criteria while reducing the cost and time burden on the medical examiner. FMCSA also seeks comment on whether the proposed requirements may deter otherwise qualified medical examiners from performing these types of examinations.

E. Listing on the NRCME

The FMCSA would issue an FMCSA medical examiner certification credential with a unique identification number and list on the NRCME at least the contact information of all medical examiners that meet FMCSA eligibility requirements, successfully complete required training, and pass the FMCSA medical examiner certification test. The certification and listing on the NRCME would expire 6 years after the date of issuance of the certification credential.

The FMCSA would maintain the NRCME on the Web, and drivers and employers of drivers would be able to access, by state or zip code, the names and contact information (from the information provided by the medical examiner under proposed Appendix A to part 390) for medical examiners listed on the NRCME. A communications resource center created to support medical examiners, drivers, and motor carriers—both with and without Internet access—would also be available. The FMCSA requests public comment on what types of medical examiner information should or should not be made available to the public by the NRCME program.

F. Implementation of the NRCME Program

The FMCSA proposes a phased approach to the required use of medical examiners listed on the NRCME. In the first phase, FMCSA proposes to require drivers who work for larger employers to have their medical examinations performed by medical examiners listed on the NRCME, because these drivers are less likely to have problems locating a medical examiner. The second phase would expand the requirement to the remaining drivers not covered in phase one. The additional time allowed for other drivers would allow for growth in the number of medical examiners who have completed the proposed certification process and have been listed on the NRCME. FMCSA seeks comment on ways to ensure that certified medical examiners are accessible to drivers in rural areas and areas where the demand for certification may be low, so that drivers do not have to travel excessive distances to locate a certified medical examiner. FMCSA also seeks comment on additional costs drivers may incur to locate and travel to a certified medical examiner for their periodic examinations.

For purposes of phase one, FMCSA proposes to define large employers as motor carriers that employ 50 or more CMV drivers. The FMCSA proposes that phase one begin 2 years after the effective date of the final rule. Any medical examination conducted for a CMV driver employed by a large employer under this phase must be conducted by a medical examiner listed on the NRCME. The second phase would begin 3 years after the effective date of the final rule, would apply to all CMV drivers, and would expand the requirement for medical examinations to be conducted by medical examiners listed on the NRCME to all CMV drivers regardless of the size of the employer. After the applicable compliance dates

for the affected drivers, FMCSA would accept as valid *only* medical certificates issued by medical examiners listed on the NRCME.

G. Changes in Medical Examination Procedures

This NPRM also proposes implementation of the SAFETEA-LU requirement that medical examiners electronically transmit to the FMCSA Chief Medical Examiner on a monthly basis the name of the CMV driver and a numerical identifier for any completed Medical Examination Report required under § 391.43. (49 U.S.C. 31149(c)(1)(E)) Additionally, the proposed rule would require medical examiners to retain for 3 years the Medical Examination Report for each examination performed. It would also require medical examiners to provide copies of the Medical Examination Reports and medical examiner's certificates to FMCSA or to authorized Federal, State and local enforcement agency personnel, within 48 hours of the request, in order to allow for investigation of errors and improper certification of CMV drivers (49 U.S.C. 31149(c)(2)).

These requirements also establish the basis for future implementation of other statutory requirements for monitoring medical examiner performance. For example, although this rulemaking does not propose collection of a representative sample and storage of Medical Examination Reports and medical certificates in a central database (49 U.S.C. 31149(c)(1)(E)), in the future FMCSA could begin reviewing a representative sample of Medical Examination Reports and medical certificates for errors, omissions, or other indications of improper certification.

H. Removal From the NRCME and Appeal Process

This NPRM proposes to define the standards and process by which a medical examiner would be removed from the NRCME and the procedures provided for appealing such action within the Agency. Under 49 U.S.C. 31149(c)(2), if a medical examiner issues a medical examiner's certificate to a driver who fails to meet the applicable standards at the time of the examination or falsely claims to have completed required training in the physical qualification standards and medical certification process, FMCSA may remove the medical examiner from the NRCME. In addition, the statute requires FMCSA to monitor medical examiner performance and investigate patterns of errors or improper

certification of CMV drivers by a medical examiner (49 U.S.C. 31149(c)(2)). The FMCSA also may remove from the NRCME any medical examiner who does not meet the qualification standards or otherwise fails to comply with section 31149 or the implementing regulations (49 U.S.C. 31149(d)(2)).

To monitor compliance with these statutory requirements, FMCSA may investigate whether medical examiners are complying with the requirement that they electronically transmit each month the name of the driver, an FMCSA numerical identifier for the driver, and the results of the examination to FMCSA (via an FMCSA-designated Web site, e-mail address, or facsimile number that will be published in the **Federal Register**) for each completed Medical Examination Report (including for individuals who failed to meet FMCSA medical standards).

The proposed rule would also require the medical examiner to provide to an authorized representative of FMCSA or to an authorized State or local enforcement agency representative, a copy of any Medical Examination Report or medical examiner's certificate, within 48 hours of the request, so that enforcement personnel can identify errors, omissions, or other indications of improper certification by medical examiners.

In addition, FMCSA would review changes submitted by medical examiners to their application information. These reviews, along with other mechanisms to be developed, would potentially identify medical examiners for removal from the NRCME.

The following are some examples of grounds for removal from the NRCME: The medical examiner no longer has at least one valid license, registration, or certification to perform physical examinations in any State; failure to comply with training requirements; failure to comply with FMCSA requirements for electronic transmittal of medical examination information to FMCSA; a demonstrated pattern of errors, omissions, or other indications of improper certification; and failure to provide copies of Medical Examination Reports and medical examiner's certificates upon demand. There may also be situations where a medical examiner would be voluntarily removed for personal reasons, such as health, travel, or retirement.

The proposed appeal process provides an opportunity for a medical examiner who has been proposed to be removed to correct an identified deficiency or request administrative review by FMCSA.

IV. Section-by-Section Discussion of the Proposals

A. Section 390.5, Definitions

Section 390.5 currently defines “medical examiner” as a person licensed by a State to perform physical examinations and lists examples of types of medical professions authorized to perform examinations of CMV drivers under part 391. Section 4116(c) of SAFETEA-LU adds a statutory definition of “medical examiner” to 49 U.S.C. 31132(6) as “an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.” The proposed revision of the definition of medical examiner in § 390.5 in this NPRM provides for the new statutory definition to replace the current regulatory definition once the final rule is completely implemented as provided in proposed § 391.42. The eligibility requirements regarding State medical licensure, registration, or certification would also appear in proposed § 390.103(a), covering eligibility requirements for medical examiner certification.

B. Subpart D of Part 390, National Registry of Certified Medical Examiners

The FMCSA proposes to establish a new subpart D in part 390 that would include the requirements for training and testing of medical examiners for listing on, and removal from, the NRCME, including appeal provisions. The requirements for medical examinations would remain in part 391.

1. Section 390.101, Scope

Proposed § 390.101 states that the new subpart would establish the minimum qualifications for FMCSA certification of medical examiners and for listing medical examiners on the NRCME. It also describes the NRCME program and explains that the registry itself is the component of the program that would provide the public with a national database listing certified medical examiners.

2. Section 390.103, Eligibility requirements for medical examiner certification

Section § 390.103 proposes the eligibility requirements for medical examiner certification. Paragraph (a)(1) incorporates the requirements from current § 390.5 that applicants must be licensed, certified, or registered under the applicable State requirements to perform physical examinations. Paragraphs (a)(2) and (a)(3) state that applicants must also obtain training and

pass a certification test, as specified in proposed §§ 390.105 and 390.107, respectively. Proposed paragraph (b) states that to renew the certification, a medical examiner would have to remain licensed, registered, or certified by his or her State and complete additional testing and training as required by proposed § 390.111(a)(5).

3. Section 390.105, Medical examiner training programs

Proposed § 390.105 would require an applicant for medical examiner certification to complete an accredited training program that meets the core curriculum specifications and administrative requirements established by FMCSA for medical examiner training. The training program would have to be accredited by a nationally-recognized medical profession accrediting organization to provide continuing education courses. There is at least one such accrediting organization for each medical specialty.

This section clarifies that it is the sole responsibility of medical examiners to ensure their training meets these requirements. The FMCSA would maintain on the NRCME Web site a list of all training providers that have submitted for FMCSA review their course documentation that includes, but is not limited to, the course syllabus, sample slides, sample handouts, and a sample training module. A training provider included on the NRCME Web site would have to agree to submit documentation for future reviews to ensure continuing compliance with FMCSA requirements. If FMCSA finds that a particular training provider does not meet the core curriculum specifications and administrative requirements, the name of the training provider would be removed from the NRCME Web site. A medical examiner could arrange for training by an organization not included in the Web site, but the medical examiner would need to ensure that the training program meets FMCSA requirements.

4. Section 390.107, Medical examiner certification testing

Section 390.107 contains the proposed requirements for the medical examiner certification test. An applicant would take the certification test from a private-sector professional testing organization. As part of the testing process, the applicant would have to provide information to a private-sector testing organization. Proposed Appendix A to part 390 would list the minimum information that the applicants would be required to provide. The applicant would take the

test at a testing center provided by a testing organization that meets FMCSA standards for delivering these tests. The testing organization would supply the applicant's personal application information and test results to FMCSA.

The testing organization would: (1) Submit for FMCSA review its documented policies and procedures to ensure they meet FMCSA criteria; and (2) agree to future FMCSA reviews to ensure continuing compliance. The FMCSA is considering the option of listing on the NRCME Web site testing organizations that meet FMCSA standards. However, the medical examiner would need to ensure that the testing organization he or she chooses to use meets FMCSA requirements.

5. Section 390.109, Issuance of the FMCSA medical examiner certification credential

Proposed § 390.109 states that FMCSA would issue an FMCSA medical examiner certification credential with a unique identification number to each applicant found to be in compliance with the requirements of §§ 390.103–390.107, and would list the medical examiner's name on the NRCME. In accordance with the phased-in schedule proposed in § 391.42, FMCSA proposes to accept as valid only medical certificates issued by medical examiners listed on the NRCME.

In addition, proposed § 390.109 specifies that the certification credential and the listing on the NRCME would expire 6 years after issuance. To maintain a listing on the NRCME and to receive a new credential, the medical examiner would need to comply with the training, testing, and other requirements of proposed § 390.111.

6. Section 390.111, Requirements for continued listing on the NRCME

Proposed § 390.111 explains how a medical examiner retains a listing on the NRCME. Each medical examiner must continue to be licensed, registered, or certified, and be authorized to perform physical examinations in accordance with the applicable State laws and regulations of each State in which the examiner performs examinations. For continued listing on the NRCME, the medical examiner would have to report to FMCSA changes to any information that the examiner previously provided to FMCSA, for example, any information related to any termination, suspension, or withdrawal of the medical examiner's license, registration, or certificate under State law.

The medical examiner must maintain documentation of his/her: (1) State

licensing, registration, or certification; and (2) completion of all training required under this notice. In addition the medical examiner would have to make this documentation available to an authorized representative of FMCSA, or an authorized representative of Federal, State or local government. The medical examiner would have to make the documentation available within 48 hours of a request for investigations and within 10 days of a request for regular audits.

The medical examiner also would have to complete periodic training and testing according to a schedule specified in paragraph (a)(5) of proposed § 390.111:

- Within 3 years of receiving the credential, the medical examiner must complete periodic training. The purpose of this training would be to refresh the medical examiner's knowledge of the medical standards for CMV drivers and to inform the medical examiner of any changes to FMCSA examination standards or guidelines. The FMCSA would monitor the results of the certification tests to identify gaps in knowledge, and analyze enforcement and crash data to identify other areas where additional training may improve the medical certification process.

- Within 6 years of receiving the credential, the medical examiner must complete the periodic training, plus repeat and pass the test taken for initial certification, under § 390.103(a)(3). However, in alternating 6 year periods, instead of taking the periodic training, the medical examiner would need to repeat the training taken for initial certification, under § 390.103(a)(2).

If a medical examiner complies with the proposed training and testing schedule and meets the other maintenance requirements of proposed § 390.111, FMCSA would issue a new medical examiner certification credential. It would be the responsibility of the medical examiner to ensure that he or she receives the new credential before the previous one expires.

7. Section 390.113, Reasons for removal from the NRCME

Section 390.113 proposes the reasons for removal of a medical examiner from the NRCME. The reasons include, but are not limited to, the following: The medical examiner's failure to continue compliance with the basic requirements for inclusion on the NRCME, such as maintaining a current State medical license, certification, or registration, receiving required periodic training, or renewing the FMCSA certification; the medical examiner's failure to comply

with the FMCSA operational requirements, such as issuing a certificate to someone not medically qualified, failure to accurately complete the Medical Examination Report or medical examiner's certificate, or failure to regularly transmit the names and other information about the results of examinations conducted; false claims by the medical examiner of completion of any required training; and failure to provide access to examination data upon request.

8. Section 390.115, Procedure for removal from the NRCME

Section 390.115 proposes procedures for removal of a medical examiner from the NRCME, as well as the due process protections afforded to medical examiners subject to proposed involuntary removal. Any involuntary removal action must be undertaken by the FMCSA Director of Medical Programs (a new position to be established by the Agency).

The proposal states that a medical examiner could be removed voluntarily by submitting a request to the FMCSA Director of Medical Programs. Such a request could be submitted either in writing or through a proposed secure information system. The FMCSA is considering developing a secure information system through Web interface in which each medical examiner listed on the NRCME would receive a unique login identification and password upon their acceptance into the NRCME. The unique login ID and password would be used to authenticate each request for voluntary removal from the NRCME. A request for voluntary removal would be effective immediately.

The proposal then describes the process by which FMCSA would initiate and then complete the involuntary removal of a medical examiner from the NRCME at the Agency's discretion. The FMCSA would issue to the medical examiner a notice of proposed removal, stating: (1) The reasons upon which the proposed removal is based under proposed § 390.113; and (2) any corrective actions necessary, if applicable, for the medical examiner to remain listed on the NRCME, if he/she so chooses. The medical examiner would have an opportunity to submit a response in writing no later than 30 days after the date of issuance of the notice. The medical examiner could submit to the Director of Medical Programs an explanation of any error(s) committed in proposing to remove the medical examiner from the NRCME. The Director of Medical Programs would review the explanation and could

withdraw, modify, or affirm the notice of proposed removal. Alternatively, the medical examiner could submit to the Director of Medical Programs a written response indicating that he or she will come into compliance, if possible, and complete the corrective actions identified in the notice of proposed removal.

The medical examiner would have 60 days from either the date of issuance of the notice of proposed removal or the date the notice is affirmed or modified, whichever is later, to comply with the requirements of this subpart and complete the applicable corrective actions specified in the notice, as modified or affirmed. If the medical examiner fails to take these necessary actions, the proposed removal becomes effective. Additionally, if the medical examiner does not submit a written response in the 30-day period following issuance of the original notice of proposed removal, the medical examiner would be removed from the NRCME at the end of that 30-day period.

Although a person may voluntarily request to be removed from the NRCME under proposed § 390.115(a), a person may not request a voluntary removal from the NRCME after receiving a notice of proposed removal from the Director of Medical Programs. This proposed provision is intended to prevent the medical examiner from leaving the NRCME and later attempting reinstatement without meeting conditions for reinstatement and compliance identified in the notice of proposed removal. However, at any time before a notice of proposed removal becomes effective, the medical examiner could resolve the matter by mutual agreement with the Director of Medical Programs.

A person who has been removed from the NRCME could request an administrative review by submitting to the FMCSA Associate Administrator for Policy and Program Development a written request no later than 30 days after the date the removal becomes final. The Associate Administrator may request additional data or a conference to discuss the removal. After completing the review, the Associate Administrator would issue a written decision.

Under proposed § 390.115(e), and as authorized by the Administrative Procedure Act, 5 U.S.C. 558(c), the Director of Medical Programs would reserve the right to remove a medical examiner from the NRCME immediately, either in cases of willfulness or cases in which public health, interest, or safety requires. In these cases, the provisions for the medical examiner to submit a response

and take corrective action would not apply. However, the medical examiner could submit to the Associate Administrator for Policy and Program Development a request for administrative review of the emergency removal. The medical examiner must request such a review no later than 30 days after the date of removal from the NRCME.

Proposed § 390.115(f) describes how a person removed from the NRCME would request reinstatement. Such a request must be submitted no sooner than 30 days after removal from the NRCME. The person must provide documentation demonstrating he or she has taken whatever action(s) is necessary to correct the deficiencies that resulted initially in removal from the NRCME, and demonstrate he or she is in compliance with the eligibility requirements of § 390.103(a). The Director of Medical Programs may specify additional requirements for reinstatement in the notice of proposed removal. In the case of a voluntary removal, the person could be reinstated after providing documentary proof of satisfying the requirements to be listed on the NRCME.

If FMCSA removes a medical examiner from the NRCME, except at the request of the medical examiner, the certification credential issued under proposed § 390.109 would no longer be valid. If a medical examiner requests voluntary removal from the NRCME, the certification credential would remain valid until it expires, but that person would not be permitted to conduct FMCSA medical examinations until that person provided documentation showing proof of satisfying the requirements for continued listing on the NRCME. In either case, the removed person's information would still be publicly available on the NRCME Web site. A record of the removed person's previous certification would remain on the NRCME Web site, with the date of removal, so that enforcement personnel and employers of drivers could verify whether a medical examiner's certificate was issued by a person listed on the NRCME at the time of issuance.

9. Appendix A to part 390, Medical examiner application data elements

Proposed Appendix A shows the information applicants must provide when they arrange with a testing organization to take the FMCSA medical examiner certification test. The professional testing organization would provide this information to FMCSA along with the results of the certification test. When a medical examiner is added to the NRCME, FMCSA would post the

person's name, business address, telephone number, and other contact information on the NRCME Web site. The applicant would need to supply a street address for the business location—not a post office box, although a post office box could be used for the mailing address. The Web site would contain a search function allowing drivers to locate certified medical examiners in a particular location. The other information required from applicants by Appendix A would be used to document a medical examiner's eligibility to be listed on the NRCME or to facilitate contact with the applicant by FMCSA.

C. Section 391.42, Schedule for Use of Medical Examiners Listed on the National Registry of Certified Medical Examiners

Under § 391.42, FMCSA proposes a schedule for implementation of the requirement that drivers must be examined only by persons who have been trained, tested, certified, and are listed on the NRCME, as set out in proposed subpart D of part 390. Specifically, beginning on a date 2 years after the effective date of the final rule, each medical examination required under subpart E of part 391 must be conducted by a medical examiner who is listed on the NRCME if the person is employed by a motor carrier that employs 50 or more drivers of CMVs. Subsequently, beginning on a date 3 years after the effective date of the final rule, every medical examination required under subpart E of part 391 must be conducted by a medical examiner who is listed on the NRCME. The FMCSA requests specific comments on the proposed compliance schedule and on the proposed threshold of 50 CMV drivers for the first phase of implementation.

D. Section 391.43, Medical Examination; Certificate of Physical Examination

Current § 391.43 contains the requirements for performing the medical examination, including instructions for the medical examiner, a sample Medical Examination Report form, and a sample medical examiner's certificate form. The NPRM contains several proposed amendments to § 391.43, including an addition to the information required on a medical examiner's certificate.

First, under the proposal, paragraph (a) would be revised to specify that, in accordance with the compliance schedule proposed in § 391.42, the medical examination must be performed by a medical examiner listed on the

NRCME under proposed subpart D of part 390 of this chapter.

Second, paragraph (g) would be revised to add the new requirement that once every calendar month the medical examiner must electronically transmit certain information to the FMCSA Medical Program. For each medical examination of an interstate CMV driver performed during the previous month, the required information to be transmitted would be the driver's name, the driver's FMCSA numerical identifier, the date of the examination, the date of expiration of the medical examiner's certificate (the so-called "medical card"), if issued, and the results of the medical examination. The FMCSA proposes to create a secure electronic transmission process that medical examiners could use to provide the information, such as a secure Web interface, e-mail address, or facsimile number. The medical examiner would be required to transmit this information not only for persons found to be medically qualified, but also for persons found to be medically unqualified or temporarily disqualified. Additionally, paragraph (g)(1) repeats part of the "Instructions for Performing and Recording Physical Examinations" in current § 391.43 that requires the medical examiner to date and sign the Medical Examination Report and provide the medical examiner's full name, office address, and telephone number.

Third, under the proposal the Medical Examiner's Certificate included in paragraph (h) would be revised to add a field for the medical examiner to enter the medical examiner's unique National Registry Number. Adding the National Registry Number allows FMCSA to identify medical examinations performed by particular medical examiners and to monitor compliance with these rules. Medical examiners would be allowed to use printed certificates they have on hand until 4 years after the effective date of the final rule.

Finally, paragraph (i) would be added to specify that the medical examiner must retain the original (paper or electronic) completed Medical Examination Report and a copy or electronic version of the medical examiner's certificate for 3 years and make them available, along with related medical documentation, to an authorized representative of the FMCSA or an authorized Federal, State or local enforcement agency representative, within 48 hours of the request. The requirement for retaining the Medical Examination Report already exists under the heading, "Instructions for

Performing and Recording Physical Examinations” in § 391.43.

V. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and the Department of Transportation regulatory policies and procedures. This NPRM includes a summary of the Agency’s preliminary regulatory analysis of the costs and benefits of this undertaking. A copy of the complete preliminary analysis is included in the docket referenced at the beginning of this notice. FMCSA seeks comment on the costs and benefits of this proposal as outlined, as well as alternatives to current cost-benefit data collection methods currently used to quantify the costs and benefits. FMCSA is particularly interested in developing a solid estimate of the cost-effectiveness, if not the benefits, of this rule. For example, it would be helpful to know what fraction of crashes involve drivers without a valid medical certificate and which aspects of this rule would be most effective at reducing both of those numbers.

Alternatives

This regulatory evaluation considers three alternatives for implementing this program. One alternative, referred to as the Public-Private Partnership Model or Alternative 1, would involve a partnership between the Agency and various private-sector training and testing organizations that currently exist to provide continuing professional education and credentialing to medical professionals. Under this partnership, the Agency would develop and provide core curriculum specifications and the certification test and protocols, and any interested organization that can meet FMCSA requirements would be eligible to deliver training or testing. Training would be delivered by private-sector professional associations, health care organizations, and other for-profit and non-profit training providers. Testing would be delivered by private-sector professional testing organizations. After completing required training, passing the certification test, and agreeing to comply with FMCSA administrative requirements, a medical examiner would be added to the NRCME, and would be authorized to conduct CMV driver physical examinations. After the NRCME is fully implemented, only physical examinations conducted by medical examiners listed on the NRCME

would be recognized by FMCSA and enforcement personnel as proof of driver physical qualification.

Alternative 2 is based on the Federal Aviation Administration’s (FAA) Aviation Medical Examiner Program (Government Model). This alternative would require the Agency to establish its own centralized training and testing program. All medical examiners would have to attend this Agency-run program and pass the test in order to be eligible for listing on the NRCME. This program’s components are essentially the same as Alternative 1, but all training and testing would be conducted by the Agency rather than private-sector training and testing organizations. This alternative would also require all medical examiners to travel to the FMCSA facility to receive the FMCSA training, which involves greater travel expenses on the part of medical examiners when compared to Alternative 1, which has training programs distributed throughout the country. However, this option would give FMCSA optimal control over the quality and content of training provided to medical examiners.

Alternative 3 would be based on the current Department of Transportation (DOT) Medical Review Officer (MRO) program requirements. The MRO training program grew out of the DOT testing program that monitors use of controlled substances and alcohol. MROs are trained and certified by accredited training programs operated by professional associations in cooperation with DOT. Only licensed Medical Doctors (MD) or Doctors of Osteopathy (DO) are eligible to be MROs. MROs also review test results for other safety sensitive occupations such as airline mechanics, train operators, and ships’ pilots.

The existing program specifies that MROs who oversee testing for commercial drivers must attend training and certification programs that satisfy the Department’s requirements. Each of these programs maintains its own registry of graduates rather than contributing names to a single Federal database. DOT does not have direct control over the training curriculum or testing protocols for these programs. Thus, the Agency would exert less control over the program under a similar option. In addition, due to the limited number of organizations issuing MRO credentials, these programs are able to charge a higher fee for certification testing than would be the case under a more competitive atmosphere. Long distance travel for the initial training and testing could also be required under this alternative.

Summary of Costs and Benefits

The costs and benefits for all three alternatives are analyzed in this regulatory evaluation. It is anticipated that approximately 40,000 medical examiners would be needed for the NRCME to accommodate the demand for an estimated 3 million medical examinations per year. All alternatives involve an initial training phase in which the 40,000 medical examiners receive training. This phase is expected to last 3 years. Beginning with the third year, the Agency would require all drivers to be examined by medical examiners listed on the NRCME. Under Alternatives 1 and 3, medical examiners would be required to attend training conducted by a private-sector organization. The training and testing costs would be borne by medical examiners. Under Alternative 2, no training or testing fees would be incurred by medical examiners, but the Agency would bear the costs of providing the training and testing services. Long distance travel to the FMCSA training center would be required under Alternative 2. Long distance travel to a designated training program is also anticipated under Alternative 3. Under Alternative 1—the Public-Private Partnership Model—it is anticipated that training programs would be available throughout the country, and that some programs would offer on-line training courses, which would minimize the need for long distance travel.

By screening out physically unqualified drivers, this rule may impact the labor market in the motor carrier industry. Some commercial drivers may have to find alternative occupations because they cannot meet the FMCSA physical qualification standards. These alternatives are likely to pay less than commercial driving, and this loss of income represents the main cost of this impact. Motor carriers would also have to bear the burden of hiring new drivers. Each alternative is expected to have an equivalent impact on the quality of driver medical certification screening, and hence the impacts on the industry are likely to be the same for all alternatives.

The ten year total cost of Alternative 1 is estimated at \$587 million, when discounted at a 7 percent rate. Alternative 2 has a total discounted ten year cost of \$658 million. Alternative 3 has a total 10 year discounted cost of \$617 million. In all alternatives, the lost income to disqualified drivers is the largest portion of cost. The costs of the training/testing, including lost time to medical examiners, is estimated to vary

between \$31 million and \$44 million (undiscounted) during the initial training phase, depending on the alternative, with Alternative 1 having the lowest cost. The lower cost associated with Alternative 1 is due to its minimization of travel and associated costs, both in expenses and lost time, to medical examiners.

Because all three alternatives are expected to improve the performance of medical examiners by equivalent amounts, total benefits are expected to be equivalent for all programs. These benefits are based on the reduction in CMV crashes that is likely to result from improved medical screening of drivers. It is estimated that physically impaired drivers operating in interstate commerce are responsible for approximately 5,800 of the roughly 420,000 CMV crashes that occur annually. Although it is not anticipated that this program would completely eliminate these crashes, it is expected to prevent a portion of them. Due to data limitations, we are unable to develop a precise estimate of the potential benefits of this rule. If this program were to prevent 25 percent of these crashes annually, it would eliminate approximately 1,451 crashes per year. The estimated annual benefit associated with avoiding these crashes would be \$206 million per year. At a 7 percent discount rate, the 10 year net benefits under this assumption would be between \$376–\$447 million, depending on the alternative chosen.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities and determined that it is not likely to have a significant impact on a substantial number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards.

The Small Business Administration (SBA) regulations (13 CFR part 121) require Federal agencies to analyze the impact of proposed and final rules on small entities. The regulations define a "small entity" in the motor carrier industry by average annual receipts, which are currently set at \$21.5 million per firm.⁴ The FMCSA has developed a model that uses data from the Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 484 "Truck Transportation" segments, to assist us in

determining the number of small trucking entities potentially affected by our proposed rules. Examining all property carriers within NAICS Code 484, roughly 75 percent had annual receipts of less than \$21.5 million. Of the 475,500 current active, interstate motor carriers in the Motor Carrier Management Information System (MCMIS), approximately 356,625 are considered small entities, and this proposed rule would affect all of them. In the Regulatory Evaluation we estimated that the improvements in the screening of drivers that would result from the NRCME training program would result in some drivers being screened out of the occupation due to untreatable disqualifying medical conditions. Motor carriers would incur costs to replace these drivers. In the Regulatory Evaluation we estimated these costs as \$1,600 per replaced driver.

Although smaller carriers make up the majority of the carrier population by number of firms, these firms only employ 20 percent of the driver population. In the regulatory evaluation, we estimated that approximately 44,000 drivers would be screened out of the CMV driving occupation and would have to be replaced. Since there is no reason to suspect that drivers for smaller firms are any more or less healthy than drivers for larger firms, we assume that 20 percent (8,800) of the drivers that would need to be replaced work for smaller carriers, resulting in a total cost to small businesses in this industry of \$14.1 million. Spreading this cost among the carriers that qualify as small businesses results in a per-carrier cost of \$39.48.

While these amounts do not represent a significant cost to the industry as a whole, or even the small business portion of it, it should be noted that the impacts are not spread evenly among all small businesses in the industry. Many small businesses in the industry would bear no additional costs from this rule, but a subset that employs drivers who do not meet current physical qualification standards would bear a cost of \$1,600 for each driver they would have to replace. This may represent a significant cost to a small motor carrier employing only one or two drivers operating on a slim margin. However, the alternative is to continue allowing drivers who do not meet current FMCSA physical qualification requirements to operate CMVs in commerce, which would compromise public safety. The FMCSA does not see a way to reduce the impacts of this requirement to small businesses in the

industry without compromising public safety.

The rule would, at a maximum, affect 8,800 motor carriers that qualify as small businesses. These carriers represent approximately 2.5 percent of small entities in the industry. While the costs to affected motor carriers may be significant, the total number of affected small entities does not appear to be significant when compared to the size of the industry and the number of small entities in the industry. Furthermore, this rule does not impose new physical requirements on drivers, but only enhances detection of drivers who do not meet current physical qualification requirements. These drivers are out of compliance with current requirements, and therefore should not be operating CMVs in commerce. Whether the cost of replacing these drivers should be considered as a cost of this rule is therefore debatable. However, the improvement in enforcement would impact the industry, so we have accounted for it here.

Another group of businesses that may be impacted by this rule change are the offices of health care providers who currently conduct driver medical examinations. Driver examinations would be conducted primarily by nurse practitioners, general internal and family physicians, and physician's assistants. Combining these groups yields a total of 317,000 health care providers who might perform driver physical examinations on a regular basis. In order to qualify as a small business, a physician's office must bring in \$9 million or less in revenue annually.⁵ The small-business threshold for nurse practitioners and physician assistants is \$6.5 million. According to the American Academy of Family Physicians, the average gross revenue of family medical practices is \$360,000 per year. However, it should be noted that many physicians and other medical professionals work for larger health care organizations such as HMOs and hospital outpatient care facilities. These larger organizations would have revenues exceeding the threshold for small businesses established by the Small Business Administration. Still, the vast majority of family care practices are likely to qualify as small businesses. Our best estimate is that 90 percent of the firms in this subset of the health care industry are small businesses. We estimate that these private health care practices have an average of 5 health care providers per firm. Given this average, there are likely to be in the neighborhood of $317,000/5 = 63,400$

⁴ Small Business Administration Table of Size Standards. Available online at: http://www.sba.gov/services/contractingopportunities/sizestandardstables/tableofsize/SERV_TABLE_HTML.html.

⁵ Ibid.

firms. Ninety percent of this number is 57,060. This is the number of firms that could potentially be impacted by this rule. We do not anticipate that the effects of this rule on firms in the health care industry would be large enough to be considered significant.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128.2 (2005 dollars) million or more in any 1 year.⁶

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rulemaking would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The FMCSA has preliminarily determined that this rulemaking would have no significant cost or other effect on or for States. States would have policy-making discretion. Nothing in this document would preempt any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this proposed rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 2809, 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. § 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. The entire privacy impact assessment for this proposal is available for review in the docket.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), FMCSA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: National Registry of Certified Medical Examiners (NRCME).

Summary: Under SAFETEA–LU, the Secretary of Transportation is required to establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates that verify whether a CMV driver's health meets FMCSA standards. In addition, section 4116(b) of SAFETEA–LU requires that the medical examinations of CMV operators be performed by medical examiners who have received training in physical and medical examination standards, and, after the NRCME is established, are listed on the NRCME. SAFETEA–LU also requires medical examiners to electronically transmit the name of the applicant and FMCSA numerical identifier for any completed Medical Examination Report required under § 391.43 to the Chief Medical Examiner on a monthly basis.

Once the NRCME program is implemented, FMCSA would accept medical examinations performed only by certified medical examiners listed on the NRCME, as required by law. The NRCME program would require medical examiners to complete training developed from standardized curriculum specifications and pass a national certification test. The

procedures used to develop and maintain the quality of the program are expected to be in accordance with national accreditation standards for certification programs established by the National Commission of Certifying Agencies (NCCA), the accreditation arm of the National Organization for Competency Assurance (NOCA).

Third-party requirements of this information collection are being considered since State laws are generally in substantial conformity with the Federal regulations for medical qualifications of commercial drivers. Consequently, the estimate of the number of CMV drivers (respondents) covered by this information collection reflects both interstate drivers subject to the Federal Motor Carrier Safety Regulations (FMCSRs) and intrastate drivers subject to compatible State regulations. Although Federal regulations do not require States to comply with the medical requirements in the FMCSRs, most States do mirror the Federal requirements; therefore, we are including intrastate drivers, which is consistent with other FMCSA information collections, to accurately reflect the burden of this information collection.

Close tracking and monitoring of certification activities and medical outcomes are crucial, and the NPRM addresses the information collection aspects of NRCME implementation.

To this end, the NPRM requires medical examiners to submit three types of data:

(1) *Medical Examiner Application and Test Results Data:* To be listed on the NRCME, medical examiners must first pass a certification test to ensure that they demonstrate an established level of competency. Private-sector testing organizations would collect data from medical examiners as the medical professionals apply to take this certification test. Data elements required of medical examiners at the time of application would include (but not be limited to) professional contact and identifying information such as job title, address, and training and State licenses obtained. This information would be collected each time the medical examiner applies to sit for the certification test, and updated with FMCSA as needed. Test results data would include total test score and responses for each test item. Private-sector testing organizations would regularly transmit medical examiner application and test results data electronically to FMCSA for inclusion in a centralized, confidential database.

(2) *CMV Driver Examination Data:* Once every calendar month, each

⁶ The accompanying Regulatory Evaluation for this NPRM presents costs and benefits in inflation-adjusted 2005 dollars. The \$128.2 million figure was derived by inflation adjusting the \$100 million cap in the original Act from 1995 to 2005 dollars using the Consumer Price Index.

medical examiner listed on the NRCME would be required to transmit to FMCSA (via the Chief Medical Examiner) the following information about each CMV driver examined during the previous month: name, FMCSA numerical identifier, date of examination, an indication of the examination outcome (for example, "medically qualified"), and date of expiration of the driver's medical certification, if issued. Data would be submitted electronically via a secure FMCSA-designated Web site, e-mail address, or facsimile number. In order to be listed on and to continue participation in the NRCME, medical examiners would need to comply with this requirement on a monthly basis.

(3) *Medical Examination Reports and Medical Examiner's Certificates:* This NPRM would require medical examiners to provide copies of Medical Examination Reports and medical examiner's certificates to authorized representatives of FMCSA or authorized State or local enforcement agency representatives. These documents contain the driver's social security number, date of birth, driver license number, and health and medical information.

Use of information collected: This proposal would support the information needs of the FMCSA in three different ways:

(1) *Medical Examiner Test Application Data:* These data would allow for the matching of documentation with verification of identity and testing eligibility (for example, proof of State licensure, registration or certification that allows performance of medical examinations, and completion of training by an accredited training provider. This information would also be utilized to track participant test taking trends as well as provide respondents with test results and follow-up information.

It is important to note that there is currently no mechanism for identifying medical examiners conducting CMV driver medical examinations. The size of this population, as well as characteristics related to their training and location, for example, is not known. This database would therefore serve as the only resource containing this information for all certified medical examiners in the United States.

Ultimately, these data would therefore be used to provide CMV drivers with contact information for those medical professionals who have passed the certification test; that is, this information would provide the content for the actual NRCME listing. In some cases, this medical examiner

information would be needed to address removals from the NRCME.

(2) *CMV Driver Examination Data:* CMV driver examination data are intended to serve a monitoring function. First, these would be the only centralized, consistent national data that would enable FMCSA to link medical examiners to the examinations they have conducted. In addition, this would be the first national database that would, after several years of implementation, contain CMV driver medical examination certification outcomes.

(3) *Medical Examination Reports and Medical Examiner's Certificates:* Medical Examination Reports and medical examiner's certificates must be available to an authorized representative of FMCSA or an authorized Federal, State or local enforcement agency representative in order to determine whether a medical examiner has issued a medical certificate to a driver who fails to meet the applicable FMCSA medical standards. Failure to properly apply FMCSA medical standards may result in removal from the NRCME. Medical examiner's certificates provide additional documentation to determine proper application of FMCSA medical standards by linking the medical examiner to both the medical examination and the driver medical certification decision, and to ensure the certification decision matches the information in the medical examination and the certificate is completed correctly.

Respondents (including number of): The likely respondents to this proposed information requirement are 40,000 medical examiners from medical professions who are believed to conduct the majority of current CMV driver medical examinations (advanced practice nurses, doctors of chiropractic, doctors of osteopathy, medical doctors and physician assistants) and one or more national private-sector testing organizations that deliver the certification test. We are unable to estimate the number of private-sector organizations that might wish to perform testing.

Frequency: FMCSA estimates each of the respondents would provide medical examiner test application data every 6 years and updated information as needed, and would provide CMV driver examination data a maximum of 12 times per year. It is estimated that an average of approximately 13,333 medical examiners will apply to take the certification test annually for the first 3 years of NRCME implementation. It is estimated that one or more testing organizations will deliver the FMCSA

medical examiner certification test to 13,333 medical examiners annually for the first 3 years following implementation of the NRCME program. It is projected that medical examiners would file 4,600,000 medical examiner's certificates per year and that authorized representatives of FMCSA or authorized State or local enforcement agency representatives would request medical examiners to provide copies of the Medical Report Form and the medical examiner's certificate 2,100 times a year.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden as follows:

FMCSA estimates that the total annual burden hours for the collection of the medical examiner test application data is 1,111 hours [13,333 applicants $\times$ 5 minutes/60 minutes per response = 1,111 hours]. This annual burden includes medical examiner time for submitting the application data to the private-sector testing organizations.

It is estimated that it will take private-sector testing organization personnel 5 minutes per medical examiner to collect and upload to FMCSA application data and test results. FMCSA estimates that the total annual burden hours for private-sector testing organizations to collect medical examiner application data and send medical examiner application and test results data to FMCSA is 1,111 hours [13,333 applicants $\times$ 5 minutes/60 minutes per medical examiner = 1,111 hours].

The transmission of CMV driver examination data would require approximately 46,000 hours of medical examiner administrative personnel time on a yearly basis, consisting of 8,000 hours for report filing (40,000 registered medical examiners $\times$ 1 minute/60 minutes to file a report $\times$ 12 reports per year = 8,000 hours) and 38,000 hours for data entry (4,600,000 reports $\times$ 30 seconds/3600 seconds to enter each driver's examination data elements = approximately 38,000 hours). Total hours for report filing and data entry is 8,000 hours + 38,000 hours = 46,000 hours]. It is estimated that it would take medical examiner administrative personnel 30 seconds to file the medical examiner's certificate. This would require approximately 38,000 hours of medical examiner administrative personnel time on a yearly basis [4,600,000 examinations $\times$ 30 seconds/3600 seconds per certificate = 38,000 hours].

It is estimated that it will take medical examiner administrative personnel 5 minutes to provide both the Medical Examination Report and the medical examiner's certificate to FMCSA or an

authorized State or local enforcement agency representative upon request, so this would require approximately 175 hours of administrative personnel time on a yearly basis [2,100 requests × 5 minutes/60 minutes per response = 175 hours].

The total estimated annual recordkeeping and time burden for these medical requirement components is approximately 86,397 hours.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Agency, including whether the information would have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by January 30, 2009, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for the Department of Transportation.

According to the 1995 amendments to the Paperwork Reduction Act (implemented by 5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection would be published in the **Federal Register**, after the Office of Management and Budget approves it.

National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action requires an Environmental Assessment (EA) to determine if a more extensive Environmental Impact Statement (EIS)

will be required. The FMCSA prepared an EA and placed it in the docket for this rulemaking. The EA found that there are no significant negative impacts expected from the result of the proposed actions. Although minor congestion and air emission impacts are discussed in the EA, the impacts are minimal and are not expected to alter the Nation's highway congestion or air emissions from roadway or air transportation vehicles. In addition, while not quantified in this analysis, minor benefits to the environment from reducing CMV crashes are expected.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General conformity requirement since it involves rulemaking and policy development and issuance.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a "significant energy action" under that Executive Order because it would not likely have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, parts 390 and 391, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31149, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

2. Amend § 390.5 by revising the definition of "medical examiner" to read as follows:

§ 390.5 Definitions.

* * * * *

Medical examiner means the following:

(1) Except as provided in paragraph (2) of this definition, for medical examinations conducted before [Date 3 years after the effective date of the final rule], a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. The term includes but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic.

(2) For medical examinations conducted on and after [Date 2 years after the effective date of the final rule] and for medical examination of persons employed by motor carriers who employ 50 or more CMV drivers, an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

(3) For medical examinations conducted on and after [Date 3 years after the effective date of the final rule], an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with subpart D of this part.

* * * * *

3. Add subpart D, consisting of §§ 390.101 through 390.115, to read as follows:

Subpart D—National Registry of Certified Medical Examiners

- 390.101 Scope.
- 390.103 Eligibility requirements for medical examiner certification.
- 390.105 Medical examiner training programs.
- 390.107 Medical examiner certification testing.
- 390.109 Issuance of the FMCSA medical examiner certification credential.
- 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.
- 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.
- 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

Subpart D—National Registry of Certified Medical Examiners

§ 390.101 Scope.

The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and

for listing the examiner on the FMCSA's National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners program is designed to improve highway safety and driver health by requiring that medical examiners be trained and certified to determine effectively whether an interstate CMV driver meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry of Certified Medical Examiners program is the registry itself, which is a national database of names and contact information for medical examiners who are authorized by FMCSA to perform CMV driver medical examinations.

§ 390.103 Eligibility requirements for medical examiner certification.

(a) To receive medical examiner certification from FMCSA a person must—

(1) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations. The applicant may be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional authorized by applicable State laws and regulations to perform physical examinations.

(2) Have completed a training program that meets the requirements of § 390.105.

(3) Have passed the FMCSA medical examiner certification test administered by a testing organization that meets the requirements of § 390.107 and that has electronically forwarded to FMCSA the applicant's completed test and application information contained in appendix A of this part.

(b) To renew medical examiner certification a medical examiner must remain qualified under paragraph (a)(1) of this section and complete additional testing and training as required by § 390.111(a)(5).

§ 390.105 Medical examiner training programs.

An applicant for medical examiner certification must complete a training program that:

(a) Is conducted by a training provider that:

(1) Is accredited by a nationally-recognized medical profession accrediting organization to provide continuing education units; and

(2) Meets the following administrative requirements:

(i) Provides training participants with proof of participation.

(ii) Provides FMCSA point of contact information to training participants.

(iii) Complies with section 508 of the Rehabilitation Act (29 U.S.C. 794d).

(b) Meets the core curriculum specifications established by FMCSA for medical examiner training. The curriculum must, at a minimum, include the following topics:

(1) Background, rationale, mission, and goals of the FMCSA medical examiner's role in reducing crashes, injuries, and fatalities involving commercial motor vehicles.

(2) Familiarization with the responsibilities and work environment of commercial motor vehicle operation.

(3) Identification of the driver and obtaining, reviewing, and documenting driver medical history, including prescription and over-the-counter medications.

(4) Performing, reviewing, and documenting the driver's medical examination.

(5) Performing, obtaining, and documenting additional diagnostic tests or medical opinion from a medical specialist or treating physician.

(6) Informing and educating the driver about medications and non-disqualifying medical conditions that require remedial care.

(7) Determining driver certification outcome and period for which certification should be valid.

(8) FMCSA reporting and documentation requirements.

§ 390.107 Medical examiner certification testing.

An applicant for medical examiner certification or recertification must apply, in accordance with the minimum specifications identified in the list of application data elements in appendix A of this part, to a testing organization that meets the following criteria:

(a) The testing organization has documented policies and procedures to:

(1) Use secure protocols to access, process, store, and transmit all test items, test forms, test data, and candidate information and ensure access by authorized personnel only.

(2) Ensure testing environments are reasonably comfortable and have minimal distractions.

(3) Prevent to the greatest extent practicable the opportunity for a test taker to attain a passing score by fraudulent means.

(4) Ensure that test center staff who interact with and proctor examinees or provide technical support have completed formal training, demonstrate competency, and are monitored periodically for quality assurance in testing procedures.

(5) Accommodate testing of individuals with disabilities or

impairments to minimize the effect of the disabilities or impairments while maintaining the security of the test and data.

(b) The testing organization has submitted its documented policies and procedures as defined in paragraph (a) of this section to FMCSA; and agreed to future reviews by FMCSA to ensure compliance with the criteria listed in this section.

§ 390.109 Issuance of the FMCSA medical examiner certification credential.

Upon compliance with the requirements of §§ 390.103–390.107, FMCSA will issue to a medical examiner an FMCSA medical examiner certification credential with a unique National Registry Number and will add the medical examiner's name to the National Registry of Certified Medical Examiners. The certification and the listing on the National Registry of Certified Medical Examiners will expire 6 years after the date of issuance of the certification credential.

§ 390.111 Requirements for continued listing on the National Registry of Certified Medical Examiners.

(a) To continue to be listed on the National Registry of Certified Medical Examiners, each medical examiner must:

(1) Continue to meet the requirements of this subpart and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the information submitted under § 390.107 within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the applicable laws and regulations of each State in which the medical examiner performs examinations.

(4) Maintain documentation of State licensing, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and completion of all training required by this section and § 390.105, and make this documentation available to an authorized representative of the FMCSA or an authorized representative of Federal, State or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of request for regular audits of eligibility.

(5) Maintain medical examiner certification by completing training and testing according to the following schedule:

(i) No sooner than 2 years and no later than 3 years after the date of issuance of the medical examiner certification

credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 5 years and no later than 6 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA, except, in alternating 6 year periods, complete the training required by § 390.103(a)(2); and

(B) Pass the test required by § 390.103(a)(3).

(b) FMCSA will issue a new medical examiner certification credential to a medical examiner who complies with paragraphs (a)(1) through (4) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) and (ii) of this section.

§ 390.113 Reasons for removal from the National Registry of Certified Medical Examiners.

The FMCSA may remove a medical examiner from the National Registry of Certified Medical Examiners. The reasons for removal may include, but are not limited to:

(a) The medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in § 390.111.

(b) The FMCSA finds the medical examiner has made errors or omissions, or finds other indications of improper certification in completed Medical Examination Reports or medical examiner's certificates.

(c) The FMCSA determines the medical examiner issued a medical examiner's certificate to an operator of a commercial motor vehicle who failed to meet the applicable standards at the time of the examination.

(d) The medical examiner fails to comply with the examination requirements in § 391.43 of this chapter.

(e) The medical examiner falsely claims to have completed training in physical and medical examination standards as required by this subpart.

§ 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a medical examiner must submit a request to the FMCSA Director of Medical Programs. Except as provided in paragraph (b) of this section, the Director will accept the request and the removal will become effective immediately. However, on and after the date of issuance of a notice of proposed removal from the National Registry, as

described in paragraph (b) of this section, the Director will not approve the medical examiner's request for voluntary removal from the National Registry.

(b) *Notice of proposed removal.*

Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the medical examiner, stating the reasons that removal is proposed under § 390.113 and any corrective actions necessary for the medical examiner to remain listed on the National Registry.

(c) *Response to notice of proposed removal and corrective action.* A medical examiner who has received a notice of proposed removal from the National Registry of Certified Medical Examiners must submit any written response to the Director of Medical Programs, no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry, as described in paragraph (c)(1) of this section, or that the medical examiner will comply and take any corrective action specified in the notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the medical examiner believes FMCSA to have relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the medical examiner must explain why an erroneous reason has been relied on in proposing the removal. The Director will review the explanation.

(i) If the Director finds FMCSA has relied on a wholly erroneous reason for proposing removal from the National Registry, the Director will withdraw the notice of proposed removal and notify the medical examiner in writing of the determination. If the Director finds FMCSA has relied on a partly erroneous reason for proposing removal from the National Registry, the Director will modify the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director modifies a notice of proposed removal, the medical examiner must comply with this subpart and correct the deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If the Director finds FMCSA has not relied on an erroneous reason in

proposing removal, the Director will affirm the notice of proposed removal and notify the medical examiner in writing of the determination. No later than 60 days after the date the Director affirms the notice of proposed removal, the medical examiner must comply with this subpart and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the medical examiner does not submit a written response within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective and the medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.*

(i) The medical examiner must comply with this subpart and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director of Medical Programs affirms or modifies the notice of proposed removal, whichever is later. The medical examiner must provide documentation of compliance and completion of the corrective actions to the Director. The Director may conduct any investigations and request any documentation necessary to verify that the medical examiner has complied with this subpart and completed the required corrective action(s). The Director will notify the medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry.

(ii) If the medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the medical examiner is immediately removed from the National Registry. The Director will notify the medical examiner in writing that he or she has been removed from the National Registry.

(3) At any time before a notice of proposed removal from the National Registry becomes final, the recipient of the notice of proposed removal and the Director may resolve the matter by mutual agreement.

(d) *Request for administrative review.*

If a person has been removed from the National Registry of Certified Medical Examiners under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, that person may request an administrative review no later than 30 days after the date the removal becomes effective. The request must be submitted in writing to the FMCSA Associate Administrator for Policy and Program Development. The

request must explain the error(s) committed in removing the medical examiner from the National Registry of Certified Medical Examiners, and include a list of all factual, legal, and procedural issues in dispute, and any supporting information or documents.

(1) *Additional procedures for administrative review.* The Associate Administrator may ask the person to submit additional data or attend a conference to discuss the removal. If the person does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

(2) *Decision on administrative review.* The Associate Administrator will complete the administrative review and notify the person in writing of the decision. The decision constitutes final Agency action.

(e) *Emergency removal.* In cases of either willfulness or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable and the Director of Medical Programs may immediately remove a medical examiner from the National Registry and invalidate the certification credential issued under § 390.109. A person who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) *Reinstatement on the National Registry of Certified Medical Examiners.* No sooner than 30 days after the date of removal from the National Registry of Certified Medical Examiners, a person who has been removed may apply to the Director of Medical Programs to be reinstated. The person must provide documentation showing compliance with all the requirements of § 390.103(a) and completion of any additional corrective actions required in the notice of proposed removal. A person who has been voluntarily removed may be reinstated by the Director of Medical Programs after providing documentation showing proof of compliance with the requirements of § 390.111.

(g) *Effect of final decision by FMCSA.* If a person is removed from the National Registry of Certified Medical Examiners under paragraph (c) or (e), or a removal is affirmed under paragraph (d), of this section, the person's listing is removed and the certification credential issued under § 390.109 is no longer valid. However, the removed person's information remains publicly available for 3 years, with an indication that the person is no longer listed on the

National Registry of Certified Medical Examiners as of the date of removal.

4. Add appendix A, Medical Examiner Application Data Elements, to part 390 to read as follows:

Appendix A of Part 390—Medical Examiner Application Data Elements

The following minimum data elements must be included in the application for medical examiner certification as specified by § 390.107:

1. Date of application.
2. Full Name.
3. Medical profession (Advanced Practice Nurse (APN), Doctor of Chiropractic (DC), Doctor of Osteopathy (DO), Medical Doctor (MD), Physician Assistant (PA), etc.).
4. Job title, if applicable (e.g., Director of * * *, etc.).
5. Current employer.
6. Employer mailing address.
7. Employer phone number.
8. Employer fax number.
9. Employer e-mail.
10. Business address (street, city, state, and zip code, if different from employer mailing address; P.O. Box is not sufficient).
11. Business phone number(s).
12. Business fax number(s).
13. Business e-mail.
14. Medical license, certificate, or registration number(s) and State(s) where issued.
15. Expiration date of State license(s), registration(s), or certification(s).
16. Statement self-certifying completion of training required by § 390.103(a) or (b).
17. Date training completed.
18. Training provider and address.
19. Group that accredited the training.
20. Type of certification: Initial—Recertification—Reinstatement.
21. Statement of capability and willingness to comply with FMCSA requirement to electronically transmit to FMCSA once every calendar month the following information about each person examined under part 391, subpart E, of this chapter:
 - Name.
 - FMCSA numerical identifier.
 - Date of examination.
 - An indication of whether the person was found to be medically qualified, medically unqualified, or temporarily disqualified.
 - Date of expiration of medical examiner's certificate, if applicable.
22. Statement agreeing to provide copies of certification of completion of training, and State license(s), certificate(s), or registration(s) to perform physical examinations to an authorized representative of FMCSA or to an authorized State or local enforcement agency representative upon request.
23. Statement affirming all information provided is true.

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

5. Revise the authority citation for part 391 to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, 31149, and 31502; Sec. 4007(b) of Pub. L. 102–240 (105 Stat. 2152); Sec. 114, Pub. L. 103–311 (108 Stat. 1673, 1677); and 49 CFR 1.73.

6. Add § 391.42 to read as follows:

§ 391.42 Schedule for use of medical examiners listed on the National Registry of Certified Medical Examiners.

(a) On and after [Date 2 years after the effective date of the final rule] each medical examination required under this subpart for persons who are employed by motor carriers that employ 50 or more drivers of CMVs, as defined in § 390.5 of this chapter, must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners.

(b) On and after [Date 3 years after the effective date of the final rule] each medical examination required under this subpart must be conducted by a medical examiner who is listed on the National Registry of Certified Medical Examiners.

7. Amend § 391.43 by revising paragraph (a), paragraph (g), and the introductory text and the form in paragraph (h), and adding paragraph (i) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

(a) Except as provided by paragraph (b) of this section and by § 391.42, the medical examination must be performed by a medical examiner listed on the National Registry of Certified Medical Examiners under subpart D of part 390 of this chapter.

* * * * *

(g) Upon completion of the medical examination required by this subpart:

(1) The medical examiner must date and sign the Medical Examination Report and provide his or her full name, office address, and telephone number on the Report.

(2) If the medical examiner finds that the person is physically qualified to drive a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs the person examined.

(3) Once every calendar month, the medical examiner must electronically transmit to the FMCSA Medical Program the following information for each Medical Examination Report completed during the previous month, for any driver who is required to be examined by a medical examiner listed on the National Registry of Certified Medical Examiners:

(i) Driver's name.
 (ii) Driver's FMCSA numerical identifier.
 (iii) Date of the examination.
 (iv) Whether the person was found to be medically qualified, medically unqualified, or temporarily disqualified.

(v) Date of expiration of medical examiner's certificate, if applicable.
 (h) The medical examiner's certificate shall be substantially in accordance with the following form. Existing forms may be used until current printed

supplies are depleted or until [Date 4 years after the effective date of the final rule], whichever occurs first.

BILLING CODE 4910-EX-P

MEDICAL EXAMINER'S CERTIFICATE		
I certify that I have examined _____ in accordance with the Federal Motor Carrier Safety Regulations (49 CFR.41-391.49) and with knowledge of the driving duties, I find this person is qualified, and if applicable only when: ☐ wearing corrective lenses ☐ wearing hearing aid ☐ accompanied by a _____ waiver/exemption ☐ driving within an exempt intracity zone (49 CFR 391.62) ☐ accompanied by a Skill Performance Evaluation Certificate (SPE) ☐ Qualified by operation of 49 CFR 391.64 The information I have provided regarding this physical examination is true and complete. A complete examination form with any attachment embodies my findings completely and correctly, and is on file in my office.		
SIGNATURE OF MEDICAL EXAMINER	TELEPHONE	DATE
MEDICAL EXAMINER'S NAME (PRINT)	☐ MD ☐ Chiropractor ☐ DO ☐ Advanced Practice Nurse ☐ Physician Assistant	
MEDICAL EXAMINER'S LICENSE OR CERTIFICATE NO./ISSUING STATE	NATIONAL REGISTRY NO.	
SIGNATURE OF DRIVER	DRIVER'S LICENSE NO.	STATE
ADDRESS OF DRIVER		
MEDICAL CERTIFICATION EXPIRATION DATE		

(i) Each original (paper or electronic) completed Medical Examination Report and a copy or electronic version of each medical examiner's certificate must be retained on file at the office of the

medical examiner for 3 years from the date of examination. The medical examiner must make all records and information in these files available to an authorized representative of the FMCSA

or an authorized State or local enforcement agency representative, within 48 hours after the request is made.

Issued on: November 20, 2008.

John H. Hill,

Administrator.

[FR Doc. E8-28172 Filed 11-28-08; 8:45 am]

BILLING CODE 4910-EX-C