



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA-2016-0333]

RIN 2126-AB97

Process for Department of Veterans Affairs (VA) Physicians to be Added to the National Registry of Certified Medical Examiners

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FMCSA proposes amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) to establish an alternate process for qualified physicians employed in the Department of Veterans Affairs (VA) (qualified VA physicians) to be listed on the Agency's National Registry of Certified Medical Examiners (National Registry). After training and testing, they become certified VA medical examiners that can perform medical examinations of commercial motor vehicle (CMV) operators who are military veterans, and issue Medical Examiner's Certificates (MECs) to those same operators as required by the Fixing America's Surface Transportation (FAST) Act.

DATES: Comments on this notice must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2016-0333 using 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., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs of the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Medical Programs Division, MC-PSP, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 by telephone at 202-366-4001 or by email, fmcsamedical@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2016-0333), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You

may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2016-0333, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2016-0333, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility

in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dottransportation.gov/privacy.

D. Advance Notice of Proposed Rulemaking Not Required

Under the provisions of 49 U.S.C. 31136(f) and (g) (added by section 5202 of the FAST Act), FMCSA is required to publish an advance notice of proposed rulemaking when a rulemaking is likely to lead to the promulgation of a major rule, unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. This NPRM is not subject to these provisions, because it is not likely to lead to the promulgation of a major rule.

II. EXECUTIVE SUMMARY

A. Purpose of the Proposed Rule

The purpose of this proposed rule is to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to establish a process for qualified physicians employed in the Department of Veterans Affairs (VA) (qualified VA physicians) to be listed on the Agency's National Registry of Certified Medical Examiners (National Registry). After training and testing they become certified VA medical examiners that can perform

medical examinations of commercial motor vehicle (CMV) operators who are military veterans, and issue Medical Examiner's Certificates (MECs) to those same operators as required by the Fixing America's Surface Transportation Act (FAST Act), Pub. L. 114-94, div. A, title V, §5403, Dec. 4, 2015, 129 Stat. 1548 (set out as a note to 49 U.S.C. 31149).

As stated in the FAST Act, qualified VA physicians must a) be employed in the Department of Veterans Affairs; b) be familiar with FMCSA's standards for, and physical requirements of, a CMV operator requiring medical certification; and c) have never "acted fraudulently" with respect to such certification. Qualified VA physicians would be listed on the National Registry after completing training and testing provided by FMCSA and delivered through a web-based training system operated by the VA, and, upon successful completion, be allowed to conduct medical examinations of and issue MECs only to CMV drivers who are veterans enrolled in the health care system established under 38 U.S.C. 1705(a) that operate a CMV (veteran operator).

B. Summary of Major Provisions

Through this rulemaking, FMCSA would establish an alternate process for qualified VA physicians to complete comparable training and testing developed by FMCSA and delivered through the VA's web-based training system prior to being listed on the National Registry. This is an alternative to VA physicians obtaining training and testing through the private sector.

Qualified VA physicians are subject to the same provisions of 49 CFR 390 subpart D, except for the differences in the eligibility, training, and testing requirements for any other healthcare professional seeking Medical Examiner (ME) certification.

Qualified VA physicians must be either a doctor of medicine or doctor of osteopathy currently employed in the VA; be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations; be familiar with FMCSA's standards for, and physical requirements of, a CMV operator requiring medical certification by completing training provided by FMCSA and delivered through a web-based training system operated by the VA; pass the medical examiner certification test provided by FMCSA and administered through a web-based training system operated by the VA; and have never "acted fraudulently" with respect to such certification of a CMV operator, including by fraudulently awarding a medical certificate. Qualified VA physicians register on the National Registry System, complete the training and testing provided by FMCSA and delivered through a web-based training system operated by the VA, and after fulfilling the requirements would be listed on the National Registry. Once certified and listed on the National Registry, qualified VA physicians become certified VA MEs.¹ This will allow such physicians to conduct medical examinations of and issue MECs only to veteran operators enrolled in the VA health care system.

If a certified VA medical examiner is no longer employed in the VA, but would like to remain listed on the National Registry, the physician must update his or her registration information within 30 days or submit such a change in registration information prior to conducting any physical examination of a CMV driver or issuing any medical examiner's certificates. Therefore, after the registration is updated the certified

¹ For clarification, FMCSA is using the term qualified VA physician to define VA physician prior to becoming certified and listed on the National Registry while the term certified VA medical examiner refers to the individual who has been certified and listed on the National Registry.

VA medical examiner becomes a certified medical examiner who may perform physical examinations and issue certificates to any CMV driver.

C. Benefits and Costs

The Agency estimates that costs of the proposed rule would be minimal, with an annualized value of \$101,739 at a 7% discount rate. The costs would consist of Federal government information technology (IT)-related expenses, Help Desk operating costs, and curriculum and testing development. Insufficient data are available to quantify the benefits of the proposed rule, as FMCSA does not know how many qualified VA physicians will complete the certification process. FMCSA estimates the per-physician savings (for certifying qualified VA physicians seeking to become certified VA MEs listed on the National Registry) at \$614, resulting from the use of online-only training and testing that eliminates travel costs. Non-quantifiable benefits may result from the increased availability for veteran operators to receive their DOT physical.

III. ABBREVIATIONS AND ACRONYMS

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| CDL | Commercial Driver's License |
| CLP | Commercial Learner's Permit |
| CMV | Commercial Motor Vehicle |
| DOT | Department of Transportation |
| FMCSA | Federal Motor Carrier Safety Administration |
| FMCSR | Federal Motor Carrier Safety Regulations |
| FAST Act | Fixing America's Surface Transportation Act |
| FR | Federal Register |
| IRFA | Initial Regulatory Flexibility Analysis |
| IT | Information Technology |
| ME | Medical Examiners |
| MEC | Medical Examiner's Certificates |
| MER | Medical Examination Report |
| National Registry | National Registry of Certified Medical Examiners |
| RFA | Regulatory Flexibility Act |
| § | Section symbol |
| SDLA | State Driver Licensing Agency |
| U.S.C. | United States Code |

IV. LEGAL BASIS FOR THE RULEMAKING

The legal authority for this proposed rule is derived from 49 U.S.C. 31136 and 31149, as supplemented by section 5403 of the FAST Act. Section 31136(a)(3) requires that operators of CMVs be physically qualified to operate safely, as determined and certified by an ME listed on the National Registry. Section 31149(d) requires FMCSA to ensure that MEs listed on the National Registry are qualified to perform the physical examinations of CMV operators, and to certify that such operators meet the physical qualification standards. In order to ensure that MEs are qualified for listing on the National Registry, 49 USC 31149(c)(1)(D) requires them to receive training based on core curriculum requirements developed by FMCSA in consultation with the Medical Review Board (established under 49 U.S.C. 31149(a)), to pass a certification examination, and to demonstrate an ability to comply with reporting requirements established by FMCSA.

Section 5403 of the FAST Act supplements the general provisions of section 31149 by providing for physicians employed in the VA to be listed on the National Registry and to perform the physical examination of veterans who require a physical examination and a medical certificate to operate a CMV. In order to be qualified for listing on the National Registry, such physicians must be familiar with the physical standards and requirements for operators of CMVs. They must also have never been found to have acted fraudulently with respect to a medical examiner's certificate for a CMV operator. Certified VA MEs on the National Registry may perform examinations

on, and issue medical examiner's certificates to, only veterans enrolled in the health care system operated by the VA.

There is general authority to adopt regulations to implement these provisions from both 49 U.S.C. 31136(a) and 49 U.S.C. 31149(e). Such authority has been delegated to the Administrator of FMCSA by 49 CFR 1.87.

V. BACKGROUND

A. National Registry of Certified MEs

Prior to the National Registry, there was no required training program for the medical professionals who conduct driver physical examinations, although the FMCSRs required MEs to be knowledgeable about the regulations (49 CFR 391.43(c)(1)). No specific knowledge of the Agency's physical qualification standards was required or verified by testing. As a result, some of the medical professionals who conducted these examinations were unfamiliar with FMCSA's physical qualification standards and how to apply them. These medical professionals may have also been unaware of the mental and physical rigors that accompany the occupation of CMV drivers, and how various medical conditions (and the therapies used to treat them) can affect the ability of drivers to safely operate CMVs.

In 2012, FMCSA issued a final rule establishing the National Registry (77 FR 24104, April 20, 2012) to improve highway safety and driver health by requiring that MEs be trained and certified so they can effectively determine whether a CMV driver's medical fitness for duty meets FMCSA's standards. The program implements the requirements of 49 U.S.C. 31149 and requires MEs who conduct physical examinations for CMV drivers to meet the following criteria: (1) complete certain training concerning

FMCSA's physical qualification standards; (2) pass a test to verify an understanding of those standards; and (3) maintain and demonstrate competence through periodic training and testing. Following the establishment of the National Registry, the FMCSRs were amended to require drivers to be examined and certified by only those MEs listed on the Agency's National Registry, and only MECs issued by MEs listed on the National Registry will be acceptable as valid proof of medical certification.

To be listed on the National Registry, MEs are required to attend an accredited training program and pass a certification test to assess their knowledge of FMCSA's physical qualifications standards and how to apply them to drivers. To maintain their certification and listing on the National Registry, MEs are required to complete training at five-year intervals and to complete training and pass a recertification test every 10 years.

Certified MEs listed on the National Registry who conduct medical examinations of CMV drivers are required to submit on a monthly basis via their individual password-protected National Registry account a CMV Driver Medical Examination Results Form, MCSA-5850, to FMCSA for each physical examination conducted. Certified MEs also are required to retain a copy of the Medical Examination Report (MER) Form, MCSA-5875, and MEC, MCSA-5876, for all drivers they examine and certify, for at least three years from the examination date. The MER Form, MCSA-5875, lists the driver's health history and specific results of the various medical tests and assessments used to determine if a driver meets the physical qualification standards set forth in 49 CFR part 391, subpart E. In addition, certified MEs are required to issue a MEC, Form MCSA-

5876, to those drivers who they determine meet FMCSA's physical qualification standards.

B. Medical Examiner's Certification Integration

On April 23, 2015, FMCSA published the Medical Examiner's Certification Integration final rule (80 FR 22790), a follow-on rule to the National Registry, which requires MEs performing physical examinations of CMV drivers to use a newly developed MER Form, MCSA-5875, in place of the former MER Form and to use Form MCSA-5876 for the MEC. In addition, beginning June 22, 2018, this rule will require certified MEs to report results of all CMV drivers' physical examinations performed (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. For commercial learner's permit (CLP) and commercial driver's license (CDL) applicants/holders, FMCSA will electronically transmit driver identification, examination results, and restriction information from the National Registry to the State Driver's Licensing Agencies (SDLAs). The Agency will also electronically transmit medical variance information for all CMV drivers to the SDLAs. MEs will still be required to provide drivers of CMVs that do not require a CDL/CLP with an MEC, Form MCSA-5876.

VI. DISCUSSION OF PROPOSED RULE

A. Overview

As required by 5403 of FAST Act, FMCSA consulted with the Secretary of Veterans Affairs and is now proposing to establish a process for qualified VA physicians employed in the VA to be included on FMCSA's National Registry, perform medical

examinations of CMV drivers who are veteran operators, and issue MECs to qualified drivers. Qualified VA physicians would be listed on the National Registry after registering on the National Registry System, and completing training and testing provided by FMCSA and delivered through a web-based training system operated by the VA. Upon successful completion, certified VA MEs will be allowed to conduct medical examinations of, and issue MECs only to, veteran operators enrolled in the VA health care system. In addition to the requirements proposed, certified VA MEs will be subject to some of the other provisions of 49 CFR 390 subpart D as are all other certified MEs listed on the National Registry.

B. Eligibility

National Registry eligibility requirements for medical examiner certification require that the person 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. As required by the statute, this proposed rule limits eligibility of qualified VA physicians to only those who are either doctors of medicine or doctors of osteopathy and employed in the VA.

Consistent with the FAST Act, this proposed rule adds the requirement that qualified VA physicians must never have “acted fraudulently” with respect to such certification of a CMV operator, including fraudulently awarding a MEC.

This proposed rule has different licensure requirements in that qualified VA physicians may be able to practice in additional States without being licensed, certified, or registered in each State. In accordance with the provisions of 38 U.S.C. 7402(a) and

(b)(1), the VA Handbook 5005/85,² Staffing (Qualification Standard for the Appointment of Physicians, GS-0602, in VA), that provides the physician qualification standards, states that physicians must possess a current, full and unrestricted license to practice medicine or surgery in a State, Territory, or Commonwealth of the United States, or in the District of Columbia, and must maintain current registration in the State of licensure if it is a requirement for continuing active, current licensure. The VA Handbook does not specify that physicians must be licensed in each State where they practice medicine. Assuming they meet licensure requirements prescribed by statute and VA policy, they may practice at any VA facility, regardless of its location or the practitioner's State of licensure. Therefore, this proposed rule would require qualified VA physicians who become certified to continue to be licensed, certified, or registered in a State to perform physical examinations. Similarly, this proposed rule would require qualified VA physicians who become certified to maintain documentation of State licensure, registration, or certification to perform physical examinations.

C. Training Requirements

Instead of completing a training program conducted by a private training organization that meets the requirements of 49 CFR 390.105, including providing training based on the core curriculum specifications developed by FMCSA, qualified VA physicians must become familiar with FMCSA's standards for, and physical requirements of, a CMV operator requiring medical certification. This would be accomplished by completing training provided by FMCSA and delivered through a web-based training system operated by the VA. Since the training is being provided by

² http://www1.va.gov/vapubs/search_action.cfm?dType=2, accessed September 20, 2016.

FMCSA, it will be comparable to the core curriculum guidelines provided to private training organizations.³ The training would be an interactive, online training course and would include at least the following: (1) an overview of all FMCSA medical standards; (2) an overview of how the Federal medical exemption programs factor into the qualification decision; (3) an administrative component that includes an overview of the driver examination forms; and (4) information regarding the use of the National Registry and the National Registry System.

D. Testing Requirements

Instead of completing the testing requirements of 49 CFR 390.107 by using a testing organization that has been approved by FMCSA to deliver the test, qualified VA physicians must pass a comparable certification test provided by FMCSA and administered through a web-based training system operated by the VA. After completing the training described above, qualified VA physicians would be required to take a test and receive a passing grade. The grade received by each qualified VA physician would be electronically transmitted from the web-based training system to the National Registry System for posting to the physician's National Registry account.

E. Maintaining Certification

One of the requirements for maintaining certification and continued listing on the National Registry is that certified MEs must continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with applicable State laws and regulations of each State in which the ME performs

³ See 78 FR 28403 (May 17, 2011) and <https://www.regulations.gov/document?D=FMCSA-2008-0363-0096>.

examinations. This proposed rule would require qualified VA physicians who become certified to continue to be licensed, certified, or registered in a State to perform physical examinations.

Another requirement for maintaining certification and continued listing on the National Registry is that certified MEs must maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the ME performs examinations. Because certified VA medical examiners may be able to practice in additional States without being licensed, certified, or registered in each State, this proposed rule would only require certified VA medical examiners to maintain documentation of State licensure, registration, or certification to perform physical examinations, again without reference to each State in which the physician performs examinations.

If a certified VA medical examiner is no longer employed in the VA, but would like to remain listed on the National Registry, the physician must update his or her registration information within 30 days or submit such a change in registration information prior to conducting any physical examination of a CMV driver or issuing any medical examiner's certificates. Pursuant to its broad authority under 49 U.S.C. 31149(c)(1)(D), FMCSA proposes to recognize the comparable training received by qualified VA physicians to be suitable for such physicians to continue to be listed on the National Registry. But physicians wishing to continue such listing must be licensed to perform physical examinations in any State where examinations of CMV drivers will be conducted. Therefore, after the registration is updated the previously certified VA

medical examiner becomes a certified medical examiner who may perform physical examinations and issue certificates to any CMV driver.

F. Performing DOT Medical Examinations

The National Registry regulations allow for certified MEs to perform examinations of all drivers requesting a DOT medical examination. This proposed rule would limit certified VA medical examiners, to conducting examinations of only veteran operators, while they are employed in the VA. This process would provide veteran operators with the option of utilizing their enrollment in the VA healthcare system to obtain their MECs.

G. Proposed Changes to Certification Requirements for All MEs

After several years of evaluating the operation of the National Registry System, FMCSA proposes changes to the existing requirements for becoming a certified ME. FMCSA proposes to add a requirement that to receive ME certification from FMCSA, prior to taking the training and testing, a person must register on the National Registry System and receive a unique identifier. This has always been how the National Registry System has operated and is the first step in becoming a certified ME but was not specifically included in the regulation.

Additionally, FMCSA proposes to remove the prohibition against an applicant taking the test more than once every 30 days. Since the regulation does not specify any actions that must be taken within the 30-day waiting period (such as additional training), the Agency proposes to remove the provision.

VII. SECTION-BY-SECTION ANALYSIS

Part 390

Section 390.5 Definitions

The Agency proposes adding new definitions for the terms “certified VA medical examiner,” “qualified VA physician” and “veteran operator.”

Section 390.103 Eligibility requirements for medical examiner certification

As a whole, FMCSA has reorganized and restructured the paragraphs of this section to introduce separate eligibility requirements for a qualified VA physician. Specifically, the Agency adds the word “either” after “must” in paragraph (a). Additionally, it adds a new paragraph (a)(1)(ii). Third, FMCSA adds a new paragraph (a)(2) and deletes from (a)(3) the sentence stating “An applicant must not take the test more than once every 30 days.” Finally, the Agency adds the citation “or (a)(2)” to paragraph (b).

Section 390.105 Medical examiner training programs.

The Agency adds a new paragraph (c) setting out the training requirements for qualified VA physicians.

Section 390.107 Medical examiner certification testing.

FMCSA adds a new paragraph (e) setting out the testing requirements for qualified VA physicians.

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

In paragraph (a)(2), FMCSA creates new paragraphs (i) and (ii). In new (a)(2)(i), the Agency deletes the word “application” and replaces it with “registration.”

Additionally, in this paragraph, the cross-reference is changed to “§390.103(a)(1)(ii).”

Finally, the Agency adds a new paragraph (a)(2)(ii) that states what happens when a certified VA medical examiner is no longer employed by the VA.

FMCSA divides both paragraphs (a)(3) and (a)(4) into two separate paragraphs: paragraph (i) with the existing requirements and new paragraph (ii) with the new requirements for certified VA MEs. In the new paragraph (a)(4)(i), FMCSA adds “and (b)” after §390.105(a). In paragraph (a)(5)(ii)(B), the cross-reference is updated to read “§390.103(a)(1)(iv) or (a)(2)(ii).”

Finally, in paragraph (b), FMCSA changes the reference from “(4)” to “(5).”

Section 390.115 Procedures for removal from the National Registry of Certified Medical Examiners.

In paragraph (d)(2)(ii), the Agency changed the cross-reference to read “§390.103(a)(1)(ii).” Additionally, paragraph (d)(2)(v) is redesignated as (d)(2)(vi) and the Agency inserts new language for (d)(2)(v).

In paragraph (f)(2), the cross-reference is changed to read “§390.103(a)(1)(ii).” Paragraph (f)(4) is divided into two separate paragraphs: (i) with the existing requirements and new paragraph (ii) with the new requirements for certified VA MEs.

Part 391

Section 391.43

Paragraph (b) is revised by adding “Exceptions. (1)” before “A licensed optometrist” and dividing the paragraph into two separate paragraphs: paragraph (1) relating to an optometrist and new paragraph (2) relating to veteran operators.

VIII. REGULATORY ANALYSES

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Therefore, the Office of Management and Budget has not reviewed the proposed rule under that Order. However, as required by 49 U.S.C. 31136(c)(2)(A), the Agency will consider the cost and benefits of this proposed rule. The Agency estimates the economic benefits and costs of the proposed rule would be less than \$100 million annually.

The objective of the proposed rule is to develop a direct process to allow qualified VA physicians employed in the VA to perform physical examinations for veteran operators and to list such physicians on the National Registry. Absent this proposed rule, qualified VA physicians may choose to become certified MEs listed on the National Registry; however, the resource and qualification burden to do so is greater than under the proposed rule. There are just 10 VA physicians certified and listed as MEs on the National Registry under the current process, a small fraction of the 49,943 listed MEs.⁴ The Agency lacks data to estimate whether the proposed rule would impact the number of qualified VA physicians who would obtain certification as certified VA MEs; however,

⁴A total of 25 medical professionals employed in the VA are listed on the National Registry as of September 16, 2016; of these, 10 are physicians. Nationwide, a total of 49,943 medical professionals are listed on the National Registry as of September 12, 2016. See <https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam> (Accessed September 16, 2016).

as this proposed rule reduces the cost to do so, the Agency assumes that this number would increase or, at minimum, remain constant relative to the baseline.

A detailed list of requirements to become a certified ME is in §390.103. The three requirements are:

- Must be licensed, certified, or registered according to State laws and regulations to perform physical examinations;
- Must complete required training from a training organization;
- Must pass the medical examiner certification test at an FMCSA-approved testing center.

The requirements are modified by the proposed rule in order to make training and testing readily accessible to qualified VA physicians. In summary, the quantifiable benefits and costs of the proposed rule are: (1) benefits in the form of cost savings for qualified VA physicians seeking to become certified VA MEs on the National Registry, through reductions in time and travel expenses; (2) costs associated with the development of an online training and testing module, and (3) information technology (IT) tasks required to construct an interface between the National Registry System and VA's web-based training system. The interface will provide a seamless transfer of completed training and testing information for each registered qualified VA physician to be listed on the National Registry.

To estimate the benefits resulting from cost savings of the proposed rule, the Agency utilized estimated health care professionals' ME training and testing-related travel costs from the December 2011 regulatory evaluation of the National Registry final

rule.⁵ For the evaluation of the proposed rule, those costs are adjusted to 2015 dollars in order to subsequently estimate the reduction in those costs attributable to the proposed rule. In the aforementioned 2011 regulatory evaluation, the Agency estimated that 50 percent of health care professionals seeking to become certified MEs will complete the required training and testing online, while the remaining 50 percent will participate in classroom-based training. At present, there are no testing providers offering online testing. Adjusting for a 50/50 online vs. classroom split for training and the current absence of online testing, FMCSA estimates that in the baseline, a qualified VA physician seeking to become a certified VA ME would, on average, incur 4.5 hours of travel time costs and 105 miles of vehicle mileage expenses.⁶ Under the proposed rule, training and testing for qualified VA physicians will be online-only, using the VA's web-based training system. This eliminates the travel time costs and the vehicle mileage costs that would otherwise be incurred in the absence of the proposed rule. Four and a half hours of travel time per participating qualified VA physician would be saved. The Bureau of Labor Statistics (BLS) Occupational Employment Statistics, May 2015, data indicate the weighted average hourly wage for general practitioners, internists, physicians, and surgeons is \$93.96.⁷ Adjusting this value for fringe benefits using data from the BLS Employer Costs for Employee Compensation database, a fringe benefit markup of 31 percent is applied, resulting in an hourly valuation of \$123.09, rounded to \$123 for

⁵ The 2011 regulatory evaluation can be accessed at <https://www.regulations.gov/document?D=FMCSA-2008-0363-0115> (Accessed September, 6, 2016).

⁶ 4.5 hours assumes 3 hours roundtrip travel for training (incurred by 50% of qualified VA physicians) and 3 hours of roundtrip travel for testing (for 100% of qualified VA physicians). $4.5 \text{ hours} = (3 \times 0.50 + 3 \times 1.0)$. 105 miles of travel by vehicle assumes a 70 mile roundtrip distance for training (incurred by 50% of qualified VA physicians) and a 70 mile roundtrip distance for testing (incurred by 100% of qualified VA physicians). $105 = (70 \times 0.50 + 70 \times 1.0)$. Distance and time inputs are consistent with those in the 2011 regulatory evaluation of the National Registry final rule.

⁷ See http://www.bls.gov/oes/current/oes_nat.htm (Accessed September 6, 2016).

purposes of this analysis.⁸ At an average of 4.5 hours of travel time saved per participating qualified VA physician, the proposed rule would provide a per-physician savings of \$554 ($\$553.50 = 4.5 \times \123 , rounded to the nearest whole number).

FMCSA separately estimates the cost savings resulting from the average reduction of 105 miles of travel per physician subsequent to the proposed rule. Consistent with the approach of the 2011 regulatory evaluation for the National Registry final rule, the Agency monetizes this benefit using the standard Internal Revenue Service (IRS) mileage rate. The 2015 standard IRS mileage rate is 57.5 cents per mile.⁹ By this measure, the per-physician travel expense savings is \$60 ($\$60 = 57.5 \text{ cents per mile} \times 105 \text{ miles}$, rounded to the nearest whole number).

The total quantifiable benefit of the proposed rule (per qualified VA physician seeking to become a certified VA ME) is estimated to be \$614. This estimate is the sum of the projected savings of \$554 in travel time costs and \$60 in travel expenses.

Participation of qualified VA physicians in the National Registry is voluntary. It is important to note that the cost savings to the Federal government are specific to the elimination of time and travel expenses associated with initial ME certification training and testing requirements, and not to subsequent refresher training and recertification testing.¹⁰

There may also be non-quantifiable benefits of the proposed rule to veteran operators if qualified VA physicians' participation in the National Registry increases the

⁸ The 31 percent fringe benefit markup is obtained from BLS series "All Civilian Total benefits for Professional and related occupations; Percent of total compensation" and corresponds to the Q1 2016 value

⁹ See <https://www.irs.gov/tax-professionals/standard-mileage-rates/> (Accessed September 21, 2016).

¹⁰ 49 CFR 390.111(a)(5)(i) and (ii) require MEs to complete periodic training every 5 years after the date of issuance of their credential, and complete training and testing no later than 10 years after the date of issuance of their credential.

availability of and access to certified VA MEs. This may reduce waiting periods for appointments for veteran operators enrolled in the VA health care system. Shorter waiting periods may expedite a veteran operator's ability to begin driving for personal income. Also, the potential addition of qualified VA physicians to the list of certified MEs in closer proximity to a veteran operator's residence may reduce the cost of travel time and the use of a personal vehicle for those veteran operators seeking to be examined by a certified VA ME.¹¹ The Agency lacks data on the number of veterans enrolled in the VA healthcare system now, or in the future, who might take advantage of this benefit, or their proximity to a VA ME who might be added to the National Registry under this proposed rule. Therefore, FMCSA is unable to quantify this benefit of the proposed rule.

The costs of the proposed rule are strictly IT systems-related and will be borne by the Federal government. These costs consist of: (1) development of an online medical examiner certification training and testing module for qualified VA physicians; (2) development and maintenance of an interface between the VA's web-based training system and the National Registry System so that qualified VA physicians' certification training and test results can be transmitted to the National Registry; and (3) operation of the National Registry Help Desk to assist qualified VA physicians with registration for, and completion of, the online training and testing. The VA and FMCSA are responsible for developing the interface between their respective IT systems.

FMCSA has executed a contract with consultants who will develop the online curriculum. The training module will include a test at the end to ensure that qualified VA

¹¹ The geographic diversity of VA medical professionals listed on the National Registry is limited in scope and number. The 25 VA practitioners listed on the National Registry are located in 16 states. Of these VA practitioners, a total of 13 are located in California (2), Colorado (4), North Dakota (3) and Wisconsin (4). See <https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam> (Accessed September 16, 2016).

physicians seeking to become certified VA MEs complete and fully understand the standards for, and physical requirements of, a CMV operator. The results of the test will be posted to his or her National Registry account. The estimated cost of this contract is \$84,138.

The IT system developer will be responsible for modifying the National Registry System so it will be able to accept VA physicians' training and test results from the VA's web-based training system and post results to each qualified VA physician's National Registry account. The contract is for \$128,675. Presently, FMCSA assumes that the VA's costs of interface development are the same.

The National Registry Help Desk contractor will staff the National Registry Help Desk to provide technical support to qualified VA physicians going through the National Registry registration and certification process and respond to telephone, written, and email inquiries regarding National Registry certification from qualified VA physicians, veterans, motor carriers, and other interested parties. FMCSA estimates costs for the first year of the contract are \$46,200 and \$57,750 for the second year. Help Desk costs are assumed to be constant at \$57,750 for the remaining eight years of the forecast period.

Table 1: Estimated Information Technology and Help Desk Costs (in 2015\$)

| Year | Curriculum Development | FMCSA Interface Development | Help Desk Support | DVA Interface Development | Total (Undiscounted) | Total (3% Discount Rate) | Total (7% Discount Rate) |
|----------------------|------------------------|-----------------------------|-------------------|---------------------------|----------------------|--------------------------|--------------------------|
| 2018 | \$84,138 | \$129,000 | \$46,200 | \$129,000 | \$388,338 | \$388,338 | \$388,338 |
| 2019 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$56,068 | \$53,972 |
| 2020 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$54,435 | \$50,441 |
| 2021 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$52,849 | \$47,141 |
| 2022 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$51,310 | \$44,057 |
| 2023 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$49,816 | \$41,175 |
| 2024 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$48,365 | \$38,481 |
| 2025 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$46,956 | \$35,964 |
| 2026 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$45,588 | \$33,611 |
| 2027 | \$0 | \$0 | \$57,750 | \$0 | \$57,750 | \$44,261 | \$31,412 |
| 10-Year Total | \$84,138 | \$129,000 | \$565,950 | \$129,000 | \$908,088 | \$837,986 | \$764,593 |
| Annualized | | | | | | \$95,376 | \$101,739 |

The IT, interface development, Help Desk, and training and testing development costs incurred by FMCSA over the 10-year forecast period are summarized in Table 1. Total costs over the 10 year period are estimated at \$908,088 on an undiscounted basis. The estimated costs at a 3 percent discount rate are \$837,986, and \$764,593 at a 7 percent discount rate. The annualized cost over the 10 year period is \$95,376 at a 3 percent discount rate and \$101,739 at a 7 percent discount rate.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Section 603(b) of the RFA requires the Agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) that assesses the impact of the proposed rule on small entities. The information that satisfies the requirements for an IRFA is provided below.

1. A description of the reasons why the action by the agency is being considered.

The proposed rule is being issued to fulfill the requirement of section 5403 of the FAST Act that requires the Secretary of Transportation, in consultation with the Secretary of Veterans Affairs, to develop a process for qualified VA physicians to be certified and listed on the Agency's National Registry. By doing so, veteran operators enrolled in the VA health care system will be able to obtain their medical examinations and MECs using their VA health care benefits. Currently, veteran operators enrolled in the VA health care system, more likely than not, would go outside the VA health care system because there are only 25 VA medical professionals in the nation who are certified MEs, 10 of whom are physicians.

2. A succinct statement of the objectives of, and the legal basis for, the proposed rule.

The objective of the proposed rule is to develop a process to allow qualified VA physicians employed in the VA to be listed on the National Registry, perform medical examinations of veteran operators, and issue MECs to those that are qualified. Upon the proposed rule's compliance date, qualified VA physicians will be able to complete ME certification training and testing requirements using a web-based training system operated by the VA to become a certified VA ME. As noted above, at present, there are only 25

VA medical professionals across the nation listed on the National Registry, 10 of whom are physicians. If more qualified VA physicians are listed on the National Registry, veteran operators enrolled in the VA health care system will have a greater likelihood of being able to obtain their medical examinations using their VA health care benefits.

The legal authority for this proposed rule is provided by 49 U.S.C. 31136 and 31149 and section 5403 of the FAST Act. Pursuant to 49 U.S.C 31136(a), FMCSA is authorized to require CMV operators to obtain periodic medical examinations performed by MEs who have received training on DOT physical standards. FMCSA created and administers the National Registry, in accordance with 49 U.S.C. 31149(d). In order to ensure that MEs are qualified for listing on the National Registry, 49 USC 31149(c)(1)(D) requires them to receive training in core curriculum requirements developed by FMCSA in consultation with the Medical Review Board (established under 49 U.S.C. 31149(a)), to pass a certification examination, and to demonstrate an ability to comply with reporting requirements established by FMCSA.

Section 5403 of the FAST Act directs the Secretary of Transportation, in consultation with the Secretary of Veterans Affairs, to develop a process for qualified VA physicians employed in the VA to be listed on the National Registry. In order to be qualified for ME certification and listing on the National Registry, the FAST Act requires that such physicians must be familiar with the physical standards and requirements for CMV operators. Qualified VA physicians listed on the National Registry may perform examinations of, and issue MECs to, only veterans enrolled in the VA health care system.

- 3. A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.**

FMCSA believes there are no small entities affected by this proposed rule.

- 4. A description of the proposed reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of entities that will be subject to the requirement and training types of professional skills necessary for preparation of the report or record and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.**

The proposed rule requires no new recording, recordkeeping, or other compliance requirements.

- 5. An identification, to the extent practicable, of relevant federal rules that may duplicate, overlap or conflict with the proposed rule.**

The Agency did not identify any Federal rules that duplicate, overlap, or conflict with the rule.

- 6. A description of any significant alternatives to the proposed rule that minimize any significant impacts on small entities.**

FMCSA has considered whether the proposed rule is expected to have a significant economic impact on a substantial number of small entities. FMCSA believes there are no small entities affected by this proposed rule. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance; please consult the FMCSA point of contact, Christine A. Hydock, listed in the **For Further Information Contact** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this proposed rule would not result in any such expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

E. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

F. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

G. E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

H. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not

anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

I. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule would not require the collection of any new personally identifiable information (PII) by the National Registry of Certified Medical Examiners system, but will establish a new process of collection for a specific group of individuals. In accordance with this Act, a privacy impact analysis is warranted to address the new process for collection of personally identifiable information contemplated in the proposed rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the proposed process for collection of personal information to the Department of Transportation, Office of the Secretary's Privacy Office for adjudication. The final adjudication from the DOT Privacy Officer will be incorporated into the Final Rule.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The E-Government Act of 2002, Pub. L. 107-347,

§ 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

Pending the adjudication from the DOT Privacy Officer, the FMCSA Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing Personally Identifying Information and has examined protections and alternative information handling processes in developing the proposal in order to mitigate potential privacy risks. The privacy risks and effects associated with the doctor's registration records resulting from this rule are not unique and have previously been addressed by the doctor registration requirements in the National Registry of Certified Medical Examiners (National Registry) and the Medical Examiner's Certification Integration PIA published on April 27, 2015 and the DOT/FMCSA 009 – National Registry of Certified Medical Examiners (National Registry) System of Records Notice (77 FR 24247) published in the Federal Register on April 23, 2012. The PIA will be reviewed and revised as appropriate to reflect the Final Rule and will be published not later than the date on which the Department initiates any of the activities contemplated in the Final Rule determined to have an impact on individuals' privacy and not later than the date on which the system supporting implementation of the Final Rule is updated.

Per the Privacy Act the Department is required to publish in the Federal Register for not less than 30 days a system of records notice (SORN) before it is authorized to collect or use PII retrieved by unique identifier. Following best practice, the SORN will be reviewed and revised as appropriate to reflect the Final Rule and would be published

concurrently with the Final Rule publication; however an additional SORN for this rulemaking is not required by DOT policy at this time.

The supporting National Registry PIA, available for review in the docket, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the system addressed in the proposed rule.

K. E.O. 12372 (Intergovernmental Review)

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

L. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

O. Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6.d. The Categorical Exclusion (CE) in paragraph 6.d covers regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. The proposed requirements in this rule are covered by this CE and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

FMCSA 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 does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects

49 CFR 390

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

49 CFR 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 49 CFR chapter 3, part 390 and 391 to read 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. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat.

1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; sec. 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; sec. 5403, 5518, 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; and 49 CFR 1.81, 1.81a and 1.87.

2. In §390.5, add the terms “Certified VA medical examiner”, “Qualified VA physician” and “Veteran operator” in alphabetical order to read as follows:

§390.5 Definitions.

* * * * *

Certified VA medical examiner means a qualified VA physician who has fulfilled the requirements and is listed on the National Registry of Certified Medical Examiners.

* * * * *

Qualified VA physician means a doctor of medicine or a doctor of osteopathy who is employed in the Department of Veterans Affairs; is familiar with the standards for, and physical requirements of, an operator certified pursuant to 49 U.S.C. 31149; and has never, with respect to such section, been found to have acted fraudulently, including by fraudulently awarding a medical certificate.

* * * * *

Veteran operator means an operator of a commercial motor vehicle who is a veteran enrolled in the health care system established under section of 38 U.S.C. 1705(a).

3. Revise §390.103 to read as follows:

§390.103 Eligibility requirements for medical examiner certification.

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

(1) 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, and

(i) Be licensed, certified, or registered in accordance with applicable State laws and regulations to perform physical examinations;

(ii) Before taking the training provided below, register on the National Registry System and receive a unique identifier.

(iii) Complete a training program that meets the requirements of §390.105(a) and (b); and

(iv) Pass the medical examiner certification test provided by FMCSA and administered by a testing organization that meets the requirements of §390.107 and that has electronically forwarded to FMCSA the applicant's completed test information no more than three years after completion of the training program required by paragraph (a)(1)(iii) of this section; or

(2) Be a doctor of medicine or a doctor of osteopathy employed in the Department of Veterans Affairs, and

(i) Be licensed, certified, or registered in a State to perform physical examinations,

(ii) Before taking the training provided below, register on the National Registry system and receive a unique identifier.

(iii) Be familiar with FMCSA's standards for, and physical requirements of, a commercial motor vehicle (CMV) operator requiring medical certification, by completing the training program in §390.105(c);

(iv) Pass the medical examiner certification test provided by FMCSA, administered in accordance with §390.107(e) and has had his or her results electronically forwarded to FMCSA; and

(v) Have never been found to have acted fraudulently with respect to any certification of a CMV operator, including by fraudulently awarding a medical certificate.

(b) If a person has medical examiner certification from FMCSA, then to renew such certification the medical examiner must remain qualified under paragraph (a)(1) or (a)(2) of this section and complete additional testing and training as required by §390.111(a)(5).

4. In §390.105, add paragraph (c) to read as follows:

§390.105 Medical examiner training programs.

* * * * *

(c) Instead of complying with paragraph (a) and (b) of this section, a qualified VA physician must complete training developed and provided by FMCSA and delivered through a web-based training system operated by the Department of Veterans Affairs.

5. In 390.107, add paragraph (e) to read as follows:

§390.107 Medical examiner certification testing.

* * * * *

(e) Instead of complying with paragraphs (a)-(d) of this section, to receive medical examiner certification from FMCSA, a qualified VA physician must pass the medical examiner certification test developed and provided by FMCSA and administered through a web-based training system operated by the Department of Veterans Affairs.

6. In §390.111, revise paragraphs (a)(2), (3), (4), (a)(5) introductory text, (a)(5)(ii)(B), and paragraph (b).

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

(a) * * *

(1) * * *

(2) Registration information. (i) Report to FMCSA any changes in the registration information submitted under §390.103(a)(1)(ii) within 30 days of the change.

(ii) A certified VA medical examiner who is no longer employed in the VA, but would like to remain listed on the National Registry, must either meet the requirements of paragraph (i) or submit this change in registration information prior to conducting any physical examination of a CMV driver or issuing any medical examiner's certificates.

(3) Licensure. (i) 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.

(ii) Instead of complying with paragraph (3)(i) of this section, a certified VA medical examiner must continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the laws and regulations of a State. If a certified VA medical examiner is no longer employed in the Department of Veterans Affairs, such physician must meet the requirements of paragraph (3)(i) of this section.

(4) Documentation. (i) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations, and maintain documentation of, and completion of, all training required by this section and §§390.105 (a) and (b). The medical examiner must make this documentation available to an authorized representative of 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

the request for regular audits of eligibility.

(ii) Instead of complying with paragraph (4)(i) of this section, a certified VA medical examiner must maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by this section and §390.105(c). The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

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

(ii) * * *

(A) * * *

(B) Pass the test required by either §390.103(a)(1)(iv) or (a)(2)(iii).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a medical examiner who complies with paragraphs (a)(1) through (5) of this section and who successfully completes the training and testing as required by paragraphs (a)(5)(i) or (ii) of this section.

7. In §390.115, revise paragraphs (b), (d)(2)(ii), (d)(2)(v), (d)(2)(vi), (f)(2) and (f)(4).

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

* * * * *

(b) Notice of proposed removal. Except as provided 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 of Certified Medical Examiners.

(d) * * *

(2) * * *

(ii) Report to FMCSA any changes in the registration information submitted under §390.103(a)(1)(ii) within 30 days of the reinstatement.

* * * * *

(v) Instead of complying with paragraph (2)(iv) of this section, a certified VA medical examiner must maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by this section and §§390.105(c) and 390.111(a)(iv) of this part. The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(vi) Complete periodic training as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

* * * * *

(f) * * *

(1) * * *

(2) Report to FMCSA any changes in the registration information submitted under §390.103(a)(1)(ii).

(3) * * *

(4) Documentation. (i) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the person performs examinations and maintains documentation of completion of all training required by §§390.105(a) and (b) and 390.111(a)(4)(i). The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The person must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

(ii) Instead of complying with paragraph (4)(i) of this section, a certified VA medical examiner must maintain documentation of licensure, registration, or certification in a State to perform physical examinations and maintain documentation of and completion of all training required by this section and §390.105(c) and 390.111(a)(iv). The certified VA medical examiner must make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The certified VA medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

* * * * *

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

8. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 5403 and 5524 of Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; and 49 CFR 1.87.

9. In 391.43, revise paragraph (b) to read as follows:

§391.43 Medical examination; certificate of physical examination.

* * * * *

(b) Exceptions. (1) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in paragraph (10) of §391.41(b).

(2) A certified VA medical examiner must only perform medical examinations of veteran operators.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: November 23, 2016

T.F. Scott Darling, III
Administrator

[FR Doc. 2016-28746 Filed: 11/30/2016 8:45 am; Publication Date: 12/1/2016]