contact the Captain of the Port Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his designated representative.

Dated: June 6, 2018.

Jeffrey W. Novak,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2018–12517 Filed 6–8–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 222, 237, and 252

[Docket DARS–2018–0032]

RIN 0750–AJ66

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Right of First Refusal of Employment-Closure of Military Installations'' (DFARS Case 2018–D002)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; correction.

SUMMARY: DoD is making a correction to the final rule published on May 30, 2018, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is duplicative of an existing Federal Acquisition Regulation (FAR) clause. The document contained an incorrect RIN number.

DATES: Effective June 8, 2018.

Applicable beginning May 30, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION: In the final rule published at 83 FR 24892 on May 30, 2018, in the third column, the following correction is made to this rule:

The RIN number cited, RIN 0750–AJ54, is corrected to read RIN 0750–AJ66.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

[FR Doc. 2018–12492 Filed 6–8–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

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: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to establish an alternative process for qualified advanced practice nurses, doctors of chiropractic, doctors of medicine, doctors of osteopathy, physician assistants, and other medical professionals who are employed in the VA and are licensed, certified, or registered in a State to perform physical examinations (qualified VA examiners) to be listed on the Agency's National Registry of Certified Medical Examiners, as required by the Fixing America's Surface Transportation (FAST) Act and the Jobs for Our Heroes Act. After successful completion of online training and testing developed by FMCSA, these qualified VA examiners will become certified VA medical examiners who can perform medical examinations of, and issue Medical Examiner's Certificates to, commercial motor vehicle operators who are military veterans enrolled in the VA healthcare system. This rule will reduce the costs for qualified VA examiners to be listed on the National Registry.

DATES: This final rule is effective August 10, 2018. Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 11, 2018.

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 or 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:

This final rule is organized as follows:

I. Rulemaking Documents
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O. E.O. 13175 (Indian Tribal Governments)
P. National Technology Transfer and Advancement Act (Technical Standards)
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I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2016–0333 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 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.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Amendments

This final rule amends the FMCSRs to establish an alternative process for

qualified VA examiners to be listed on the Agency's National Registry of Certified Medical Examiners (National Registry), as required in the FAST Act, Public Law 114–94, div. A, title V, section 5403, Dec. 4, 2015, 129 Stat. 1312, 1548, as amended by the Jobs for Our Heroes Act, Public Law 115–105, section 2, Jan. 8, 2018, 131 Stat. 2263 (set out as a note to 49 U.S.C. 31149). Under current regulations, in order to become a certified medical examiner (ME) and to be listed on the National Registry, an individual must complete training in person or online and pass a test administered at an FMCSA-approved testing center. Under today's final rule, after successfully completing training and passing a test, both of which will be provided by FMCSA and delivered through a web-based training system operated by the VA, these qualified VA examiners become certified VA MEs. Certified VA MEs are only allowed to conduct medical examinations of, and issue Medical Examiner's Certificates (MECs) to, commercial motor vehicle (CMV) drivers who are veterans enrolled in the healthcare system established under 38 U.S.C. 1705(a) (veteran operators). This rule will reduce the costs for qualified VA examiners to be listed on the National Registry. This rule also makes changes to the registration requirements applicable to all MEs and eliminates the 30-day waiting period before retesting.

B. Summary of Major Provisions

FMCSA amends the FMCSRs to establish an alternative process for qualified VA examiners to be listed on the National Registry. To be eligible to be listed on the National Registry as a certified VA ME, an individual must: (1) Be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional currently employed in the VA; (2) be licensed, certified, or registered in a State to perform physical examinations; (3) register on the National Registry website and receive a National Registry number; (4) be familiar with FMCSA's standards and physical requirements for a CMV operator requiring medical certification by completing training provided by FMCSA and delivered through a web-based training system operated by the VA; (5) pass the ME certification test provided by FMCSA and administered through a web-based training system operated by the VA; and (6) never have been found to have ''acted fraudulently'' with respect to certification of a CMV operator, including by fraudulently awarding an MEC. After fulfilling the foregoing requirements, qualified VA examiners are listed on the National Registry and become certified VA MEs.[1] This final rule limits certified VA MEs to conduct medical examinations of, and issue MECs to, veteran operators only. The final rule clarifies the proposal in the notice of proposed rulemaking (NPRM) that when a certified VA ME is no longer employed in the VA, he or she must update the registration information in his or her National Registry account on the National Registry website within 30 days of leaving employment in the VA.

C. Benefits and Costs

The Agency estimates that costs of the final rule would be minimal, with an annualized value of $117,000 at a 7 percent discount rate. The costs would consist of Federal government information technology (IT)-related expenses, Help Desk operating costs, and curriculum and testing development. The Agency estimates cost savings to the qualified VA examiners of $345,000, annualized at a 7 percent discount rate. The cost savings result from the elimination of tuition costs and travel time and expenses. The resulting annual net costs of the rule are –$228,000, or alternatively, a net cost savings of $228,000. Additional non-quantifiable cost savings may result from the increased availability of certified VA MEs to veteran operators who receive medical examinations through the VA.

III. Abbreviations and Acronyms

ACOEM American College of Occupational and Environmental Medicine
ATA American Trucking Associations
CAA Clean Air Act
CE Categorical Exclusion
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
DOT Department of Transportation
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FAST Act Fixing America's Surface Transportation Act
FR Federal Register
IRS Internal Revenue Service
IT Information Technology
ME Medical Examiner
MEC Medical Examiner's Certificate, Form MCSA–5876
MER Form Medical Examination Report Form, MCSA–5875
National Registry National Registry of Certified Medical Examiners
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
NYSCA New York State Chiropractic Association
OIG Office of Inspector General
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association, Inc.
PII Personally Identifiable Information
PIA Privacy Impact Assessment
PTA Privacy Threshold Assessment
§ Section symbol
U.S.C. United States Code
VA Department of Veterans Affairs

IV. Legal Basis for the Rulemaking

The legal authority for this final rule is derived from 49 U.S.C. 31136 and 31149, as supplemented by section 5403 of the FAST Act, as amended. 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. To ensure that MEs are qualified for listing on the National Registry, 49 U.S.C. 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. Section 5403 originally provided an alternative process for a ''qualified physician'' employed in the VA to be listed on the National Registry and to perform medical examinations of veteran operators who require an MEC. FMCSA interpreted the term ''physician'' in the NPRM to mean a doctor of medicine or a doctor of osteopathy.

The Jobs for Our Heroes Act amended section 5403(d)(2) by expanding eligibility to use the alternative process to a ''qualified examiner.'' The Act defines the term to mean an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the VA and licensed, certified, or

[1] For ease, FMCSA is using the term ''qualified VA examiner'' to refer to a VA advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is licensed, certified, or registered in a State to perform physical examinations prior to becoming certified and listed on the National Registry. The term ''certified VA ME'' refers to a VA advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is licensed, certified, or registered in a State to perform physical examinations once he or she has been certified and listed on the National Registry.

registered in a State to perform physical examinations. To be qualified for listing on the National Registry, such individual must be familiar with the physical standards and requirements for operators of CMVs. He or she must also never have been found to have acted fraudulently with respect to an MEC for a CMV operator. Certified VA MEs on the National Registry may only perform examinations on, and issue MECs to, veterans enrolled in the healthcare system operated by the VA.

The Jobs for Our Heroes Act and its expanded definition of the medical professionals who could utilize the alternative process proposed in the NPRM was enacted after FMCSA published the NPRM on December 1, 2016. Ordinarily, agencies may promulgate final rules only after issuing an NPRM and providing an opportunity for public comment (5 U.S.C. 553). But when a final rule is a logical outgrowth of the NPRM because it provided fair notice that the issue was being considered by the Agency, no additional notice and opportunity to comment is required. *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 174–75 (2007) and cases there cited.

There also 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.

Before prescribing any regulations, however, FMCSA must consider their ''costs and benefits'' (49 U.S.C. 31136(c)(2)(A) and 31502(d)). These factors are discussed elsewhere in this preamble.

V. Background

A. National Registry of Certified Medical Examiners

Prior to the National Registry, there was no Federally-required training and testing program for the medical professionals who conducted driver medical examinations, although the FMCSRs required MEs to be knowledgeable about the regulations (49 CFR 391.43(c)(1)). Specific knowledge of the Agency's physical qualification standards was not required or verified by testing. Thus, some of the medical professionals who conducted these examinations may not have been as familiar with FMCSA's physical qualification standards and how to apply them as the Agency had intended. These medical professionals also may have been unaware of the mental and physical rigors that accompany the occupation of CMV driver, 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 National Registry, and to allow only MECs issued by MEs listed on the National Registry to be accepted as valid proof of a driver's 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 qualification standards and how to apply them to drivers. To maintain their certification and listing on the National Registry, MEs are required to complete periodic training every 5 years and pass a recertification test every 10 years. They are also required to submit to FMCSA, monthly, via their individual password-protected National Registry account, a CMV Driver Medical Examination Results Form, MCSA–5850, for each medical examination conducted and to retain the original Medical Examination Report (MER) Form and a copy of the MEC for at least 3 years from the date of the examination.

As of May 31, 2017, there were 54,171 certified MEs listed on the National Registry. Between May 21, 2014 and May 31, 2017, essentially the first 3 years of the National Registry, 16,227,352 examinations were conducted. Of the examinations conducted, 13,638,849 were of commercial driver's license holders and 2,588,503 were of non-commercial driver's license holders. In contrast, as of May 31, 2017, there were only 114 certified MEs listed on the National Registry who were employed in the VA. Between May 21, 2014 and May 31, 2017, certified MEs who were employed in the VA conducted 14,260 examinations. Through this rulemaking, we hope to increase the number of VA examiners and the number of CMV drivers they examine.

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 medical 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 the future, certified MEs will be required 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 and commercial driver's license applicants/holders, FMCSA will electronically transmit driver identification, examination results, and restriction information from the National Registry to the State Driver Licensing Agencies. FMCSA will also electronically transmit medical variance information for all CMV drivers to the State Driver Licensing Agencies. MEs will still be required to provide CMV drivers who do not require a commercial learner's permit/commercial driver's license with an original paper MEC, Form MCSA–5876.

VI. December 1, 2016, Proposed Rule

As required by section 5403 of the FAST Act, FMCSA consulted with the Secretary of Veterans Affairs and published an NPRM on December 1, 2016 (81 FR 86673). The NPRM proposed an alternative process for qualified VA physicians to be included on FMCSA's National Registry so they could 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 website and completing training and testing comparable to that required of other medical professionals, but provided by FMCSA and delivered through a web-based training system operated by the VA. FMCSA estimated the total quantifiable cost savings of the proposed rule per qualified VA physician seeking to become a certified VA ME to be $519. This estimate is the sum of the projected savings of $459 in travel time costs and $60 in travel expenses. Upon successful completion, certified VA MEs would only be

allowed to conduct medical examinations of, and issue MECs to, veteran operators. Certified VA MEs would also be subject to the other provisions of 49 CFR part 390, subpart D, required of all certified MEs listed on the National Registry.

The NPRM outlined certain eligibility requirements. Based on section 5403, prior to its amendment, this proposal applied to qualified VA physicians who are either doctors of medicine or doctors of osteopathy. Additionally, qualified VA physicians must never have been found to have ''acted fraudulently'' with respect to certification of a CMV operator, including fraudulently awarding an MEC. As for licensure requirements, the proposal specified that qualified VA physicians may be able to practice in VA facilities in all States without being licensed, certified, or registered in each State. This requirement is in line with the VA handbook, which does not specify that physicians must be licensed in each State where they practice medicine. Assuming they meet the 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.

As proposed, qualified VA physicians must be familiar with FMCSA's standards and physical requirements for a CMV operator requiring medical certification. This would be accomplished by completing training based on the core curriculum specifications that would be provided by FMCSA [2] and delivered through a web-based training system operated by the VA. As for testing, qualified VA physicians must pass a comparable certification test provided by FMCSA and administered through a web-based training system operated by the VA. The passing 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.

The proposed rule required qualified VA physicians who become certified VA MEs to maintain their medical licensure, registration, and certification records. However, because certified VA MEs may be able to practice in additional States without being licensed, registered, or certified in each State, the NPRM only required certified VA MEs to maintain documentation of State licensure, registration, or certification to perform physical examinations, without reference to each State in which the physician performs examinations.

The proposal limited certified VA MEs to conducting medical examinations of only veteran operators while employed in the VA. If a certified VA ME 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 medical examination of a CMV driver or issuing any MECs. Pursuant to its broad authority under 49 U.S.C. 31149(c)(1)(D), FMCSA proposed to recognize the training received by qualified VA physicians as comparable to that received by other medical professionals, thus allowing 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 ME becomes a certified ME who may perform medical examinations and issue certificates to any CMV driver in the certified ME's State(s) of licensure.

In addition, the NPRM proposed two changes to the existing requirements for becoming a certified ME. To receive ME certification from FMCSA, prior to taking the training and testing, the NPRM required a person to 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 it was not specifically included in the regulation. Moreover, the NPRM proposed to remove the prohibition against an applicant taking the certification test more than once every 30 days, because the regulation does not specify any actions that must be taken within the 30-day waiting period.

VII. Discussion of Comments Received on the Proposed Rule

Overview of Comments

In response to the December 2016 NPRM, FMCSA received 173 comments. Many commenters were individuals, most of whom identified themselves as certified MEs and healthcare professionals. Among other commenters were the following: 10 professional chiropractic associations including the Kentucky Association of Chiropractors, Federation of Chiropractic Licensing Boards, American Chiropractic Association, California Chiropractic Association, Iowa Chiropractic Society, Illinois Chiropractic Association, New York State Chiropractic Association (NYSCA), New York Chiropractic Council, Association of New Jersey Chiropractors, and the Association of Chiropractic Colleges; three other healthcare provider professional associations including the American Academy of Physician Assistants, American Association of Nurse Practitioners, and American College of Occupational and Environmental Medicine (ACOEM); and three trucking industry associations including the Owner-Operator Independent Drivers Association, Inc. (OOIDA), National School Transportation Association, and the American Trucking Associations (ATA).

Five commenters expressed overall support for the proposed rule and four commenters expressed opposition to the rule. Many commenters expressed neither support nor opposition to the rule in its entirely; instead, they offered recommendations or voiced concerns.

Most commenters opposed the proposal that a qualified VA physician must be either a doctor of medicine or doctor of osteopathy currently employed in the VA. Other commenters found the rule unnecessary or stated that it creates a duplicative process. Additionally, commenters said that by developing an alternative process for qualified physicians employed in the VA to be listed on the National Registry, FMCSA was creating an exception to the National Registry process of certifying MEs. Another issue commenters highlighted was the burden that would be placed on the VA by conducting these medical examinations. Commenters also had questions and concerns regarding the training and testing of qualified VA physicians. One commenter disagreed with the estimated savings associated with the alternative process for being listed on the National Registry. Finally, several commenters raised concerns that are outside the scope of this rulemaking.

Qualified VA Physicians—Doctors of Medicine or Doctors of Osteopathy

Comments: Many commenters objected to the provisions of the proposed rule that a qualified VA physician must be either a doctor of medicine or a doctor of osteopathy. Most of these commenters requested that a doctor of chiropractic employed in the VA be considered a qualified VA physician so they could use the proposed process and become a certified VA ME. Some commenters requested

[2] *See* 78 FR 28403 (May 17, 2011) and *https://www.regulations.gov/document?D=FMCSA-2008-0363-0096.*

that all categories of medical professionals currently eligible to be listed on the National Registry be allowed to participate in the proposed process if they are employed in the VA.

Several commenters stated that the proposed process is discriminatory, and a waste of resources and obvious experience of medical professionals who are not included in the alternative process, which will lead to increased costs for veterans and a shortage of medical professionals available to perform the medical examinations in the VA. Many commenters pointed out that chiropractors, nurse practitioners, and physician assistants are already allowed on the National Registry and urged that they should not be excluded from this rule.

The NYSCA recognized that the language of the FAST Act ''tied'' the Agency's ''hands statutorily.'' Furthermore, the NYSCA stated it is up to Congress ''to change the relevant law underpinning the regulatory proposal.'' In contrast, other commenters stated that the statute does not limit the process to doctors of medicine or osteopathy, and that the proposal has gratuitously added such a limitation. Given that Congress did not limit the term ''physician'' to medical and osteopathic doctors, the commenters asserted that it is consistent with the statute to include chiropractors as ''physicians'' under the proposed rule and is likely more representative of Congress's intent. OOIDA questioned whether limiting the definition of physician to only doctors of medicine and osteopathy, and not applying the criteria set forth in 49 CFR 390.103, is too restrictive to match the Congressional intent. Within their comment, they provided a hyperlink to a letter by three members of Congress to the Administrator of FMCSA, which stated that regulatory barriers that make it needlessly difficult for veterans to secure jobs in the trucking industry should be eliminated. Other commenters contended that the term ''qualified physician'' was intended to be the same as the categories included in 49 CFR 390.103, subject only to the provisions of section 5403(d)(2) of the FAST Act.

Two commenters urged that chiropractors should be included in the definition of ''physician'' because the Federal government already includes chiropractors as physicians in the Medicare program or in regulations issued by the Department of Labor's Office of Workers' Compensation Programs.

Several commenters stated that the scope of practice and classification of chiropractors varies by State. For example, one commenter reported that 46 States allow chiropractors to perform medical examinations. Several commenters noted that many States include chiropractors in their definition of ''physician.'' In Illinois, chiropractors are licensed under the same Medical Practice Act as medical and osteopathic physicians and considered full physicians with the right to perform medical examinations. In West Virginia, chiropractors are also recognized as physicians who may perform medical examinations. In Iowa, chiropractors are considered ''primary care providers.'' One commenter stated that the Joint Commission, which accredits and certifies healthcare organizations, recently changed its stance on chiropractors and now recognizes them as physicians. Three commenters contended that the proposed rule would inappropriately invade or conflict with the authority of State legislatures and licensing boards to determine what is within a doctor of chiropractic's scope of practice. The NYSCA acknowledged that, while chiropractors are licensed as physicians in many jurisdictions of the United States, they are recognized as ''limited license physicians.''

FMCSA Response: This final rule recognizes and incorporates the amendments made to section 5403(d)(2) of the FAST Act by the Jobs for Our Heroes Act. As such, in addition to doctors of medicine and osteopathy as proposed in the NRPM, advanced practice nurses, doctors of chiropractic, physician assistants, and other medical professionals employed in the VA are eligible to use the alternative process for becoming certified and listed on the National Registry, provided they are licensed, certified, or registered in a State to perform physical examinations.

Subsequent to the publication of the NPRM, Congress enacted the Jobs for Our Heroes Act on January 8, 2018. The Act amends section 5403(d)(2) of the FAST Act by replacing the term ''qualified physician'' with ''qualified examiner.'' The Act now defines ''qualified examiner'' to mean, in relevant part, an individual who: (A) Is employed in the VA as an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional; and (B) is licensed, certified, or registered in a State to perform physical examinations. As such, the categories of VA medical professionals who are eligible to use the alternative process are identical to the categories of medical professionals set forth in 49 CFR 390.103 who are eligible to perform medical examinations.

In view of the numerous comments directed to the proposed rule limiting participation in the alternative process for being listed on the National Registry to physicians, it was clear that this was a matter under consideration by FMCSA. Now that the Congressional action amending section 5403 has directly addressed the issue as well, the Agency can adopt a final rule that is a logical outgrowth of the NPRM by responding to the comments and incorporating the statutory amendments without the need for additional public comment.

Duplicative Rule

Comments: Several commenters stated that the proposed rule was duplicative and unnecessary. Some stated that there is already a system in place for qualified physicians to become certified and listed on the National Registry. There is no need to create a regulation that will set up and maintain a separate training and testing program outside the already functioning and capable FMCSA program.

FMCSA Response: As stated in the NPRM, these changes to the FMCSRs are in response to the FAST Act requirement set forth in section 5403(c), as amended, that FMCSA ''develop a process for qualified examiners to perform a medical examination and provide a medical certificate under subsection (a) and include such examiners on the national registry of medical examiners established under section 31149(d) of title 49, United States Code'' (49 U.S.C 31149 note). FMCSA believes that the process as established in this final rule meets the requirement of the FAST Act.

Creating an Exception to the National Registry Certification Process

Comments: Several commenters stated that the proposed rule would create an exception to the National Registry process for becoming a certified ME and subvert the purpose of the National Registry by creating an exempted class. One commenter noted that allowing any government organization to perform medical examinations of veteran operators has the appearance of being self-serving and going around the system, rather than through its many safeguards and qualifications. Most commenters on this subject agreed that providers who work for the VA should be treated the same as all other providers and should be held to the same standards by following the same procedures for becoming certified and listed on the National Registry. Additionally, ATA asked if VA-certified MEs would also be subject

to periodic training and testing requirements; as they did not feel the proposal addressed this critical issue.

FMCSA Response: FMCSA does not believe that this alternative process is creating an exempted class or undermining the existing system. This final rule provides an option that allows qualified VA examiners to be listed on the Agency's National Registry so that veterans enrolled in the VA healthcare system will have the convenience of obtaining medical examinations where they receive their healthcare. As stated elsewhere in this final rule, the training and testing the qualified VA examiners must complete is comparable to what other medical professionals must complete to be listed on the National Registry. Finally, to address ATA's concerns, once a qualified VA examiner is certified and listed on the National Registry, he or she will be subject to the same requirements for periodic training every 5 years and for testing every 10 years. Certified VA MEs' performance will be subject to the same FMCSA review and compliance as other MEs.

Burden on the VA

Comments: Several commenters believed that this rule will further burden the overtaxed VA clinics and hospitals. They stated that the VA budget is already stretched, and that the work it will take to implement this rule is a waste of taxpayer's money. One commenter stated this rule will be detrimental to the VA healthcare system; it will be a significant expense to the VA, but only offer a modest savings to veterans. Some commenters stated that they do not believe the VA should be taking over the civilian community businesses that have developed over the last 20 years. Another commenter stated that local small businesses will lose clients.

FMCSA Response: The FAST Act directs FMCSA to work with the VA to develop a process that will allow veterans enrolled in the VA healthcare system to receive medical examinations in the VA. Therefore, FMCSA and the VA must develop such a process.

The statute specifically adopts the definition of veteran set forth in 38 U.S.C. 101 and the priority of enrollment in the VA healthcare system established under 38 U.S.C. 1705(a). As such, the statute does not increase the number of veterans who are eligible to obtain healthcare from the VA. The medical benefits package available to qualifying veterans already includes the completion of forms and periodic medical examinations. *See* 38 CFR 17.38(a)(1)(xv) and (a)(2)(i). Therefore, a new veteran benefit is not created.

FMCSA does not see this rule as a burden on the VA clinics and hospitals. Qualified VA examiners are not being forced to use this process or to become certified and listed on the National Registry. This rule is being implemented to make it more convenient for qualified VA examiners to become certified and, therefore, to provide veterans with increased access to certified MEs.

FMCSA, in consultation with the VA, estimates that VA's only costs will be interface development of $129,000 in the first year. FMCSA will incur all other costs. Total savings to veterans will depend on how many qualified VA examiners take advantage of this process and become certified and listed on the National Registry and how many medical examinations they perform.

The Agency notes, based on its consultation with the VA, that not all veterans are eligible to receive healthcare from the VA. Moreover, the rule does not require veterans who are eligible to receive healthcare from the VA to obtain their medical examinations from the VA. The rule also does not prohibit non-VA MEs from providing medical examinations for veterans.

Comments: One commenter stated that the VA will have to increase spending and revise its IT systems to interface with the States to transmit data regarding qualified VA test results. He further stated that the potential IT issues arising from this data transmission are huge because of government computer system firewalls. Another commenter believed that the VA's resources would be better allocated toward medical treatment for our nation's veterans.

FMCSA Response: There is no provision in this rule that will require the VA to revise its IT system to interface with the States to transmit the data. Certified VA MEs will submit driver examination results to FMCSA through their individual password-protected National Registry accounts, just like any other certified ME. *See* 49 CFR 391.43(g). The transmission of the MEC information will be between the National Registry and the States, not the certified ME and the States.

Comments: The comments included a statement that FMCSA is forcing the VA's most valuable healthcare providers, the physicians and osteopaths, to become certified MEs. A commenter believed that when a veteran needs necessary medical treatment, the medical doctor will be too busy performing medical examinations.

FMCSA Response: FMCSA notes that this final rule does not require any VA medical professional to become a certified ME or to conduct medical examinations. Those VA physicians who meet the qualifications are eligible, but not required, to become certified and listed on the National Registry. Moreover, the amendments made by the Jobs for Our Heroes Act expand eligibility to use the alternative process to advance practice nurses, doctors of chiropractic, and physician assistants, which allows the VA, if it wishes, to provide medical examinations in a manner that is most efficient and consistent with its healthcare delivery model.

Additionally, as stated elsewhere in this final rule, section 5403(c) of the FAST Act, as amended, requires FMCSA to ''develop a process for qualified examiners to perform a medical examination and provide a medical certificate under subsection (a) and include such examiners on the national registry of medical examiners established under section 31149(d) of title 49, United States Code'' (49 U.S.C. 31149 note). This rule does not change the existing requirements or process for becoming certified and listed on the National Registry and does not prevent those certified MEs currently listed on the National Registry from providing services to veterans.

Comments: The comments expressed concern regarding the oversight of VA physicians. It was stated that, presumably, the only people with access to VA physicians are veterans who are registered with the VA and are seeking medical certification. Because most DOT Office of Inspector General (OIG) agents are not veterans, FMCSA will have a significant challenge getting its OIG agents into VA facilities to conduct investigations. It was also stated that it is unreasonable to believe that the quality of care at VA clinics and hospitals will not be adversely affected, and safety concerns will not be overlooked.

FMCSA Response: FMCSA would work collaboratively with the OIG to ensure access when necessary. With respect to oversight of the certified VA MEs, FMCSA monitors and audits certified MEs listed on the National Registry, which will include certified VA MEs, and may request access to all medical examination records when there is a need to review such documents.

Training

Comments: Several commenters believed that the Agency proposed different training requirements for qualified VA physicians.

ACOEM stated that the core content of any training should include at least the minimum requirements specified in the core curriculum announced in the April

2012 final rule. It stated that the training should also make certain potential examiners aware of other sources of information, such as information developed by the Medical Review Board and the Motor Carrier Safety Advisory Committee, as well as medical literature, which could be consulted when no official guidance is available from FMCSA. ACOEM believed it would be a disservice to both the military veterans and the motoring public if the certified VA MEs are less aware of the regulations, guidelines, and current literature, as well as the roles, responsibilities, and risks of operating CMVs than MEs trained under the existing process. Commenters said many VA physicians have never performed medical examinations for CMV drivers, and those who have performed such medical examinations did a poor job.

One commenter stated that different training requirements give the appearance of impropriety. The commenter continued to explain that with all the training options available, VA physicians should be able to choose their training from the same training options available to all others seeking National Registry certification.

Some commenters suggested that VA physicians would be better served by attending live training. Another commenter stated that ''to allow the VA to self train or train over the internet would diminish the quality of care provided,'' and that to expand its authority without requiring the same training for qualified VA physicians is dangerous and poorly conceived.

FMCSA Response: We stated in the NPRM that FMCSA will be providing the VA with an interactive, web-based training course and will 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. To clarify, these four modules will be based on the same core curriculum specifications published with the April 2012 final rule. The training will focus on the standards for physical qualifications and the physical requirements for an operator of a CMV, as required by section 5403(d)(2)(B) of the FAST Act. Therefore, all certified MEs will receive comparable training. While the specific training content and delivery method are not prescribed by FMCSA, and no two training organizations offer the identical training, qualified VA examiners will not receive training that minimizes the substantive content of the program.

With respect to the commenter who stated that training options available to VA physicians would be limited, qualified VA examiners may choose or utilize either of the training options outlined in part 390 subpart D. FMCSA has added language in the final rule to explain this choice. It was not the intent of FMCSA to limit the choices of a qualified VA examiner; it was to provide an alternative, comparable training option.

FMCSA disagrees that qualified VA examiners would be better served by attending live training. Under the existing National Registry process, medical professionals may take the training exclusively online. FMCSA does not believe that it should impose a burden on qualified VA examiners that is not imposed on other prospective MEs. Moreover, the assumption that the web-based VA process will diminish the quality of medical examinations or that it is a poorly conceived concept is misguided. As discussed above, FMCSA will be overseeing the development of the training and will ensure that it is comparable to training received through private training organizations.

FMCSA also disagrees that allowing ''the VA to self train'' and that different training requirements for the qualified VA examiners give the appearance of impropriety. As discussed above, the training requirements for qualified VA examiners are comparable to the existing training requirements. In addition, under the existing regulations, any hospital system, occupational health consortium, or professional association that meets the requirements of § 390.105 is allowed to develop its own training program and to administer it to its employees or members in a comparable manner. Moreover, the FAST Act directs FMCSA to establish a process for qualified VA examiners to be listed on the Agency's National Registry. For all the reasons discussed above, FMCSA believes that the web-based training is a reasonable and efficient means of satisfying that directive.

Testing

Comments: A number of commenters believed that the Agency proposed different testing requirements for qualified VA physicians. Many commenters were concerned that the test for qualified VA physicians would be different than the test other examinees take. The commenters stated it is only fair that all examinees be treated exactly the same and take the same test. Some commenters objected to online testing. One commenter noted that the existing proctored system of testing was developed to ensure security of the process and should not be different for qualified VA physicians. In contrast, other commenters urged that online testing be available to all examinees.

OOIDA commented that testing should ''remain on par with the private sector and accessible so as to not frustrate the purpose of Section 5403.'' It also suggested that metrics be established to evaluate whether the developed process fulfills the Congressional intent.

FMCSA Response: The qualified VA examiners will take a certification test drawn from the same question bank FMCSA develops and provides to private testing organizations; therefore, all examinees will be treated the same with respect to the certification test taken. The passing grade will be the same for all MEs.

FMCSA notes that the existing regulations allow testing organizations to provide remote, computer-based testing for examinees (*see* 49 CFR 390.107(b)); therefore, the web-based testing for qualified VA examiners is contemplated by the existing regulations. FMCSA acknowledges, however, that none of the private testing organizations currently offer computer-based testing.

Because all Federal departments and agencies, including both FMCSA and the VA, are required to ensure compliance with the Federal Information System Management Act, National Institute of Standards and Technology, Office of Management and Budget (OMB), and all applicable laws, directives, policies, and directed actions on a continuing basis to maintain the security and privacy of all Federal information systems and the data contained in those systems, the security of the test will be as secure as the testing administered in a proctored environment by a private testing organization. In addition, FMCSA and the VA will be directly overseeing the security process to control access, and to confirm the identity of the person taking the examination and his or her eligibility to take the examination.

OOIDA's comment regarding an evaluation of this new process is beyond the scope of this rulemaking. However, FMCSA already has a method of evaluating all medical professionals listed on the National Registry, as described in the final rule published on April 20, 2012 (77 FR 20124). A similar review process will also apply to certified VA MEs.

Costs

Comments: ACOEM stated that one of the concerns of the FAST Act was a lack of access by veterans to certified MEs, which ACOEM stated was based on an assumption that time and travel costs prevent VA physicians from being trained under the National Registry requirements. ACOEM stated that it disagreed with the estimated savings associated with an alternative process, as noted in the NPRM. It stated that, because many training programs are offered partially or entirely online, travel costs (or time away from work) are virtually eliminated. It believed that the relative cost of subsidizing qualified VA physicians to complete a distance learning training program, as compared to FMCSA developing and maintaining a training program (including periodic updates as new guidance, regulations, or other information becomes available), would most likely be comparable.

FMCSA Response: FMCSA disagrees with ACOEM's comment. While online training programs are available, no data are available regarding the degree to which VA MEs who are currently listed on the National Registry (or who would obtain training toward that end in the baseline) received online versus classroom training. ACOEM provides no data on which FMCSA should revise the 50/50 split in the baseline between online and classroom training. The ''50/50 split'' here refers to the estimate in both the 2011 regulatory evaluation of the National Registry final rule and again in the NPRM and this final rule that 50 percent of healthcare professionals seeking to become certified MEs would complete the required training and testing online, while the remaining 50 percent would participate in classroom-based training. The 50/50 split was utilized to be consistent with the Agency's projections in the December 2011 regulatory evaluation of the National Registry final rule. The regulatory evaluation for today's final rule estimates average savings—specific to training, not testing—of 1.5 hours of travel time (valued at $153) and 35 miles of mileage expenses (valued at $20.13) per participating qualified VA examiner, or $173.13 in total. The remainder of the $519 average savings per participating qualified VA examiner consists of savings from the elimination of travel time and mileage expenses resulting from the online testing component of this final rule, as online testing, although permitted, is not being offered, and therefore is not included in the baseline. In the absence of credible studies or surveys that might suggest otherwise, the Agency maintains that the use of the 50/50 split and the consequent $173.13 savings estimate for training are reasonable.

FMCSA makes no claim that the relative cost of an FMCSA-developed online training program is less than the relative cost of subsidizing qualified VA examiners to complete distance learning training programs. While the cost to society for a qualified VA examiner to complete online training through a third party versus through FMCSA may be comparable, the FAST Act directs FMCSA to develop and implement a process. FMCSA believes that the process as established in this final rule is the most convenient option for qualified VA examiners.

Outside the Scope of This Rulemaking

A number of respondents submitted comments suggesting adjustments to the proposed rule that are not consistent with section 5403(d)(2) of the FAST Act as amended. As such, they are outside the scope of this rulemaking; therefore, a response is not required. For example, one commenter asked whether, as a certified ME on the National Registry, he could apply to the VA to perform examinations for veterans. Another commenter suggested that a better option than the proposed rule may be to contract with preferred private certified MEs at a discounted rate, potentially providing more robust coverage and lower total program costs. One commenter stated that this rule should include those who use the VA healthcare system who are not veterans, such as spouses of veterans. Finally, a commenter suggested that existing MEs offer a reduced fee to do medical examinations for veterans.

VIII. Explanation of Changes From the NPRM

Most significantly, the final rule incorporates the amendments made to section 5403(d)(2) of the FAST Act by the Jobs for Our Heroes Act. As such, the final rule reflects that, in addition to doctors of medicine and osteopathy as proposed in the NRPM, advanced practice nurses, doctors of chiropractic, physician assistants, and other medical professionals employed in the VA are eligible to use the alternative process for becoming certified and listed on the National Registry, provided they are licensed, certified, or registered in a State to perform physical examinations. Otherwise, the final rule makes minimal changes to the proposed regulatory text. Most are minor editorial changes to improve clarity.

As discussed above, many commenters thought the proposed rule applied to the existing process to become certified and listed on the National Registry. Considering these comments, FMCSA has determined that greater clarity will result if the alternative process for qualified VA examiners is set out in a stand-alone group of rules in subpart D. As such, the final rule sets forth new §§ 390.123 through 390.135 that implement the alternative process for qualified VA examiners. While the organization of the regulatory text in the final rule differs from the NPRM, only a few clarifying or conforming changes were made to the substance of the alternative process for qualified VA examiners. A new § 390.101(b) is added in the final rule. It explains that a qualified VA examiner may be listed on the National Registry by satisfying the requirements for medical examiner certification set forth in either § 390.103 or § 390.123.

Another change from the NPRM focuses on the process or actions a certified VA ME must take when he or she is no longer employed by the VA. Upon review, the Agency noted that the proposed regulatory text was unclear and inconsistent with FMCSA's intent. The final rule makes clarifying changes in § 390.131 to specify that a certified VA ME must inform FMCSA through his or her National Registry account of any changes in registration information, including that the certified VA ME is no longer employed in the VA, within 30 days of the change. FMCSA also adds a new paragraph (c) to clarify the requirements if a previously certified VA ME would like to remain listed on the National Registry.

The definitions in § 390.5, other than the definition of ''veteran operator,'' are changed to incorporate the amendments made by the Jobs for Our Heroes Act. FMCSA adds identical definitions to § 390.5T, a temporary regulation. In January 2017, FMCSA suspended certain regulations relating to a new electronic Unified Registration System. The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017 (*Unified Registration System; Suspension of Effectiveness,* 82 FR 5292, 5311, Jan. 17, 2017). Section 390.5 is one of the suspended sections. As the temporary provisions of § 390.5T are in effect, it is necessary to add the definitions to that section as well.

The final rule makes conforming changes to the existing regulations to reflect that new sections have been added to subpart D. In particular, ''this subpart'' is changed in the existing regulatory text to ''§§ 390.103 through 390.115'' in each place that it appears.

IX. Section-by-Section Analysis

The final rule makes the following changes to the NPRM:

Part 390

Section 390.5 Definitions

In the definition of a certified VA medical examiner, ''physician'' is changed to ''examiner''. ''Qualified VA physician'' is changed to ''Qualified VA medical examiner''. The phrase ''a doctor of medicine or a doctor of osteopathy'' is replaced in the definition by ''an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional''. The clause ''is licensed, certified, or registered in a State to perform physical examinations;'' is inserted as the second clause. The definition of veteran operator remains as proposed. The definitions are added to this temporarily suspended section.

Section 390.5T Definitions

The definitions, as revised, for § 390.5 are added to this temporary section.

Section 390.101 Scope

The final rule designates the existing paragraph as paragraph (a) and adds a new paragraph (b) identifying the provisions for the alternative processes for qualified VA examiners to be certified and listed on the National Registry.

Section 390.103 Eligibility Requirements for Medical Examiner Certification

In the final rule, FMCSA inserts a center heading prior to the section. Proposed paragraph (a)(1)(ii) is redesignated as paragraph (a)(2) and several clarifying changes have been made to that paragraph. ''Before taking the training provided below'' is moved to the end of the clause, and ''provided below'' is changed to ''that meets the requirements of § 390.105''. ''System'' is changed to ''website''. ''Unique identifier'' is deleted and ''National Registry number'' is inserted. Other than the redesignation of paragraphs and these minor formatting and editorial revisions, the section remains as proposed.

Section 390.105 Medical Examiner Training Programs

The final rule moves proposed paragraph (c) to new § 390.125 and otherwise leaves § 390.105 unchanged.

Section 390.107 Medical Examiner Certification Testing

The final rule moves proposed paragraph (e) to new § 390.127 and otherwise leaves § 390.107 unchanged.

Section 390.109 Issuance of the FMCSA Medical Examiner Certification Credential

FMCSA makes a conforming change to this section by deleting ''with a unique National Registry Number''.

Section 390.111 Requirements for Continued Listing on the National Registry of Certified Medical Examiners

The final rule moves proposed paragraphs (a)(2)(ii), (a)(3)(ii), and (a)(4)(ii) to new § 390.131. The section otherwise remains as proposed.

Section 390.113 Reasons for Removal From the National Registry of Certified Medical Examiners

The final rule removes the phrase ''this subpart'' from the introductory paragraph and paragraph (e) of this section, and adds in its place ''§§ 390.103 through 390.115''.

Section 390.115 Procedures for Removal From the National Registry of Certified Medical Examiners

The final rule moves proposed paragraphs (d)(2)(v) and (f)(4)(ii) to new § 390.135. The section otherwise remains as proposed.

Section 390.123 Medical Examiner Certification for Qualified Department of Veterans Affairs Examiners

The final rule inserts a center heading before the section and adds a new section setting out the eligibility requirements for qualified VA examiners. FMCSA made changes in this section corresponding to the registration changes made in § 390.103.

Section 390.125 Qualified VA Examiner Certification Training

The final rule adds a new section setting out the alternative training for qualified VA examiners.

Section 390.127 Qualified VA Examiner Certification Testing

The final rule adds a new section setting out the alternative testing for qualified VA examiners.

Section 390.129 Issuance of the FMCSA Medical Examiner Certification Credential

The final rule adds a new section that is analogous to § 390.109 and includes the conforming change deleting ''with a unique National Registry Number''.

Section 390.131 Requirements for Continued Listing of a Certified VA Medical Examiner on the National Registry of Certified Medical Examiners

The final rule adds a new section that is analogous to § 390.111 for certified VA medical examiners. FMCSA clarifies in paragraph (a)(2) that it applies to certified VA MEs and adds paragraph (c) to provide the requirements for a previously certified VA ME to remain listed on the National Registry.

Section 390.133 Reasons for Removal of a Certified VA Medical Examiner From the National Registry of Certified Medical Examiners

The final rule adds a new section that is analogous to § 390.113 for certified VA medical examiners.

Section 390.135 Procedure for Removal of a Certified VA Medical Examiner From the National Registry of Certified Medical Examiners

The final rule adds a new section that is analogous to § 390.115 for certified VA medical examiners. FMCSA clarifies that paragraphs (d)(2)(ii) and (f)(2) apply to certified VA MEs. Other than the redesignation of paragraphs and minor clarifying references, the section remains as proposed in § 390.115.

Part 391

Section 391.43 Medical Examination; Certificate of Physical Examination

This section remains as proposed.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that Order. 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, Feb. 26, 1979).

The Agency, however, has considered the total costs and benefits of this final rule and determined they are less than $100 million annually.

The objective of the final rule is to develop an alternative process to allow qualified VA examiners to perform

medical examinations for veteran operators and to list such examiners on the National Registry. Absent this final rule, qualified VA examiners may choose to become certified MEs listed on the National Registry; however, the cost of doing so is greater than under the final rule. As of May 31, 2017, there were 114 VA medical professionals certified and listed on the National Registry under the existing process, a small fraction of the 54,171 listed MEs.[3]

The standard requirements to become a certified ME are listed in § 390.103. The three requirements are that a person:

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

The final rule modifies these requirements to make training and testing readily accessible to qualified VA examiners. The Federal government will incur the following costs for the modification of these requirements: (1) Costs associated with the development of a web-based training and testing module, (2) IT costs required to construct an interface between the National Registry System and VA's web-based training system, and (3) operation of the National Registry Help Desk to assist qualified VA examiners with registration for, and completion of, the web-based training and testing.

FMCSA will be developing the web-based curriculum. The training will include a test at the end to ensure that qualified VA examiners seeking to become certified VA MEs complete the curriculum and fully understand the standards for, and physical requirements of, a CMV operator. Curriculum development is a one-time cost incurred in the first year and FMCSA, in consultation with the National Registry developer, estimates this cost will be no more than $200,000. FMCSA revised this estimate for the final rule to reflect the updated cost of the curriculum development.

FMCSA will modify the National Registry System so it will be able to accept qualified VA examiners' training and test results from the VA's web-based training system and post results to each qualified VA examiner's National Registry account. The VA and FMCSA are responsible for developing the interface between their respective IT systems. The interface will provide a seamless transfer of completed training and testing information for each registered qualified VA examiner to be listed on the National Registry. FMCSA, in consultation with the National Registry developer and the VA, estimates these costs to be $129,000 for each Agency, or a total of $258,000.

The National Registry Help Desk contractor will staff the National Registry Help Desk to provide technical support to qualified VA examiners going through the National Registry registration and certification process and respond to telephone, written, and email inquiries regarding National Registry certification from qualified VA examiners, veterans, motor carriers, and other interested parties. FMCSA, in consultation with the National Registry developer, estimates that costs for the first year of the contract will be $46,200 and that the costs will increase to $57,750 for each of years 2 through 10 of the analysis period.

The curriculum development, interface development, and Help Desk costs incurred by FMCSA over the 10-year analysis period are summarized in Table 1. Total costs over the 10-year period are estimated at $1.0 million on an undiscounted basis and $880,000 at a 7 percent discount rate. The annualized cost over the 10-year period is $117,000 at a 7 percent discount rate.

TABLE 1—ESTIMATED FEDERAL GOVERNMENT COSTS

[In 2015$]

Year	Curriculum development	FMCSA and VA interface development	Help Desk support	Total (undiscounted)	Total (3% discount rate)	Total (7% discount rate)
2018	$200,000	$258,000	$46,200	$504,200	$504,200	$504,200
2019	0	0	57,750	57,750	56,068	53,972
2020	0	0	57,750	57,750	54,435	50,441
2021	0	0	57,750	57,750	52,849	47,141
2022	0	0	57,750	57,750	51,310	44,057
2023	0	0	57,750	57,750	49,816	41,175
2024	0	0	57,750	57,750	48,365	38,481
2025	0	0	57,750	57,750	46,956	35,964
2026	0	0	57,750	57,750	45,588	33,611
2027	0	0	57,750	57,750	44,261	31,412
Total	200,000	258,000	565,950	1,023,950	953,848	880,455
Annualized					108,563	117,156

FMCSA also analyzed the cost savings for qualified VA examiners seeking to become certified VA MEs on the National Registry. These qualified VA examiners would incur reduced tuition costs and travel time and expenses as a result of this rule.

To estimate these cost savings, the Agency utilized estimated ME tuition and travel costs from the December 2011 regulatory evaluation of the National Registry final rule,[4] and adjusted them to 2015 dollars.

In the 2011 regulatory evaluation, the Agency estimated tuition costs of $440, in 2008 dollars, for each healthcare professional. By receiving the training via FMCSA's web-based curriculum, the qualified VA examiner will no longer incur tuition costs. FMCSA estimated the tuition cost savings by adjusting the $440 for inflation using the Implicit Price Deflator for Gross Domestic

[3] A total of 114 medical professionals employed in the VA were listed on the National Registry as of May 31, 2017. Nationwide, a total of 54,171 medical professionals were listed on the National Registry as of May 31, 2017. *See https://nationalregistry.fmcsa.dot.gov/NRPublicUI/home.seam* (Accessed May 31, 2017).

[4] The 2011 regulatory evaluation can be accessed at *https://www.regulations.gov/document?D=FMCSA-2008-0363-0115* (Accessed April 3, 2017).

Product as published by the Bureau of Economic Analysis on March 30, 2017. FMCSA estimates tuition cost savings of $488 for each healthcare professional ($488 = $440 × 1.108).[5]

In the 2011 regulatory evaluation, the Agency estimated that 50 percent of healthcare professionals seeking to become certified MEs would complete the required training and testing online, while the remaining 50 percent would participate in classroom-based training. At present, there are no testing providers offering online testing (although online testing is permitted). Adjusting for a 50/50 online versus classroom split for training and the current absence of online testing, FMCSA estimates that in the baseline, a qualified VA examiner seeking to become a certified VA ME would, on average, incur 4.5 hours of travel costs and 105 miles of vehicle mileage expenses.[6] Under the final rule, training and testing for qualified VA examiners will be online only, using the VA's web-based training system. This eliminates the travel costs and the vehicle mileage costs that would otherwise be incurred in the absence of the final rule. FMCSA quantifies the qualified VA examiner's opportunity cost of travel time using a representative wage rate for a qualified VA examiner. The Bureau of Labor Statistics (BLS) Occupational Employment Statistics, May 2015, data indicate the weighted average hourly wage rate for general practitioners, internists, physicians and surgeons, chiropractors, nurse practitioners, and physician assistants is $78.01.[7] FMCSA accounts for fringe benefits using data from the BLS Employer Costs for Employee Compensation database. Applying the fringe benefit markup of 31 percent results in an hourly wage rate of $102.19, rounded to $102 for purposes of this analysis.[8] At an average of 4.5 hours of travel time saved per participating qualified VA examiner, the final rule would provide a per-examiner travel time cost savings of $459 ($459 = 4.5 × $102, rounded to the nearest whole number).

FMCSA separately estimates the cost savings resulting from the average reduction of 105 miles of travel per qualified VA examiner under the final 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-qualified VA examiner travel expense savings is $60 ($60 = 57.5 cents per mile × 105 miles, rounded to the nearest whole number).

Each qualified VA examiner seeking to become a certified VA ME is estimated to incur a one-time cost savings of $1,007. This estimate is the sum of the projected savings of $488 in tuition costs, $459 in travel time, and $60 in travel expenses. It is important to note that the cost savings are limited to the elimination of tuition costs and travel time and expenses associated with initial ME certification training and testing requirements, and do not reflect subsequent refresher training and recertification testing required for all certified MEs.[10]

The total cost savings attributable to this final rule equals the expected annual number of VA medical professionals who would use this process to become certified multiplied by $1,007, discounted at a 7 percent discount rate.

FMCSA consulted with the VA regarding the expected annual number of VA medical professionals who would use this process to become a certified VA ME after the compliance date of this final rule. Because participation in the National Registry is voluntary, the VA does not have a direct estimate of this number, but expressed to FMCSA that it is motivated to encourage its qualified VA examiners to become certified VA MEs. It is, therefore, reasonable to assume an initial ''ramp-up'' period during the first 3 years following the compliance date of the final rule.

The VA has identified about 157 hospitals and 1,800 clinics at which it provides healthcare services. It anticipates that on completion of the ramp-up period, there will be 10 certified VA MEs per each of the 157 hospitals operated by the VA, and one certified VA ME at each of the 300 largest clinics (the 1,500 smaller clinics may share the services of certified VA MEs at VA hospitals). This results in a total of 1,870 certified VA MEs across all VA facilities (1,870 = 10 MEs per hospital × 157 hospitals + 1 ME per clinic × 300 clinics).

As of May 31, 2017, there were 114 VA medical professionals on the National Registry. To reach the projected level of 1,870 certified VA MEs, the VA would need 585 qualified VA examiners to become certified VA MEs in each of the first 3 years (585 = (1,870 − 114) ÷ 3). Some of these certified VA MEs will leave the VA due to attrition and job transfers, and will need to be replaced by new certified VA MEs. FMCSA estimates the turnover rate for certified VA MEs using data from the Office of Personnel Management (OPM). OPM provides publicly available data at the Agency level on the Federal Civilian Workforce through the FedScope Data Cubes. FMCSA reviewed Veterans Health Administration total employee counts[11] and counts of employee separations[12] for the three relevant medical occupations (0602—Medical Officer, 0603—Physician Assistant, and 0610—Nurse) and found that the turnover rate for these occupations averaged 9 percent over the last 5 fiscal years.

The total number of qualified VA examiners becoming certified VA MEs in years 1 through 3 of the analysis is the sum of the 585 certified VA MEs needed for the ramp-up period and the number that replaces those who leave due to attrition or job transfer. FMCSA estimates the number of certified VA MEs who leave the National Registry by applying the 9 percent turnover rate to the total number of certified VA MEs on the National Registry in the previous year.[13] For example, in year 1, the number of qualified VA examiners that become certified VA MEs due to

[5] U.S. Department of Commerce (DOC), Bureau of Economic Analysis (BEA). ''National Income and Products Accounts (NIPA), Section 1, Table 1.1.9: Implicit Price Deflators for Gross Domestic Product.'' Published March 30, 2017. FMCSA adjusted the tuition cost value using a multiplier of 1.108 (1.108 ≈ 109.998/99.246).

[6] 4.5 hours assumes 3 hours roundtrip travel for training (incurred by 50 percent of qualified VA examiners) and 3 hours of roundtrip travel for testing (for 100 percent of qualified VA examiners). 4.5 hours = (3 × 0.50 + 3 × 1.0). 105 miles of travel by vehicle assumes a 70-mile roundtrip distance for training (incurred by 50 percent of qualified VA examiners) and a 70-mile roundtrip distance for testing (incurred by 100 percent of qualified VA examiners). 105 = (70 × 0.50 + 70 × 1.0). Distance and time inputs are consistent with those in the 2011 regulatory evaluation of the National Registry final rule.

[7] *See https://www.bls.gov/news.release/archives/ocwage_03302016.pdf* (Accessed May 24, 2017).

[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 April 3, 2017).

[10] Both 49 CFR 390.111(a)(5)(i) and (ii) and new 49 CFR 390.131(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 every 10 years after the date of issuance of their credential.

[11] U.S. Office of Personnel Management. FedScope Employment Trend (Year-to-Year) Data Cube, Fiscal Year 2012 through Fiscal Year 2016. Available at: *https://www.fedscope.opm.gov/* (Accessed August 10, 2017).

[12] U.S. Office of Personnel Management. FedScope Separations Trend (FY 2011–FY 2017) Data Cube, Fiscal Year 2012 through Fiscal Year 2016. Available at: *https://www.fedscope.opm.gov/* (Accessed August 10, 2017).

[13] Qualified *VA Examiners Joining NRCME to Replace Attrition*$_t$ = *Certified VA MEs Registered on the NRCME*$_{t-1}$ × 9%.

attrition is equal to 10 (10 = 114 × 9%). In year 2, the number of qualified VA examiners that become certified VA MEs due to attrition is equal to 61 (61 = (114 + 585) × 9%).

As shown in the table below, this would result in an annualized cost savings of approximately $345,000, which is greater than the annualized cost of the rule estimated at approximately $117,000. Therefore, this rule would result in an annualized net cost savings of approximately $228,000.

TABLE 2—POTENTIAL COST SAVINGS AND NET COST SAVINGS

Year	Potential number of certified VA MEs who join the national registry A	Cost savings per 1 qualified VA examiner (7% discount rate) B	Total cost savings (7% discount rate) C = A × B	Total costs (7% discount rate) D	Net cost savings E = −D + C
2018	595	($941)	($559,783)	$471,215	($88,568)
2019	646	(879)	(568,004)	50,441	(517,563)
2020	697	(822)	(572,754)	47,141	(525,612)
2021	163	(768)	(125,181)	44,057	(81,124)
2022	163	(718)	(116,992)	41,175	(75,817)
2023	163	(671)	(109,338)	38,481	(70,857)
2024	163	(627)	(102,185)	35,964	(66,221)
2025	163	(586)	(95,500)	33,611	(61,889)
2026	163	(548)	(89,252)	31,412	(57,840)
2027	163	(512)	(83,413)	29,357	(54,056)
Total	3,079	(7,070)	(2,422,402)	822,855	(1,599,547)
Annualized	.....	(1,007)	(344,896)	117,156	(227,740)

Notes:
(a) Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).
(b) Values shown in parentheses are negative values (*i.e.*, less than zero), and represent a decrease in cost or a cost savings.

The final rule may result in non-quantifiable cost savings to veteran operators if it increases the availability of and access to certified VA MEs. This may reduce waiting periods for appointments for veteran operators enrolled in the VA healthcare system. Shorter waiting periods may expedite a veteran operator's ability to begin driving for personal income. This rule supports the distribution of benefits and services offered to veterans enrolled in the VA healthcare system and encourages veterans to live active and productive lives stemming from gainful employment. Research supports that being gainfully employed contributes to physical and mental health and well-being.[14] Easing access to employment and the associated wellness benefits to veterans may decrease the aggregate demand for VA healthcare services. Also, the potential addition of certified VA MEs on the National Registry 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. The Agency lacks data on the number of veterans enrolled in the VA healthcare system now, or in the future, who might realize cost savings from this process. Therefore, FMCSA is unable to quantify cost savings that may be incurred by veteran operators.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action.[15] The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, is $2.1 million. Expressed on an annualized basis, the cost savings are $147,000. These values are expressed in 2016 dollars.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (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. 847, 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.[16] 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.

In accordance with section 603(a) of the RFA, FMCSA completed an Initial Regulatory Flexibility Analysis to assess the impact of the NPRM on small entities. Although FMCSA received numerous public comments on the NPRM for this rule, there were no comments specific to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file comments in response to the proposed rule.

Section 604(a) of the RFA requires the Agency to prepare a Final Regulatory Flexibility Analysis to assess the impact of the final rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule will affect a subset of qualified VA examiners, the VA, and

[14] Waddell, Gordon and Burton, A Kim. 2006. *Is Working Good For Your Health and Well Being?* Available at: *http://iedereen-aandeslag.nl/wp-content/uploads/2016/07/hwwb-is-work-good-for-you.pdf* (Accessed March 6, 2017).

[15] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. Feb. 3, 2017.

[16] Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601, *et seq.*).

FMCSA. Neither qualified VA examiners, the VA, nor FMCSA are considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, qualified VA examiners are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. Neither the VA nor FMCSA are considered small governmental jurisdictions under section 601(5) of the RFA.

This rule will result in one-time cost savings for qualified VA examiners of approximately $1,000. The VA and FMCSA will incur combined costs of approximately $117,000, annualized at a 7 percent discount rate.

This rule will not affect small entities. Consequently, I hereby certify that the action will not have a significant economic impact on a substantial number of small entities.

D. 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 final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final 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 final 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.

E. 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 1 year. Though this final rule will not result in any such expenditure, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 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 has determined that this rule does 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.

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

This final 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.

I. 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 final 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.

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

FMCSA reviewed this final 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.

K. Privacy

The E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921, requires Federal agencies to conduct a privacy impact assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, Public Law 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note, requires the Agency to conduct a PIA of a regulation that will affect the privacy of individuals. FMCSA has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information (PII) and has evaluated protections and alternative information handling processes in developing the final rule to mitigate potential privacy risks. This rule will not require the collection of any new PII by the National Registry 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 PII contemplated in the final rule.

The Agency submitted a Privacy Threshold Assessment (PTA) analyzing the final rule and the specific process for collection of personal information to the DOT Office of the Secretary's Privacy Office for adjudication. Per the DOT Privacy Officer's adjudication of the PTA, the process to add qualified VA examiners to the National Registry creates a new privacy risk that must be managed appropriately. The current National Registry of Certified Medical Examiners PIA published on February 28, 2017, at *https://www.transportation.gov/individuals/privacy/privacy-impact-assessments,* will be reviewed and revised as appropriate to reflect the final rule and will be published not later than the date on which DOT initiates any of the collection activities contemplated in the final rule. 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 final rule.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. Per the PTA adjudication from the DOT Privacy Officer, the qualified VA examiners' registration records resulting from this rule are not unique and will be maintained and managed by FMCSA in accordance with the registration requirements identified in the planned update to the DOT/FMCSA 009—National Registry of Certified Medical Examiners (National Registry) System of Records Notice published in the **Federal Register** on April 23, 2012 (77 FR 24247).

Per the Privacy Act, FMCSA and DOT are required to publish in the **Federal Register** for at least 30 days a system of records notice (SORN) before it is authorized to collect or use PII retrieved by unique identifier. The current National Registry SORN will be reviewed and revised as appropriate to reflect the final rule and will be published concurrently with the final rule publication or not later than the date on which FMCSA begins collecting and/or using records consistent with the requirements of this rule. As the collected information will be stored in an existing FMCSA system of records, an additional SORN for this rule is not required.

L. E.O. 12372 (Intergovernmental Review)

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

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

FMCSA has analyzed this final 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.

N. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This final rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

O. 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.

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

The National Technology Transfer and Advancement Act (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.

Q. Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act (NEPA) 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, paragraph 6.d. The Categorical Exclusion (CE) in paragraph 6.d covers regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. The requirements in this rule are covered by this CE and the action does not have any effect on the quality of the environment. The CE determination is available for review in the docket.

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 final rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this 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 amends 49 CFR chapter III, 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. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312,

1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 2. Amend § 390.5 as follows:

■ a. Lift the suspension of the section;

■ b. Add definitions of ''Certified VA medical examiner'', ''Qualified VA examiner'', and ''Veteran operator'' in alphabetical order; and

■ c. Suspend § 390.5 indefinitely.

The additions read as follows:

§ 390.5 Definitions.

* * * * *

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

* * * * *

Qualified VA examiner means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; 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 38 U.S.C. 1705(a).

■ 3. Amend § 390.5T by adding the terms ''Certified VA medical examiner'', ''Qualified VA examiner'', and ''Veteran operator'' in alphabetical order to read as follows:

§ 390.5T Definitions.

* * * * *

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

* * * * *

Qualified VA examiner means an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional who is employed in the Department of Veterans Affairs; is licensed, certified, or registered in a State to perform physical examinations; 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 38 U.S.C. 1705(a).

■ 4. Revise § 390.101 to read as follows:

§ 390.101 Scope.

(a) The rules in this subpart establish the minimum qualifications for FMCSA certification of a medical examiner and for listing the examiner on FMCSA's National Registry of Certified Medical Examiners. The National Registry of Certified Medical Examiners is designed to improve highway safety and operator health by requiring that medical examiners be trained and certified to determine effectively whether an operator meets FMCSA physical qualification standards under part 391 of this chapter. One component of the National Registry is the registry itself, which is a national database of names and contact information for medical examiners who are certified by FMCSA to perform medical examinations of operators.

(b) A qualified VA examiner, as defined in either § 390.5 or § 390.5T, may be listed on the National Registry of Certified Medical Examiners by satisfying the requirements for medical examiner certification set forth in either § 390.103 or § 390.123.

Medical Examiner Certification Requirements

■ 5. Add an undesignated center heading before § 390.103 to read as set forth above.

■ 6. Amend § 390.103 by revising paragraph (a) to read as follows:

§ 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 must 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) Register on the National Registry website and receive a National Registry number before taking the training that meets the requirements of § 390.105.

(3) Complete a training program that meets the requirements of § 390.105.

(4) 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 3 years after completion of the training program required by paragraph (a)(3) of this section.

* * * * *

§ 390.109 [Amended]

■ 7. Amend § 390.109 by removing the phrase ''with a unique National Registry Number''.

■ 8. Amend § 390.111 by revising paragraphs (a)(1) and (2) and (a)(5)(ii)(B) to read as follows:

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

(a) * * *

(1) Continue to meet the requirements of §§ 390.103 through 390.115 and the applicable requirements of part 391 of this chapter.

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

* * * * *

(5) * * *

(ii) * * *

(B) Pass the test required by § 390.103(a)(4).

* * * * *

§ 390.113 [Amended]

■ 9. Amend § 390.113 by removing the phrase ''this subpart'' from the introductory text and paragraph (e) and adding in its place ''§§ 390.103 through 390.115''.

■ 10. Amend § 390.115 as follows:

■ a. By removing in paragraphs (c)(1)(i) and (ii), (c)(2)(i), (d)(2)(i), and (f)(1) the phrase ''this subpart'' and adding in its place the phrase ''§§ 390.103 through 390.115'' wherever it appears; and

■ b. By revising paragraphs (d)(2)(ii) and (f)(2).

The revisions read as follows:

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

* * * * *

(d) * * *

(2) * * *

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

* * * * *

(f) * * *

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

* * * * *

■ 11. Add an undesignated center heading and §§ 390.123, 390.125, 390.127, 390.129, 390.131, 390.133, and 390.135 to subpart D to read as follows:

Subpart D—National Registry of Certified Medical Examiners

* * * * *

Medical Examiner Certification Requirements for Qualified Department of Veterans Affairs Examiners

Sec.

390.123 Medical examiner certification for qualified Department of Veterans Affairs examiners.
390.125 Qualified VA examiner certification training.
390.127 Qualified VA examiner certification testing.
390.129 Issuance of the FMCSA medical examiner certification credential.
390.131 Requirements for continued listing of a certified VA medical examiner on the National Registry of Certified Medical Examiners.
390.133 Reasons for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.
390.135 Procedure for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

§ 390.123 Medical examiner certification for qualified Department of Veterans Affairs examiners.

(a) For a qualified VA examiner to receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a person must:

(1) Be an advanced practice nurse, doctor of chiropractic, doctor of medicine, doctor of osteopathy, physician assistant, or other medical professional employed in the Department of Veterans Affairs;

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

(3) Register on the National Registry website and receive a National Registry number before taking the training that meets the requirements of § 390.125;

(4) Be familiar with FMCSA's standards for, and physical requirements of, a commercial motor vehicle operator requiring medical certification, by completing the training program that meets the requirements of § 390.125;

(5) Pass the medical examiner certification test provided by FMCSA, administered in accordance with § 390.127, and has had his or her test information forwarded to FMCSA; and

(6) Never have been found to have acted fraudulently with respect to any certification of a commercial motor vehicle operator, including by fraudulently awarding a medical certificate.

(b) If a person becomes a certified VA medical examiner under §§ 390.123 through 390.135, then to renew such certification the certified VA medical examiner must remain qualified under paragraphs (a)(1) and (2) of this section and complete additional testing and training as required by § 390.131(a)(5).

§ 390.125 Qualified VA examiner certification training.

A qualified VA examiner applying for certification under §§ 390.123 through 390.135 must complete training developed and provided by FMCSA and delivered through a web-based training system operated by the Department of Veterans Affairs.

§ 390.127 Qualified VA examiner certification testing.

To receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a qualified VA examiner must pass the medical examiner certification test developed and provided by FMCSA and administered through a web-based system operated by the Department of Veterans Affairs.

§ 390.129 Issuance of the FMCSA medical examiner certification credential.

Upon compliance with the requirements of § 390.123(a) or (b), FMCSA will issue to a qualified VA examiner or certified VA medical examiner, as applicable, an FMCSA medical examiner certification credential and will add the certified VA medical examiner's name to the National Registry of Certified Medical Examiners. The certification credential will expire 10 years after the date of its issuance.

§ 390.131 Requirements for continued listing of a certified VA medical examiner on the National Registry of Certified Medical Examiners.

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

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the change.

(3) Continue to be licensed, certified, or registered, and authorized to perform physical examinations, in accordance with the laws and regulations of a State.

(4) 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 § 390.125. 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:

(i) No sooner than 4 years and no later than 5 years after the date of issuance of the medical examiner certification credential, complete periodic training as specified by FMCSA.

(ii) No sooner than 9 years and no later than 10 years after the date of issuance of the medical examiner certification credential:

(A) Complete periodic training as specified by FMCSA; and

(B) Pass the test required by § 390.123(a)(5).

(b) FMCSA will issue a new medical examiner certification credential valid for 10 years to a certified VA 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.

(c) A certified VA medical examiner must report to FMCSA within 30 days that he or she is no longer employed in the Department of Veterans Affairs. Any certified VA medical examiner who is no longer employed in the Department of Veterans Affairs, but would like to remain listed on the National Registry, must, within 30 days of leaving employment in the Department of Veterans Affairs, meet the requirements of § 390.111. In particular, he or she must 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. The previously certified VA medical examiner's medical license(s) must be verified and accepted by FMCSA prior to conducting any physical examination of a commercial motor vehicle operator or

issuing any medical examiner's certificates.

§ 390.133 Reasons for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

FMCSA may remove a certified VA medical examiner from the National Registry of Certified Medical Examiners when a certified VA medical examiner fails to meet or maintain the qualifications established by §§ 390.123 through 390.135, the requirements of other regulations applicable to the certified VA medical examiner, or otherwise does not meet the requirements of 49 U.S.C. 31149. The reasons for removal may include, but are not limited to:

(a) The certified VA medical examiner fails to comply with the requirements for continued listing on the National Registry of Certified Medical Examiners, as described in § 390.131.

(b) FMCSA finds that there are errors, omissions, or other indications of improper certification by the certified VA medical examiner of an operator in either the completed Medical Examination Reports or the medical examiner's certificates.

(c) The FMCSA determines the certified VA 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 certified VA medical examiner fails to comply with the examination requirements in § 391.43 of this chapter.

(e) The certified VA medical examiner falsely claims to have completed training in physical and medical examination standards as required by §§ 390.123 through 390.135.

§ 390.135 Procedure for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners.

(a) *Voluntary removal.* To be voluntarily removed from the National Registry of Certified Medical Examiners, a certified VA medical examiner must submit a request to the FMCSA Director, Office of Carrier, Driver and Vehicle Safety Standards, 1200 New Jersey Ave. SE, Washington, DC 20590. Except as provided in paragraph (b) of this section, the Director, Office of Carrier, Driver and Vehicle Safety Standards will accept the request and the removal will become effective immediately. On and after the date of issuance of a notice of proposed removal from the National Registry of Certified Medical Examiners, as described in paragraph (b) of this section, however, the Director, Office of Carrier, Driver and Vehicle Safety Standards will not approve the certified VA medical examiner's request for voluntary removal from the National Registry of Certified Medical Examiners.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a certified VA medical examiner from the National Registry of Certified Medical Examiners by issuing a written notice of proposed removal to the certified VA medical examiner, stating the reasons that removal is proposed under § 390.133 and any corrective actions necessary for the certified VA medical examiner to remain listed on the National Registry of Certified Medical Examiners.

(c) *Response to notice of proposed removal and corrective action.* A certified VA 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, Office of Carrier, Driver and Vehicle Safety Standards no later than 30 days after the date of issuance of the notice of proposed removal. The response must indicate either that the certified VA medical examiner believes FMCSA has relied on erroneous reasons, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, as described in paragraph (c)(1) of this section, or that the certified VA 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 certified VA medical examiner believes FMCSA has relied on an erroneous reason, in whole or in part, in proposing removal from the National Registry of Certified Medical Examiners, the certified VA medical examiner must explain the basis for his or her belief that FMCSA relied on an erroneous reason in proposing the removal. The Director, Office of Carrier, Driver and Vehicle Safety Standards will review the explanation.

(i) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has wholly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will withdraw the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has partly relied on an erroneous reason for proposing removal from the National Registry of Certified Medical Examiners, the Director, Office of Carrier, Driver and Vehicle Safety Standards will modify the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards modifies a notice of proposed removal, the certified VA medical examiner must comply with §§ 390.123 through 390.135 and correct any deficiencies identified in the modified notice of proposed removal as described in paragraph (c)(2) of this section.

(ii) If the Director, Office of Carrier, Driver and Vehicle Safety Standards finds FMCSA has not relied on an erroneous reason in proposing removal, the Director, Office of Carrier, Driver and Vehicle Safety Standards will affirm the notice of proposed removal and notify the certified VA medical examiner in writing of the determination. No later than 60 days after the date the Director, Office of Carrier, Driver and Vehicle Safety Standards affirms the notice of proposed removal, the certified VA medical examiner must comply with §§ 390.123 through 390.135 and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the certified VA 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 certified VA medical examiner is immediately removed from the National Registry of Certified Medical Examiners.

(2) *Compliance and corrective action.* (i) The certified VA medical examiner must comply with §§ 390.123 through 390.135 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, Office of Carrier, Driver and Vehicle Safety Standards affirms or modifies the notice of proposed removal, whichever is later. The certified VA medical examiner must provide documentation of compliance and completion of the corrective actions to the Director, Office of Carrier, Driver and Vehicle Safety Standards. The Director, Office of Carrier, Driver and Vehicle Safety Standards may conduct any investigations and request any documentation necessary to verify that the certified VA medical examiner has complied with §§ 390.123 through

390.135 and completed the required corrective action(s). The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the certified VA medical examiner in writing whether he or she has met the requirements to continue to be listed on the National Registry of Certified Medical Examiners.

(ii) If the certified VA medical examiner fails to complete the proposed corrective action(s) within the 60-day period, the removal becomes effective and the certified VA medical examiner is immediately removed from the National Registry of Certified Medical Examiners. The Director, Office of Carrier, Driver and Vehicle Safety Standards will notify the person in writing that he or she has been removed from the National Registry of Certified Medical Examiners.

(3) At any time before a notice of proposed removal from the National Registry of Certified Medical Examiners becomes final, the recipient of the notice of proposed removal and the Director, Office of Carrier, Driver and Vehicle Safety Standards 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, 1200 New Jersey Ave. SE, Washington, DC 20590. The request must explain the error(s) committed in removing the certified VA 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. If the Associate Administrator decides the removal was not valid, FMCSA will reinstate the person and reissue a certification credential to expire on the expiration date of the certificate that was invalidated under paragraph (g) of this section. The reinstated certified VA medical examiner must:

(i) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(ii) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3) within 30 days of the reinstatement.

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

(iv) 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 §§ 390.125 and 390.131 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.

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

(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, Office of Carrier, Driver and Vehicle Safety Standards may immediately remove a certified VA medical examiner from the National Registry of Certified Medical Examiners and invalidate the certification credential issued under § 390.129. 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 voluntarily or involuntarily removed may apply to the Director, Office of Carrier, Driver and Vehicle Safety Standards to be reinstated. The person must:

(1) Continue to meet the requirements of §§ 390.123 through 390.135 and the applicable requirements of part 391 of this chapter.

(2) Report to FMCSA any changes in the registration information submitted under § 390.123(a)(3).

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

(4) 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 §§ 390.125 and 390.131. 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) Complete training and testing as required by the Director, Office of Carrier, Driver and Vehicle Safety Standards.

(6) In the case of a person who has been involuntarily removed, provide documentation showing completion of any corrective actions required in the notice of proposed removal.

(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) of this section, the certification credential issued under § 390.129 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.

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

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

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 13. Amend § 391.43 by revising 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.

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Issued under authority delegated in 49 CFR 1.87 on: June 5, 2018.

Raymond P. Martinez,

Administrator.

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