

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 68, and 91**

**[Docket No.: FAA-2016-9157; Amdt. Nos. 61-140, 68-1, and 91-347]**

**RIN 2120-AK96**

Alternative Pilot Physical Examination and Education Requirements

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule will allow airmen to exercise pilot in command privileges in certain aircraft without holding a current medical certificate. This rule, which conforms FAA regulations with legislation, is intended to ensure that pilots who complete a medical education course, meet certain medical requirements, and comply with aircraft and operating restrictions are allowed to act as pilot in command for most part 91 operations.

**DATES:** This rule is effective on May 1, 2017.

**Docket:** Background documents may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Linsenmeyer, General Aviation and Commercial Division, AFS-800, Flight Standards Service, Federal Aviation Administration, 55 M Street, SE, 8<sup>th</sup> floor, Washington, DC 20003; telephone: (202) 267-1100; email: 9-AWA-AFS-BasicMed@faa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. Executive Summary**

The Federal Aviation Administration (FAA) Extension, Safety, and Security Act of 2016 (Pub. L. 114-190) (FESSA) was enacted on July 15, 2016. Section 2307 of FESSA, Medical Certification of Certain Small Aircraft Pilots, directed the FAA to “issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft” without having to undergo the medical certification process under 14 CFR part 67 if the pilot and aircraft meet certain prescribed conditions as outlined in FESSA. The FAA is amending parts 61 and 91 and creating a new part 68 to conform to this legislation.

This final rule implements, without interpretation, the requirements of section 2307 of FESSA. This rule reiterates the provisions of section 2307 of FESSA and describes how the FAA is implementing those provisions.

### **II. Legal Authority and Administrative Procedure Act**

#### A. Authority for this Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This final rule is promulgated under the authority described in Subtitle VII, Part A, Subpart iii, section 44701, General Requirements; section 44702, Issuance of Certificates; and

section 44703, Airman Certificates. Under these sections, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. The FAA is also authorized to issue certificates, including airman certificates and medical certificates, to qualified individuals. This rule is within the scope of that authority.

This rule is further promulgated under section 2307 of Public Law 114-190, the FAA Extension, Safety and Security Act of 2016. Section 2307, Medical Certification of Certain Small Aircraft Pilots, provides the requirements and terms of this rule.

#### B. Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) requires an agency to conduct notice and comment rulemaking except when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. The FAA finds that notice and the opportunity to comment are unnecessary and contrary to the public interest in this action because the FAA has simply adopted the statutory language without interpretation and is implementing that language directly into the regulations. The FAA further finds that delaying implementation of this rule to allow for notice and comment would be contrary to the public interest as to do so would delay the new privileges Congress sought to provide.

### **III. Background**

#### A. Current Situation

In general, a person may serve as a required pilot flightcrew member of an aircraft only if that person holds the appropriate medical certificate.<sup>1</sup> 14 CFR 61.3(c)(1). There are a few exceptions to this requirement, such as for pilots flying gliders, balloons, and/or light-sport aircraft. 14 CFR 61.3(c)(2).

A medical certificate provides validation that a person meets FAA medical certification requirements. Title 14, Code of Federal Regulations (14 CFR) part 67 provides for the issuance of three classes of medical certificates—first-, second-, and third-class medical certificates.<sup>2</sup> At minimum, a third-class medical certificate is required for operations requiring a private pilot certificate, a recreational pilot certificate, a flight instructor certificate (when acting as pilot in command or serving as a required flight crewmember in operations other than glider or balloon), or a student pilot certificate. An applicant who is found to meet the appropriate medical standards,<sup>3</sup> based on a medical examination and an evaluation of the applicant’s history and condition, is entitled to a medical certificate without restriction or limitation.

A person obtains a medical certificate by completing an online application (FAA form 8500-8, Application for Medical Certificate) using the FAA’s medical certificate application

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<sup>1</sup> When referring to a “medical certificate” in this final rule, the FAA is referring only to a current and valid first-, second-, or third-class FAA airman medical certificate issued under 14 CFR part 67, which may have been issued under an authorization for special issuance (“special issuance medical certificate”).

<sup>2</sup> In most cases, a first-class medical certificate is required for operations requiring an airline transport pilot (ATP) certificate. At minimum, a second-class medical certificate is required for operations requiring a commercial pilot certificate. The requirement to hold a first or second class medical certificate when exercising the privileges of a commercial or airline transport pilot certificate is not changed by this rulemaking.

<sup>3</sup> Part 67 contains the requirements for medical standards and certification.

tool, MedXPress, on the FAA website and undergoing a physical examination with an FAA-designated Aviation Medical Examiner (AME). The majority of applicants are issued an unrestricted medical certificate by an AME. An AME may defer an applicant to the FAA for further review (which may include further examination by a specialist physician) when there is information indicating the existence or potential of an adverse medical finding that may warrant further FAA medical evaluation and oversight. Title 14 CFR 61.23 specifies the duration of validity for unrestricted medical certificates based on the applicant's age on the date of examination. For third-class medical certificates, certificates for airmen under age 40 are valid for 5 years and for airmen age 40 and over are valid for 2 years.

#### B. Section 2307, Medical Certification of Certain Small Aircraft Pilots

Section 2307, Medical Certification of Certain Small Aircraft Pilots, provides that, within 180 days of enactment of Public Law 114-190, the FAA Extension, Safety and Security Act of 2016, the Administrator of the FAA shall issue or revise regulations to ensure that an individual may operate as pilot in command of a covered aircraft if certain provisions stipulated in section 2307 of FESSA are met. Those provisions, discussed further below, include requirements for the person to:

- Possess a valid driver's license;
- Have held a medical certificate at any time after July 15, 2006;
- Have not had the most recently held medical certificate revoked, suspended, or withdrawn;
- Have not had the most recent application for airman medical certification completed and denied;

- Have taken a medical education course within the past 24 calendar months;
- Have completed a comprehensive medical examination within the past 48 months;
- Be under the care of a physician for certain medical conditions;
- Have been found eligible for special issuance of a medical certificate for certain specified mental health, neurological, or cardiovascular conditions;
- Consent to a National Driver Register check;
- Fly only certain small aircraft, at a limited altitude and speed, and only within the United States;
- Not fly for compensation or hire.

The FAA notes that the use of this rule by any eligible pilot is voluntary. Persons may elect to use this rule or may continue to operate using any valid FAA medical certificate.<sup>4</sup> The FAA recognizes that a pilot who holds a medical certificate may choose to exercise this rule and not to exercise the privileges of his or her medical certificate. Even though a pilot chooses not to exercise the privileges of the medical certificate for a particular operation, the FAA retains the authority to pursue enforcement action to suspend or revoke that medical certificate where there is evidence that the pilot does not meet the FAA's medical certification standards.

49 U.S.C. 44709(a).

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<sup>4</sup> Section 2307(k) states the provisions and requirements of the section do not apply to anyone who elects to operate under § 61.23(b) and (c) – which govern operations not requiring a medical certificate and operations requiring either a medical certificate or U.S. driver's license, respectively. Because this final rule amends § 61.23(c) to include the relief outlined in FESSA, the reference to § 61.23(c) in section 2307(k) applies to that section as it was written at the time the legislation was enacted.

#### **IV. Pilot Requirements of Section 2307 of FESSA**

Section 2307(a)(1) through (7) contains several requirements the pilot must meet in order to act as pilot-in-command (PIC) of a covered aircraft. The FAA is implementing those requirements by revising § 61.23(c)(1) and by adding new § 61.23(c)(3).<sup>5</sup> The following sections discuss the pilot requirements of section 2307 and the FAA's implementation of those requirements in more detail.

##### A. Applicability of Section 2307

Section 2307(a) states that an "individual" may operate as PIC of a covered aircraft in accordance with the requirements of FESSA. Thus, the privileges of this rule are not limited to persons holding a private pilot certificate; it also applies to persons exercising student pilot, recreational pilot, and private pilot privileges and to persons exercising flight instructor privileges when acting as PIC.<sup>6</sup> Accordingly, §§ 61.3 and 61.23 indicate that persons exercising the privileges of these certificates may act as PIC of an operation conducted under the conditions and limitations set forth in § 61.113.<sup>7</sup> However, persons exercising privileges of a student pilot or recreational pilot certificate must continue to operate consistent with the limitations on their

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<sup>5</sup> Section 61.23(c) currently addresses operations that may be conducted using either a medical certificate or a U.S. driver's license.

<sup>6</sup> The FAA has found that, in conducting flight training, the PIC is not carrying passengers or property for compensation or hire, nor is acting as PIC of an aircraft for compensation or hire. Final Rule, "Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules," 62 FR 16220, at 16242 (Apr. 4, 1997).

<sup>7</sup> Section 61.113(i) contains the operating requirements of section 2307. Section 61.23(a)(3) requires a person to hold a third class medical certificate when taking a practical test in an aircraft for a recreational pilot, private pilot, commercial pilot, or airline transport pilot certificate, or for a flight instructor certificate. Accordingly, this rule contains a conforming amendment to allow these pilots to operate under the conditions and limitations of § 61.113(i) when taking a practical test.

certificate.<sup>8</sup> The FAA is therefore adding new §§ 61.89(d) and 61.101(k) to make clear that while individuals exercising the privileges of a student pilot or recreational pilot certificates may operate under § 61.113(i), they must comply with the limitations in §§ 61.89 and 61.101, as applicable, when those limitations conflict with § 61.113(i). Individuals holding a private pilot certificate issued on the basis of a foreign pilot license under § 61.75 may also operate under this rule, provided they meet the requirements of §§ 61.23(c)(3) and 61.113(i). However, an individual who is applying for a U.S. private pilot certificate under § 61.75 is still required to hold a medical certificate issued under part 67 or a medical license issued by the country that issued the person's foreign pilot license.<sup>9</sup> Section 2307 does not apply to persons exercising privileges of a commercial pilot certificate or an airline transport pilot certificate because section 2307 prohibits operations for compensation or hire.<sup>10</sup> Persons exercising privileges of a commercial pilot or ATP certificate must continue to hold a first or second class medical certificate in accordance with § 61.23(a)(1) and (2).

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<sup>8</sup> Section 61.89 contains the general limitations of a student pilot. Section 61.101 contains the privileges and limitations for recreational pilots.

<sup>9</sup> Under § 61.75(b), a person who holds a foreign pilot license issued by a contracting State to the Convention on International Civil Aviation may be issued a U.S. private pilot certificate based on the foreign pilot license without any further showing of proficiency, provided the applicant meets the requirements of § 61.75. One of these requirements is to hold a medical certificate issued under part 67 or a medical license issued by the country that issued the person's foreign pilot license. 14 CFR § 61.75(b)(4).

<sup>10</sup> The FAA notes that § 61.113 provides that certain activities conducted by a private pilot acting as PIC are excepted from the general prohibition on operations conducted for compensation or hire. These activities are listed in § 61.113(b)-(h). Although the FAA considers these activities to be operations involving compensation or hire, the compensation or hire exceptions for these operations permit these operations to be conducted under this rule.

## B. Valid Driver's License (§ 61.23(c)(1) and (c)(3))

Section 2307(a)(1) of FESSA requires that, to be eligible to act as PIC without a medical certificate, an individual possess a valid driver's license issued by a State, territory, or possession of the United States and comply with all medical requirements or restrictions associated with that license. As with other FAA regulations, the FAA interprets "valid driver's license" to mean a current and valid U.S. driver's license. Each State will determine what, if any, medical requirements or restrictions are necessary and associated with each driver's license issued.

The FAA is implementing section 2307(a)(1) by revising § 61.23(c)(1) and by adding new § 61.23(c)(3). The FAA is adding paragraphs (v) and (vi) to § 61.23(c)(1) to require a person exercising a student pilot certificate, recreational pilot certificate, private pilot certificate, or flight instructor certificate (while acting as the pilot in command or as a required flight crewmember) to hold and possess either a medical certificate or a driver's license issued by a State, territory, or possession of the U.S. when operating under this rule. Additionally, the FAA is adding new § 61.23(c)(3) to require a person using a U.S. driver's license to meet the requirements of § 61.23(c)(1) while operating under section 2307 of FESSA to comply with all medical requirements or restrictions associated with his or her U.S. driver's license.

The FAA notes that, while some pilots use an official passport as a valid form of photo identification under § 61.3(a)(2), it does not meet the requirements of section 2307(a)(1) of FESSA. All pilots, including pilots who were issued U.S. private pilot certificates in accordance with § 61.75, must hold a U.S. driver's license to operate under this rule. An international driver's license or any driver's license issued by a country or territory other than the United States does not suffice to meet this requirement.

Individuals who do not have a medical certificate and whose driver's license has been revoked or rescinded for any reason are not eligible to use this rule, unless and until the driver's license is reinstated. Any restrictions on a driver's license (e.g., corrective lenses, prosthetic aids required, daylight driving only) also apply under this rule.

Since FESSA requires the individual to possess a driver's license, pilots are required to have the driver's license in their personal possession when operating using this rule.

#### C. Medical Certificate Issued by the FAA (§ 61.23(c)(3)(i)(B))

Section 2307(a)(2) of FESSA requires that the individual (1) hold a medical certificate issued by the FAA on the date of enactment of Public Law 114-190, (2) have held a medical certificate at any point during the 10-year period preceding the date of enactment, or (3) obtain a medical certificate after the date of enactment. Because Public Law 114-190 was signed into law on July 15, 2016,<sup>11</sup> the FAA calculates the 10-year period preceding the date of enactment as beginning on July 15, 2006. Thus, at any point after July 14, 2006, a person must have held a medical certificate issued under part 67. The FAA is implementing this requirement in § 61.23(c)(3)(i)(B).

Consistent with section 2307(a)(3) of FESSA, the medical certificate required under § 61.23(c)(3)(i)(B) may have been a first-, second-, or third-class medical certificate, including a medical certificate issued under an authorization for special issuance (“special issuance medical certificate”).

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<sup>11</sup> Public Law 114-190

A person who has not held a medical certificate at any point after July 14, 2006, must obtain a medical certificate issued under part 67. After that medical certificate expires, that person may use, or continue to use, the alternative pilot physical examination and education requirements, provided that person meets the other conditions and limitations.

For individuals relying on an already expired certificate, a person should use the date that his or her most recent medical certificate expired to determine whether it meets the 10-year period look-back described in FESSA. Special-issuance medical certificates are always time-limited and will explicitly state the date when the certificate expires or is no longer valid. Therefore, any special-issuance medical certificate with an expiration date on or after July 15, 2006, would meet the 10-year look-back requirement.

Unrestricted (“regular issuance”) medical certificates do not list a specific expiration date. Therefore, persons with an unrestricted FAA medical certificate should refer to the “Date of Examination” displayed on the certificate, and then use § 61.23(d) to determine when it expired for operations requiring a third-class medical certificate.<sup>12</sup> The expiration date is based on a person’s age on the date of the examination as calculated from his or her date of birth (i.e., “under age 40” vs. “age 40 and over”). For example, a person born on January 2, 1963 would be “under age 40” if the date of examination was January 1, 2003, but would be “age 40 and over”

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<sup>12</sup> The FAA notes that a first or second class medical certificate lapses into a third class medical certificate when it exceeds the duration period for first or second class medical certificates under § 61.23(d). For example, for a pilot under the age of 40, a first class medical certificate expires on the 12th month after the month of the date of examination shown on the medical certificate. Upon the date of expiration for a first class medical certificate, the certificate would lapse into a third class medical certificate.

if the examination occurred one day later on January 2, 2003. The FAA advises individuals to carefully review § 61.23(d), which specifies the duration of medical certificates.<sup>13</sup>

Persons age 40 or over on the date of their examination would meet the 10-year period described in FESSA if their examination was on or after July 15, 2004. This date is based on the two-year validity period for third class medical certificates issued to persons age 40 or over.

Persons under age 40 on the date of their examination would meet the 10-year period described in FESSA if their examination was on or after July 15, 2003. This date is based on the three-year validity period for third class medical certificates issued to persons under 40 years of age that was in effect prior to 2008.<sup>14</sup>

Individuals operating under this rule are not required to carry or possess the expired medical certificate when operating under this rule.

#### D. Requirements of a Medical Certificate (§ 61.23(c)(3)(ii) and (iii))

Section 2307(a)(3) of FESSA requires that the most recent medical certificate issued by the FAA to the individual: (1) indicates whether the certificate is first-, second-, or third-class;

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<sup>13</sup> On July 24, 2008, the FAA published a final rule, “Modification of Certain Medical Standards and Procedures and Duration of Certain Medical Certificates,” that extended the duration of certain medical certificates (73 FR 43059). Before the 2008 final rule, first-class medical certificates had a maximum duration of 6 months, regardless of the person’s age, while third-class medical certificates had a maximum duration of 3 years for individuals under age 40. With publication of the final rule, the duration of first- and third-class medical certificates for individuals under age 40 was extended to 1 year for first-class medical certificates and 5 years for third-class medical certificates. For persons over age 40, the duration of first- and third-class medical certificates remained 6 months and 2 years, respectively.

<sup>14</sup> Under the 2008 final rule that extended the duration of third class medical certificates for persons under the age of 40 from three years to five years, the FAA construed the extended validity period as “reviving” expired medical certificates if those certificates would have been valid under the extended period. For example, a third-class medical certificate issued in 2004 (four years before the effective date of the 2008 rule) expired in 2007. When the 2008 final rule became effective, the FAA applied the new five-year duration to the expired certificate. Thus, the medical certificate was revived and remained valid until 2009.

(2) may include authorization for special issuance; (3) may be expired; (4) cannot have been revoked or suspended; and (5) cannot have been withdrawn.

The requirement that the medical certificate indicate whether the certificate is first-, second-, or third-class is captured in § 61.23(c)(3)(i)(B), which requires the medical certificate to have been issued under part 67.<sup>15</sup> The FAA is implementing the remaining requirements of section 2307(a)(3) in § 61.23(c)(3)(ii) and (iii). Accordingly, § 61.23(c)(3)(ii) now states that the most recently issued medical certificate: (1) may include an authorization for special issuance; (2) may be expired; and (3) cannot have been suspended, revoked, or withdrawn.

Thus, the most recently issued medical certificate, which the person must have held at any point after July 14, 2006, may have been a special issuance medical certificate and may be expired. However, it may not have been suspended or revoked, or in the case of an authorization for a special issuance (i.e., a restricted medical certificate), it may not have been withdrawn. Unrestricted medical certificates can be suspended or revoked if the certificate holder does not meet the medical standards of part 67 or as the result of noncompliance with other regulatory requirements. The FAA may also suspend or revoke a medical certificate on the basis of a reexamination of that certificate under section 44709 of Title 49 of the United States Code.

Section 2307 of FESSA states that the medical certificate “cannot have been revoked or suspended.” Accordingly, if a person’s most recently issued medical certificate has been suspended or revoked, the person must apply for and be issued a new medical certificate prior to using the privileges afforded under this rule. This holds true even if the medical certificate was

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<sup>15</sup> Under part 67, a person may be issued a first-, second-, or third-class medical certificate.

suspended and reinstated because FESSA expressly states that the certificate “cannot have been...suspended.”<sup>16</sup> Therefore, if a person’s last medical certificate was under suspension at any point in time that medical certificate cannot be used for relief under this rule.

Further, if the person’s medical certificate expired while under suspension, the person must apply for and be issued a new medical certificate to use the privileges of this rule. This requirement is based on the language in FESSA stating that the certificate “cannot have been suspended.” The fact that the certificate expired while under suspension does not change the fact that it was suspended (for purposes of exercising relief under this rule).

Finally, § 2307 requires that the most recently issued medical certificate “cannot have been withdrawn.” The FAA notes that unrestricted medical certificates may be denied, suspended, or revoked and authorizations for special issuances (i.e., restricted medical certificates) may be denied or withdrawn. Accordingly, the requirement that the most recently issued authorization for special issuance cannot have been withdrawn is implemented in § 61.23(c)(3)(iii).

#### E. Application for an Airman Medical Certificate (§ 61.23(c)(3)(iv))

Section 2307(a)(4) of FESSA requires that the most recent application for airman medical certification submitted to the FAA by the individual cannot have been completed and denied. The FAA is implementing this requirement in § 61.23(c)(3)(iv).

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<sup>16</sup> If a person’s medical certificate is suspended, modified, or revoked under § 67.413(b), that suspension or modification remains in effect until the person provides the requested information, history, or authorization to the FAA and until the FAA determines that the person meets the medical standards set forth in part 67.14 CFR 67.413(c).

Consistent with the Guide for Aviation Medical Examiners and online information on the Aerospace Medical Certification Subsystem (AMCS), the FAA considers an application to be completed once the AME imports the individual’s MedXpress application data into AMCS.<sup>17</sup> If an individual submits a MedXpress application but the information is never imported into AMCS by an AME (e.g., the individual never makes an appointment or does not show up for the appointment), then the un-imported application would not be completed and, as such, the FAA would have no basis to make a denial or other certification action.<sup>18</sup> Therefore, any un-imported application would not be subject to the portion of section 2307 relating to “completed and denied” applications, and the individual would look to the most recent application where the FAA either issued or denied a medical certificate in order to determine eligibility under this rule.

After importing a MedXpress application into AMCS, the AME may take one of three actions on the completed application. The AME may: (1) issue a medical certificate; (2) defer issuance to the FAA; or (3) deny the issuance of a medical certificate. Guidance to AMEs makes clear that once the AME has imported the individual’s application in MedXpress, the AME is required to transmit the application to the FAA,<sup>19</sup> regardless of whether (a) the applicant leaves

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<sup>17</sup> “Information for Aviation Medical Examiners Processing MedXpress Applications” instructs AMEs that “MedX applications *must* be imported before the applicant leaves your [the AME’s] office” and “As soon as you [the AME] import an application into AMCS, it is a signed FAA form and should be treated accordingly.” ([https://www.faa.gov/other\\_visit/aviation\\_industry/designees\\_delegations/designee\\_types/ame/amcs/media/MedXpress%20AME%20Procedures\\_Jan%202012.pdf](https://www.faa.gov/other_visit/aviation_industry/designees_delegations/designee_types/ame/amcs/media/MedXpress%20AME%20Procedures_Jan%202012.pdf))

<sup>18</sup> When an individual does not follow up a MedXpress application by presenting to an AME for an examination, the data entered through MedXpress system remains valid for 60 days, after which the application expires and is deleted from the MedXpress system. ([https://www.faa.gov/other\\_visit/aviation\\_industry/designees\\_delegations/designee\\_types/ame/amcs/media/MedXpress%20AME%20Procedures\\_Jan%202012.pdf](https://www.faa.gov/other_visit/aviation_industry/designees_delegations/designee_types/ame/amcs/media/MedXpress%20AME%20Procedures_Jan%202012.pdf))

<sup>19</sup> The AME Guide states that all completed applications and medical examinations, unless otherwise directed by the FAA, must be transmitted electronically via AMCS within 14 days after completion to the AMCD

the AME office in the middle of the examination, (b) all elements of the AME's examination have been accomplished, or (c) the applicant does/does not provide all additional information required by the AME or the FAA.<sup>20</sup> Whenever an AME defers an examination, the FAA makes a determination on that application (denial or issuance).

An individual's application is considered completed and denied and that individual is unable to use the privileges of this rule when:

- (1) An AME denies an application immediately after completing the examination and the FAA does not reverse that decision.
- (2) The FAA denies the application after the applicant has been deferred by the AME.
- (3) A denied application remains under judicial appeal (e.g., to the National Transportation Safety Board), since no valid medical certificate has been issued.

Additionally, if a person held a medical certificate within the 10-year period preceding July 15, 2016, but subsequently submitted a new application that was completed and denied, that person could not revert to the previous medical certificate meeting the 10-year look back requirement. That person would need to re-apply and be issued a new medical certificate to use the privileges of this rule.

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([https://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/ame/guide/app\\_process/general/disposition/](https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/app_process/general/disposition/)).

<sup>20</sup> The AME Guide states that, when an applicant is advised by an Examiner that further examination and/or medical records are needed, the applicant may elect not to proceed. The Examiner is directed to note this in Block 60 [of the FAA form 8500-8, Application for medical certificate]. No certificate should be issued, and the Examiner should forward the application form to the AMCD, even if the application is incomplete.

([https://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/ame/guide/app\\_process/app\\_review/item62/](https://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/app_process/app_review/item62/))

#### F. Completion of Medical Education Course (§ 61.23(c)(3)(i)(C))

Section 2307(a)(5) of FESSA requires the individual to have completed a medical education course during the 24 calendar months before acting as pilot in command of a covered aircraft and demonstrate proof of completion of the course. The FAA notes that section 2307(c) prescribes the medical education course requirements, which are implemented in new part 68 and discussed in section VI of this preamble.

Section 61.23(c)(3)(i)(C) implements the requirement to have completed the medical education course during the 24 calendar months before acting as PIC of an operation under § 61.113(i).<sup>21</sup> The term “24 calendar months” as used throughout 14 CFR means “24 unit months,” and “unit months” is defined as beginning on the first of the month and ending on the last day of the month.<sup>22</sup> Thus, a pilot has from the beginning of the 24<sup>th</sup> calendar month before the month in which he or she wants to act as PIC of an operation under § 61.113(i) to complete the medical education course. For example, if a pilot wants to act as PIC of an operation under § 61.113(i) on August 19, 2019, that pilot must have, since August 1, 2017, completed the medical education course.

#### G. Care and Treatment by a Physician (§ 61.23(c)(3)(i)(E))

Section 2307(a)(6) of FESSA requires that the individual, when serving as PIC, is under the care and treatment of a physician if the individual has been diagnosed with any medical

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<sup>21</sup> Section 61.113(i) implements the operating requirements of section 2307 of the Act.

<sup>22</sup> Legal Interpretation to Mr. Sean Conlin (Feb. 24, 2000).

condition that may impact the ability of the individual to fly. This requirement is implemented in § 61.23(c)(3)(i)(E).

#### H. Receipt of Medical Exam during the Previous 48 Months (§ 61.23(c)(3)(i)(D))

Section 2307(a)(7) of FESSA requires the individual to have received a comprehensive medical examination from a State-licensed physician during the previous 48 months. This requirement is implemented in § 61.23(c)(3)(i)(D). The FAA notes that section 2307(a)(7) contains additional requirements regarding the comprehensive medical examination. Those additional requirements are implemented in new part 68 and discussed in section VII of this preamble.

In implementing section 2307(a)(7), the FAA notes that section 2307(a)(5) uses the term “calendar months” and section 2307(a)(7) uses the term “months.” As evident from a legal interpretation issued on February 24, 2000,<sup>23</sup> the FAA interprets the terms “calendar months” and “months” differently. The term “calendar months” means “unit months,” as previously discussed, which is defined as beginning on the first day of the month and ending on the last day of the month. The term “months,” however, means months from the exact date at issue. For example, under § 61.23(c)(3)(i)(D), if an individual wants to act as PIC of an operation under § 61.113(i) on July 19, 2021, that individual must have received a comprehensive medical examination on or after July 19, 2017.

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<sup>23</sup> Id.

## **V. Covered Aircraft Requirements and Operating Requirements**

Section 2307(j) of FESSA contains the covered aircraft requirements and section 2307(a)(8) contains the operating requirements. The FAA is implementing these requirements in new § 61.113(i).<sup>24</sup> The following sections discuss the FAA's implementation of the covered aircraft and operating requirements in more detail.

### **A. Covered Aircraft Requirements of Section 2307 of FESSA**

Throughout section 2307, FESSA refers to a "covered aircraft." Section 2307(j) of FESSA defines a covered aircraft as an aircraft that (1) is authorized under Federal law to carry not more than 6 occupants; and (2) has a maximum certificated takeoff weight of not more than 6,000 pounds.

The FAA is implementing these requirements for type certificated aircraft in § 61.113(i)(1). For type certificated aircraft, the aircraft's design approval would authorize the number of occupants the aircraft may carry and would contain the maximum certificated takeoff weight. The aircraft's design approval may be a type certificate (TC), a supplemental type certificate (STC), or an amended type certificate (ATC). The FAA recognizes that changes could be made to an aircraft's type design. For example, an aircraft type certificated to carry more than 6 occupants may be altered to carry 6 or less occupants. In order to make such a change, that aircraft would have to obtain a new design approval, such as an STC or an ATC. So long as an aircraft's design approval (i.e., TC, STC, or ATC) authorizes the aircraft to carry no more than 6 occupants, that aircraft would meet the requirement of section 2307(j)(1). Additionally, if an

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<sup>24</sup> Section 61.113 currently addresses private pilot privileges and limitations.

aircraft with a maximum certificated takeoff weight of more than 6,000 pounds is altered to have a maximum certificated takeoff weight of less than 6,000 pounds, that aircraft would meet the requirement of section 2307(j)(2).

The FAA is implementing the requirements of section 2307(j) for experimental aircraft by adding paragraph (j) to § 91.319. Experimental aircraft, which are not type certificated, are issued special airworthiness certificates. The FAA prescribes operating limitations to accompany the special airworthiness certificates. Additionally, § 91.319 prescribes operating limitations for aircraft having experimental certificates. Consistent with section 2307(j) of FESSA, § 91.319(j) states that no person may operate an aircraft that has an experimental certificate under § 61.113(i) unless the aircraft is carrying not more than 6 occupants. The FAA is adding this paragraph to make clear that experimental aircraft meet the requirements for covered aircraft under this rule.

The FAA notes that the maximum takeoff weight of an experimental aircraft is determined as part of the special airworthiness certification process. Prior to issuing a special airworthiness certificate, the FAA checks the current weight and balance information for an aircraft, which includes the maximum gross weight established by the operator.

While a person may operate an aircraft that meets the requirements of section 2307(j) under this rule, the FAA notes that section 2307 does not relieve an aircraft from the requirement to be operated in accordance with its operating limitations.<sup>25</sup> Accordingly, if an aircraft being

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<sup>25</sup> 14 CFR 91.9(a).

operated under this rule has any operating limitations that conflict with § 61.113(i),<sup>26</sup> that aircraft must comply with its operating limitations.

#### B. Operating Requirements of Section 2307 of FESSA

Section 2307(a)(8) of FESSA requires that the individual operate in accordance with the following operating requirements:

- The covered aircraft is carrying not more than 5 passengers.
- The individual is operating the covered aircraft under visual flight rules or instrument flight rules.
- The flight, including each portion of that flight, is not carried out—
  - for compensation or hire, including that no passenger or property on the flight is being carried for compensation or hire;
  - at an altitude that is more than 18,000 feet above mean sea level;
  - outside the United States, unless authorized by the country in which the flight is conducted; or
  - at an indicated airspeed exceeding 250 knots.

The following sections discuss the FAA’s implementation of these requirements in more detail.

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<sup>26</sup> As noted previously, § 61.113(i) implements the covered aircraft requirements and operating requirements of the Act.

## **1. The Covered Aircraft is Carrying not more than 5 Passengers**

Section 2307(a)(8)(A) of FESSA requires that the covered aircraft carry no more than five passengers. This requirement is implemented in § 61.113(i)(1).

As previously discussed, section 2307(j) of FESSA requires the covered aircraft to be authorized to carry no more than six occupants. While section 2307(j) and section 2307(a)(8)(A) may appear to conflict, the FAA notes that it interprets the terms “occupants” and “passengers” differently. The term “occupants” includes all persons onboard an aircraft including any required flightcrew members.<sup>27</sup> A flightcrew member is required if he or she is required by type certification of the aircraft or by regulation. The term “passengers” does not include required flight crewmembers. Therefore, under this rule, a covered aircraft may be authorized to carry up to 6 occupants (including any required flight crewmembers) and may be operated with up to five passengers on board. For example, a person may operate an aircraft type certificated for one pilot flightcrew member under this rule with up to five additional occupants on board. An aircraft type certificated for two pilot flightcrew members may be operated under this rule with up to four additional occupants on board.<sup>28</sup> An occupant in the aircraft (other than the pilot operating under this rule) may be a passenger, a required pilot flightcrew member (if the aircraft is type certificated for more than one pilot or if the regulations require more than one pilot), or a flight instructor (if the flight is a training operation). If a pilot operating an aircraft under this rule

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<sup>27</sup> A flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. 14 CFR 1.1

<sup>28</sup> An operation requiring two pilots could not carry five passengers under § 2307(a)(8)(A) because it would exceed the number of occupants allowed under § 2307(j). The FAA considers that, due to the limitations for maximum certificated takeoff weight, all, or nearly all, covered aircraft will require only a single pilot.

carries another pilot on board who is not a required pilot flightcrew member, that additional pilot would be a passenger under the FAA's regulations.

The operations under this rule include training operations. As such, a person may receive flight training from an FAA-authorized flight instructor while the person receiving flight training is acting as PIC and operating under this rule. Alternatively, an individual may receive flight instruction from a flight instructor while the flight instructor is acting as PIC and operating under this rule.

This rule is applicable only to the person acting as the PIC. Thus, for any flight operated under this rule, the status of the medical certificate of any other pilot aboard who is not acting as the PIC is irrelevant. For example, flight instructors meeting the requirements of this rule may act as PIC while giving flight training without holding a medical certificate, regardless of whether the person receiving flight training holds a medical certificate. While flight training for compensation is considered "other commercial flying" for flight and duty requirements under parts 121 and 135,<sup>29</sup> "a certificated flight instructor who is acting as PIC and is receiving compensation for his or her flight instruction is exercising flight instructor privileges for the flight training being provided and is exercising private pilot privileges while acting as PIC of the flight."<sup>30</sup>

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<sup>29</sup> Legal Interpretation to Richard Martindell (March 11, 2009); Legal Interpretation to Arturo Rodriguez (July 2, 2012).

<sup>30</sup> Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules, 62 FR 16220 (Apr. 4, 1997).

## **2. Operate the Aircraft under Visual Flight Rules or Instrument Flight Rules**

Section 2307(a)(8)(B) of FESSA permits an operation under that section to be conducted under visual flight rules or instrument flight rules. An individual operating under this rule may, therefore, conduct the flight in visual meteorological conditions or instrument meteorological conditions. The FAA notes, however, that FESSA does not relieve an individual from the requirement to hold an instrument rating and be instrument current to act as PIC under instrument flight rules. Nor does FESSA relieve an aircraft from the requirement to be approved for IFR operations in order to be operated under instrument flight rules.

## **3. The Flight, Including Each Portion of the Flight**

Section 2307(a)(8)(C) requires that the flight, including each portion of the flight, is not carried out: (i) for compensation or hire, including that no passenger or property on the flight is being carried for compensation or hire; (ii) at an altitude that is more than 18,000 feet above mean sea level; (iii) outside the United States, unless authorized by the country in which the flight is conducted; or (iv) at an indicated air speed exceeding 250 knots.

Because the statute includes the phrase "...flight, including each portion of the flight," all of the limitations for the operation set forth in section 2307(a)(8)(C)(i)-(iv) (i.e. compensation/hire prohibition, altitude, geographic, and airspeed limitations) apply to the entire flight. Accordingly, if this rule is being exercised in any flight, it must be applied for the entire flight (takeoff to full-stop landing) and all the operational restrictions apply for the entire flight. The FAA is implementing the requirements of section 2307(a)(8)(C)(i)-(iv) in § 61.113(i)(2)(i)-(iv). These requirements are discussed in more detail below.

i. Flight is not Conducted for Compensation or Hire

Section 2307(a)(8)(C)(i) of FESSA requires that the flight, including each portion of that flight, is not carried out for compensation or hire, including that no passenger or property on the flight is being carried for compensation or hire. Section 61.113(a) already prohibits private pilots from acting as PIC of an aircraft that is carrying passengers or property for compensation or hire and from acting as PIC for compensation or hire. Accordingly, this FESSA requirement is already addressed by the existing regulation.

ii. Altitude Restriction

Section 2307(a)(8)(C)(ii) of FESSA requires that the flight, including each portion of that flight, is not carried out at an altitude that is more than 18,000 feet above mean sea level (MSL). This requirement is implemented in § 61.113(i)(2)(ii).

For pilots operating aircraft capable of flight above 18,000 feet MSL, the pilot's preflight planning must accommodate the altitude limitation. For instance, if weather phenomena like icing or thunderstorms are forecast (or is within reasonable possibility) within the pilot's route of flight that would necessitate climbing above 18,000 feet MSL, the FAA considers initiating such a flight to be contrary to this rule. The aircraft must operate at or below 18,000 feet MSL during the entire flight.

iii. Geographic Restriction

Section 2307(a)(8)(C)(iii) of FESSA requires that the flight, including each portion of that flight is conducted within the United States, unless authorized by the country in which the flight is conducted. This requirement is implemented in § 61.113(i)(2)(iii).

Title 14 CFR 1.1 defines the United States as the States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters, and the airspace of those areas. Thus, a pilot operating in the United States, as defined in § 1.1, may elect to use this rule.

Airmen certificated by the FAA are represented to the International Civil Aviation Organization (ICAO) as compliant with ICAO standards for private pilots, among other requirements. As FESSA and this final rule describe standards that divert from ICAO requirements,<sup>31</sup> flights must be geographically limited to operations within the United States.

#### iv. Airspeed Restriction

Section 2307(a)(8)(C)(iv) of FESSA requires that the flight, including each portion of that flight, is conducted at an indicated airspeed not exceeding 250 knots. The FAA is implementing this requirement in § 61.113(i)(2)(iv).

Recognizing that many aircraft have airspeed indicators that read in miles per hour (mph), 250 knots is equivalent to 288 mph. No aircraft may be operated in any phase of flight at an airspeed greater than 250 KIAS (knots indicated airspeed).

## **VI. Medical Education Course Requirements of Section 2307 of FESSA**

The following sections describe the medical education course requirements of section 2307 of FESSA and the FAA's implementation of those requirements.

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<sup>31</sup> Annex 1 to the Convention on International Civil Aviation, "Personnel Licensing," Chapter 6 "Medical Provisions for Licensing," 11<sup>th</sup> Edition (July 2011).

## A. Development and Availability of the Medical Education Course

Section 2307(c)(1) requires the medical education course to be available on the internet free of charge. Section 2307(c)(2) requires the course to be developed and periodically updated in coordination with representatives of relevant nonprofit and not-for-profit general aviation stakeholder groups.

To implement these requirements, the FAA will work with nonprofit and not-for-profit general aviation stakeholder groups to coordinate and develop a medical education course that meets the requirements of FESSA, which are discussed in more detail below. A nonprofit or not-for-profit general aviation stakeholder group may submit a medical education course to the FAA for consideration. Upon receipt of the submission, the FAA will verify the course meets the requirements of § 68.3. If the FAA accepts the course, the FAA will provide a link to the course on the FAA public website. Thus, for public awareness, the FAA's website will contain a list of each medical education course that the FAA has accepted.

The FAA has determined that it is appropriate to enter into agreements with nonprofit or not-for-profit general aviation stakeholder groups who elect to provide the course.

## B. Course Requirements

Pursuant to the requirements of section 2307(c)(3) through (9) of FESSA, the course must:

- Educate pilots on conducting medical self-assessments;
- Advise pilots on identifying warning signs of potential serious medical conditions;
- Identify risk mitigation strategies for medical conditions;

- Increase awareness of the impacts of potentially impairing over-the-counter and prescription drug medications;
- Encourage regular medical examinations and consultations with primary care physicians;
- Inform pilots of the regulations pertaining to the prohibition on operations during medical deficiency and medically disqualifying conditions; and
- Provide the checklist developed by the Federal Aviation Administration in accordance with section 2307(b).

The FAA is implementing these requirements in § 68.3(a)(1)-(7). The FAA notes that the requirements for the checklist, which the course must provide, are implemented in § 68.5.

#### C. Documents the Course Must Provide to the Individual and Transmit to the FAA

Pursuant to the requirements of section 2307(c)(10) of FESSA, upon successful completion of the course, the medical education course must electronically provide to the individual and transmit to the FAA—

- A certification of completion of the medical education course;
- A release authorizing the National Driver Register through a designated State Department of Motor Vehicles to furnish to the FAA information pertaining to the individual's driving record;
- A certification by the individual that the individual is under the care and treatment of a physician if the individual has been diagnosed with any medical condition that may impact the ability of the individual to fly;

- A form that includes information regarding the individual, the physician, the comprehensive medical exam, and a certification by the individual that the checklist was followed and signed by the physician; and
- A statement signed by the individual certifying that the individual understands the existing prohibition on operations during medical deficiency. A copy of this signed statement must be provided to the pilot and retained by the pilot.

These requirements are implemented in § 68.3(b)(1)-(5) and are discussed in more detail below.

### **1. Certification of Completion**

Section 2307(c)(10)(A) requires the certification of completion of the medical education course to be printed and retained in the individual's logbook and made available upon request. This certification of completion must contain only the individual's name, address, and airman certificate number.<sup>32</sup> The FAA is implementing this requirement in § 68.3(b)(1).

The PIC must maintain the certification of completion along with his or her pilot logbook. The certification must be available along with the logbook at any time the pilot is presenting the logbook to comply with any regulatory requirement (such as applying for a certificate or rating), or upon request by a representative of the FAA Administrator. Under the

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<sup>32</sup> The term "certification" was used in the legislation. The FAA notes that this term may cause confusion with the general use of that term within FAA regulations. This document need only contain the information required by FESSA as set forth in § 68.3(b)(1).

terms of FESSA, there is no requirement for pilots to carry compliance documentation that shows their compliance with the relief described in this rule.

The FAA recognizes that many pilots maintain logbooks electronically. Pilots may carry an electronic facsimile or representation of the certification along with their pilot logbook entries, as long as that representation of the certification is available and clearly legible when the logbook is being used to comply with a regulatory requirement or upon request by a representative of the FAA Administrator.

## **2. Authorization for Access to National Driver Register**

Section 2307(c)(10)(B) requires a release authorizing the National Driver Register through a designated State Department of Motor Vehicles to furnish to the FAA information pertaining to the individual's driving record. Section 2307(d) states that the authorization under section 2307(c)(10)(B) shall be an authorization for a single access to the information contained in the National Driver Register. The FAA is implementing these requirements in § 68.3(b)(2).

The National Driver Register (NDR) is a division in the National Center for Statistics and Analysis under the National Highway Traffic Safety Administration (NHTSA). The NDR maintains the computerized database known as the Problem Driver Pointer System (PDPS), which contains information on individuals whose privilege to operate a motor vehicle has been revoked, suspended, canceled or denied or who have been convicted of serious traffic-related offenses.

Each time an individual indicates his or her consent for the NDR release, the FAA will conduct a single NDR check in an identical manner to the NDR check currently conducted when

a person applies for a medical certificate. Similarly, the information the FAA receives from the NDR check will be used in the same way as for an applicant for a medical certificate.

### **3. Certification that the Individual is Under the Care and Treatment of a Physician**

Section 2307(c)(10)(C) requires a certification by the individual that the individual is under the care and treatment of a physician if the individual has been diagnosed with any medical condition that may impact the ability of the individual to fly, as required by section 2307(a)(6).<sup>33</sup> This requirement is implemented in § 68.3(b)(3).

The FAA recognizes that there are many thousands of diagnosable medical conditions, as well as innumerable medical treatments and medications. Many conditions, treatments, or medications are unlikely to impact a person's ability to safely operate an aircraft. However, there are numerous conditions, treatments, and medications that are aviation safety risks. Potential adverse effects may result from sudden incapacitation (e.g., epilepsy, coronary artery disease, implantable cardioverter-defibrillators, etc.) or reduced cognitive, mental or physical abilities (e.g., visual impairments, neurological diseases, psychiatric diseases, diabetes or other metabolic diseases, sedative-hypnotic medications, etc.). Each of these, independently or in combination, can adversely affect the pilot's ability to safely perform pilot duties and are a hazard to the national air space. Additionally, the adverse effects of many medical conditions and medications are exaggerated under typical flight conditions, including reduced air pressure, available oxygen,

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<sup>33</sup> Section 2307(a)(6) requires the individual, when serving as PIC, to be under the care and treatment of a physician if the individual has been diagnosed with any medical condition that may impact the ability of the individual to fly. This requirement is implemented in § 61.23(3)(i)(E).

or acceleration forces. Pilots should consult with their physician or other medical care provider for care and treatment of their conditions, but also for guidance on the impact their conditions may have on flight safety. Pilots, in discussion with their physician/medical care provider, should also consult available aeromedical resources on the flight hazards associated with medical conditions/ medications. The Do not Issue/Do not Fly list ([www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/ame/guide/pharm/dni\\_dnf/](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/ame/guide/pharm/dni_dnf/)) is readily available in the AME Guide on the FAA website. Chapter 8 of the FAA's Aeronautical Information Manual (AIM 8-1-1) also addresses medical factors for pilots. Additional resources include the FAA's AME Guide, other FAA flight safety websites, and the websites of non-profit and not-for-profit general aviation stakeholders.

While the pilot is required to attest that he or she is under the care and treatment of a physician for any condition that affects safe flight, the FAA emphasizes that all pilots are expected to exercise good judgment (whether operating under this rule or not) and conduct a personal self-assessment of their condition before every flight.<sup>34</sup> The FAA's recommended self-assessment guidance is found in the "IMSAFE" checklist found in Chapter 8 of the FAA Aeronautical Information Manual at [https://www.faa.gov/air\\_traffic/publications/media/aim.pdf](https://www.faa.gov/air_traffic/publications/media/aim.pdf).

The FAA notes that under section 2307(e) of FESSA, which prescribes requirements for the special issuance process, an individual clinically diagnosed with a mental health condition or

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<sup>34</sup> Section 61.53(c) requires that for operations provided for in § 61.23(c), a person must meet the provisions of § 61.53(b). That paragraph states that a person shall not act as pilot in command, or in any other capacity as a required pilot flight crewmember, while that person knows or has reason to know of any medical condition that would make the person unable to operate the aircraft in a safe manner.

a neurological condition shall certify every 2 years,<sup>35</sup> in conjunction with the certification requirement of section 2307(c)(10)(C), that the individual is under the care of a State-licensed medical specialist for that mental health or neurological condition.<sup>36</sup> The requirements for the special issuance process are discussed in section VIII of this preamble.

#### **4. Form**

Section 2307(c)(10)(D) of FESSA requires the form, which must be electronically provided to the individual and transmitted to the FAA upon successful completion of the course, to include the following information:

- The name, address, telephone number, and airman certificate number of the individual;
- The name, address, telephone number, and State medical license number of the physician performing the comprehensive medical examination<sup>37</sup> required in section 2307(a)(7);
- The date of the comprehensive medical examination required in section 2307(a)(7); and
- A certification by the individual that the checklist described in subsection (b) was followed and signed by the physician in the comprehensive medical examination required in section 2307(a)(7).

These requirements are implemented in § 68.3(b)(4)(i)-(iv).

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<sup>35</sup> The FAA notes that section 2307(e) uses the phrase “two years” when discussing the certifications made as part of the medical education course, whereas section 2307(c) uses the phrase “24 calendar months.” For purposes of these certifications, the FAA anticipates that the certification will occur in conjunction with completion of the medical education course.

<sup>36</sup> Section 2307(e)(3) contains the special rules for mental health conditions. Section 2307(e)(4) contains the special rules for neurological conditions.

<sup>37</sup> The FAA notes that the comprehensive medical examination occurs every 48 months while the medical education course must be completed every 24 calendar months. As such, a pilot may be reporting a medical exam that occurred 24 calendar months prior

## **5. Certification Regarding the Prohibition on Operations During Medical Deficiency**

Section 2307(c)(10)(E) of FESSA requires the individual to sign<sup>38</sup> a statement certifying that the individual understands the existing prohibition on operations during medical deficiency by stating: “I understand that I cannot act as pilot in command, or any other capacity as a required flight crew member, if I know or have reason to know of any medical condition that would make me unable to operate the aircraft in a safe manner.” This statement shall be electronically provided to the individual and transmitted to the FAA upon successful completion of the course. The FAA is implementing this requirement in § 68.3(b)(5).

The Advisory Circular (AC) 68-1, Alternative Medical Qualifications, contains additional information about the medical education course requirements.

## **VII. Comprehensive Medical Examination**

In order to act as PIC under this rule, an individual must receive a comprehensive medical examination from a State-licensed physician during the previous 48 months in accordance with section 2307(a)(7). This requirement is reflected in § 61.23(c)(3)(i)(D).

Section 2307(a)(7)(A) requires that prior to the examination, the individual do the following: (1) complete the individual’s section of the medical examination checklist described in section 2307(b); and (2) provide the completed checklist to the physician performing the examination. The FAA is implementing these requirements in § 68.5(a)(1)-(2).

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<sup>38</sup> Section 2307 indicates that the statement should be “printed and signed” prior to being transmitted to the FAA. The FAA is construing this requirement to allow for electronic signature and electronic retention of this statement. See Government Paperwork Elimination Act (GPEA), Pub. L. 105-277 Title XVII.

Section 2307(a)(7)(B) of FESSA requires the physician to: (1) conduct the comprehensive medical examination in accordance with the checklist; (2) check each item specified during the examination; and (3) address, as medically appropriate, every medical condition listed and any medications the individual is taking. The FAA is implementing these requirements in § 68.5(b)(1)-(3).

## **VIII. Comprehensive Medical Examination Checklist**

### **A. Checklist Requirements of Section 2307 of FESSA**

Section 2307(b)(1) of FESSA requires that the FAA develop a checklist for an individual to complete and provide to the physician performing the required comprehensive medical examination.

Section 2307(b)(2) of FESSA requires the checklist to contain three sections: (1) a section for the individual to complete; (2) a section with instructions for the individual to provide the completed checklist to the physician performing the examination; and (3) a section for the physician to complete, which contains instructions for the physician performing the examination. Section 2307(b) prescribes requirements for each of these sections, which are discussed below. The FAA is implementing the comprehensive medical examination checklist requirements in § 68.7 and has developed the checklist in accordance with these requirements.

## 1. Section for the Individual to Complete

Section 2307(b)(2)(A)(i) of FESSA requires the checklist to contain a section for the individual to complete, which contains boxes 3 through 13 and boxes 16 through 19 of the FAA form 8500-8, Application for Airman Medical Certificate (3-99).<sup>39</sup> This requirement is implemented in § 68.7(a)(1). The AC contains the specific information required by boxes 3 through 13 and boxes 16 through 19.

Section 2307(b)(2)(A)(ii) of FESSA requires the checklist to contain (in the section for the individual) a signature line for the individual to affirm that:

- The answers provided by the individual on that checklist, including the individual's answers regarding medical history, are true and complete;
- The individual understands that he or she is prohibited under Federal Aviation Administration regulations from acting as pilot in command, or any other capacity as a required flight crew member, if he or she knows or has reason to know of any medical deficiency or medically disqualifying condition that would make the individual unable to operate the aircraft in a safe manner; and
- The individual is aware of the regulations pertaining to the prohibition on operations during medical deficiency and has no medically disqualifying conditions in accordance with applicable law.

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<sup>39</sup> Section 2307 of FESSA specifically references the FAA form 8500-8 revision dated 3-99. The FAA notes that since that revision the FAA has revised the form several times, most recently with publication of the final rule Student Pilot Application Requirements, 81 FR 1292 (Jan. 12, 2016). In accordance with the requirements of FESSA, the FAA has developed the comprehensive medical examination checklist using boxes 3-13 and 16-19 as they appeared on the FAA form 8500-8 revision 3-99.

The FAA is implementing these requirements in § 68.7(a)(2)(i)-(iii).

## 2. Section Containing Instructions for the Individual

Section 2307(b)(2)(B) requires the checklist to contain a section with instructions for the individual to provide the completed checklist to the physician performing the comprehensive medical examination. The FAA is implementing this requirement in § 68.7(b).

## 3. Section for the Physician to Complete with Instructions for the Physician

Section 2307(b)(2)(C)(i) of FESSA requires the checklist to include a section for the physician to complete, that instructs the physician to perform a clinical examination of the following:

- Head, face, neck, and scalp;
- Nose, sinuses, mouth, and throat;
- Ears, general (internal and external canals), and eardrums (perforation);
- Eyes (general), ophthalmoscopic, pupils (equality and reaction), and ocular motility (associated parallel movement, nystagmus);
- Lungs and chest (not including breast examination);
- Heart (precordial activity, rhythm, sounds, and murmurs);
- Vascular system (pulse, amplitude, and character, and arms, legs, and others);
- Abdomen and viscera (including hernia);
- Anus (not including digital examination);
- Skin;
- G–U system (not including pelvic examination);

- Upper and lower extremities (strength and range of motion);
- Spine and other musculoskeletal;
- Identifying body marks, scars, and tattoos (size and location);
- Lymphatics;
- Neurologic (tendon reflexes, equilibrium, senses, cranial nerves, and coordination, etc.);
- Psychiatric (appearance, behavior, mood, communication, and memory);
- General systemic;
- Hearing;
- Vision (distant, near, and intermediate vision, field of vision, color vision, and ocular alignment);
- Blood pressure and pulse; and
- Anything else the physician, in his or her medical judgment, considers necessary.

The FAA is implementing these requirements in § 68.7(c)(1)(i)-(xxii).

Section 2307(b)(2)(C)(ii) requires the physician to exercise medical discretion to address, as medically appropriate, any medical conditions identified, and to exercise medical discretion in determining whether any medical tests are warranted as part of the comprehensive medical examination. The FAA is implementing this requirement in § 68.7(c)(2).

Section 2307(b)(2)(C)(iii) of FESSA requires the checklist to instruct the physician to discuss all drugs the individual reports taking (prescription and nonprescription) and their potential to interfere with the safe operation of an aircraft or motor vehicle. The FAA is implementing this requirement in § 68.7(c)(3).

Furthermore, section 2307(b)(2)(C)(iv) of FESSA requires the checklist to instruct the physician to sign the checklist, stating: “I certify that I discussed all items on this checklist with the individual during my examination, discussed any medications the individual is taking that could interfere with his or her ability to safely operate an aircraft or motor vehicle, and performed an examination that included all of the items on this checklist. I certify that I am not aware of any medical condition that, as presently treated, could interfere with the individual's ability to safely operate an aircraft.” The FAA is implementing this requirement in § 68.7(c)(4).

Lastly, section 2307(b)(2)(C)(v) of FESSA requires the checklist to instruct the physician to provide the date the comprehensive medical examination was completed, and the physician's full name, address, telephone number, and State medical license number. This requirement is implemented in § 68.7(c)(5).

The FAA relies on the determination of each State (as well as each territory and possession of the United States) as to which persons it will license as physicians. If the person holds a license as a physician issued by any State, territory, or possession, then he or she meets the requirement as a State-licensed physician. The FAA notes that all States license medical doctors (M.D.s) and doctors of osteopathic medicine (D.O.s) as physicians, although Federal and some State laws may permit the licensure of other persons, such as doctors of dental surgery (D.D.S.) as physicians. While the FAA expects that a specialist physician, (e.g., D.D.S., dentist, podiatrist) who does not also hold an M.D. or D.O. would not have the breadth of training to conduct a medical exam as required in this rule, the FAA will rely on each State-licensed physician to determine whether he or she is qualified to conduct the medical exam required by FESSA.

Existing FAA prohibitions against self-endorsements would apply, prohibiting a State-licensed physician from conducting the physical examination on himself or herself.

#### B. Inclusion of the Completed Checklist in the Pilot's Logbook

Section 2307(b)(3) of FESSA requires that the completed checklist be retained in the pilot's logbook and be made available upon request. The FAA is implementing this requirement in § 61.113(i)(3).

The FAA recognizes that many pilots now maintain logbook information electronically. Similar to the requirements described previously for the course completion certification described in section 2307(c)(10)(A), the FAA notes that pilots may retain an electronic version of the completed checklist using whatever method they choose so long as an accurate electronic or physical representation of the document can be made available upon request.

#### C. FAA Implementation of the Comprehensive Medical Examination Checklist Requirements of Section 2307 of FESSA

Section 2307(c)(9) of FESSA requires the medical education course to provide the medical examination checklist developed by the FAA. For purposes of implementation, the FAA will require that any nonprofit or not-for-profit general aviation stakeholder group that provides a medical course for this rule make the checklist available at that group's website.

To implement the medical checklist provisions of FESSA, the FAA has developed the Comprehensive Medical Examination Checklist. The checklist is a fillable PDF form available on the FAA website, in addition to the location discussed immediately above. Pilots may complete the form either electronically or may print it out and complete it. Regardless of how the

pilot chooses to complete the form, the pilot must print the form, sign it, and take it to the State-licensed physician performing the medical examination. The FAA will provide the blank Comprehensive Medical Examination Checklist but will not be collecting and maintaining the checklist in any FAA system of records. As noted, the pilot will be required to retain the checklist as one of the items necessary for verification that he or she is eligible to operate under this rule.

## **IX. Special Issuance Process**

### A. Requirements of Section 2307 of FESSA

Section 2307(e)(1) of FESSA states that an individual who has qualified for the third-class medical certificate exemption under subsection (a) of section 2307 and is seeking to serve as a PIC of a covered aircraft shall be required to have completed the process for obtaining an Authorization for Special Issuance of a Medical Certificate if that person has any of the following: (1) a mental health disorder; (2) a neurological disorder; or a (3) cardiovascular condition.

Section 2307(e)(1)(A) states that a mental health disorder is limited to an established medical history or clinical diagnosis of:

- Personality disorder that is severe enough to have repeatedly manifested itself by overt acts;
- Psychosis, defined as a case in which an individual: (i) has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of psychosis; or (ii) may reasonably be expected to manifest delusions,

hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of psychosis;

- Bipolar disorder; or
- Substance dependence within the previous 2 years, as defined in § 67.307(a)(4) of title 14, Code of Federal Regulations.

Section 2307(e)(1)(B) states that a neurological disorder is limited to an established medical history or clinical diagnosis of any of the following:

- Epilepsy.
- Disturbance of consciousness without satisfactory medical explanation of the cause.
- A transient loss of control of nervous system functions without satisfactory medical explanation of the cause.

Section 2307(e)(1)(C) states that a cardiovascular condition is limited to a one-time special issuance for each diagnosis of the following:

- Myocardial infarction.
- Coronary heart disease that has required treatment.
- Cardiac valve replacement.
- Heart replacement.

The FAA is implementing the requirements of section 2307(e)(1)(A)-(C) in § 68.9(a)(1)-(3).

## **1. Special Rule for Cardiovascular Conditions**

Section 2307(e)(2) of FESSA states that in the case of an individual with a cardiovascular condition, the process for obtaining an Authorization for Special Issuance of a Medical Certificate shall be satisfied with the successful completion of an appropriate clinical evaluation without a mandatory wait period.<sup>40</sup>

The FAA is implementing this requirement in § 68.9(b).

## **2. Special Rule for Mental Health Conditions**

Section 2307(e)(3)(A)(i) of FESSA states that in the case of an individual with a clinically diagnosed mental health condition, the ability to operate without a third-class medical certificate under subsection (a) of section 2307 shall not apply if in the judgment of the individual's State-licensed medical specialist, the condition: (1) renders the individual unable to safely perform the duties or exercise the airman privileges described in the operating requirements of subsection (a)(8); or (2) may reasonably be expected to make the individual unable to perform the duties or exercise the privileges described in the operating requirements of subsection (a)(8).

Additionally, section 2307(e)(3)(A)(ii) states that in the case of an individual with a clinically diagnosed mental health condition, the ability to operate without a third-class medical

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<sup>40</sup> Current guidance establishes mandatory wait periods for certain cardiovascular conditions. For example, there is a 3-month recovery time after a myocardial infarction from non-coronary heart disease before an applicant may be considered for a medical certificate. 2016 Guide for Aviation Medical Examiners.

certificate under section 2307(a) shall not apply if the individual's driver's license is revoked by the issuing agency as a result of a clinically diagnosed mental health condition.

The FAA is implementing section 2307(e)(3)(A)(i)-(ii) in § 68.9(c)(1)(i)-(ii).

Section 2307(e)(3)(B) of FESSA requires that an individual clinically diagnosed with a mental health condition shall certify every 2 years, in conjunction with the certifications under subsection (c)(10)(C), that the individual is under the care of a State-licensed medical specialist for that mental health condition. The FAA is implementing this requirement in § 68.9(c)(2). This certification will be incorporated into the medical education course process. The FAA notes that the certifications required under subsection (c)(10)(C) of FESSA are implemented in § 68.3(b)(3).

### **3. Special Rule for Neurological Conditions**

Section 2307(e)(4)(A)(i) states that in the case of an individual with a clinically diagnosed neurological condition, the ability to operate without a third-class medical certificate under subsection (a) of section 2307 shall not apply if in the judgment of the individual's State-licensed medical specialist, the condition: (1) renders the individual unable to safely perform the duties or exercise the airman privileges described in the operating requirements of subsection (a)(8); or (2) may reasonably be expected to make the individual unable to perform the duties or exercise the privileges described in the operating requirements of subsection (a)(8).

Section 2307(e)(4)(A)(ii) states that in the case of an individual with a clinically diagnosed neurological condition, the ability to operate without a third-class medical certificate under subsection (a) of section 2307 shall not apply if the individual's driver's license is revoked by the issuing agency as a result of a clinically diagnosed neurological condition.

The FAA is implementing the requirements of section 2307(4)(A) in § 68.9(d)(1)(i)-(ii).

Section 2307(4)(B) of FESSA requires that an individual clinically diagnosed with a neurological condition shall certify every 2 years, in conjunction with the certification under subsection (c)(10)(C), that the individual is under the care of a State-licensed medical specialist for that neurological condition. As with the requirements for certain mental health disorders, this certification will be incorporated into the medical education course process.

Regarding the certification related to mental health disorders and neurological disorders, the FAA recognizes that the inclusion of such a certification could create confusion. So to clarify, the FAA has written the certifications for the individual to attest (1) that the individual does not have a mental health disorder or neurological disorder or, (2) if the individual has a mental health disorder or neurological disorder, that the individual is under the care of a State-licensed medical specialist for that mental health condition or neurological condition. The FAA's intent is to ensure that no medical information is collected. Rather, the FAA views these certifications as a place for the individuals to attest that if they have a mental health or neurological disorder listed in section 2307, then they meet the section 2307 requirement that they are under the care of a State-licensed medical specialist for that condition.

#### B. Special Issuance Medical Certificates

All persons who currently hold an FAA-issued special issuance medical certificate, or who have held an FAA-issued special issuance medical certificate within the 10-year period preceding the enactment of FESSA, for conditions other than the specified cardiovascular, mental health, and neurological conditions listed in FESSA, may elect to use this rule. These persons are no longer required to maintain their special issuance medical certificate if they

choose to comply with the requirements of section 2307 of FESSA. The FAA emphasizes that it expects all pilots, including persons who hold or have held a special issuance medical certificate, to comply with care and treatment protocols recommended by their State-licensed physician.

If a pilot, while using this rule, is diagnosed with a condition that would have, in the past, required the pilot to be considered for a special issuance medical certificate, but is not one of the specified conditions described in FESSA, then that pilot may continue to exercise the privileges of this rule so long as all other requirements of section 2307 of FESSA are met.

FESSA prescribes specific responsibilities and prohibitions that must be met for pilots who have certain cardiovascular, neurological, or mental health conditions. Persons who have, or are newly diagnosed with, a cardiovascular, neurological, or mental health condition described in FESSA, may not use this rule until they have been found eligible for special issuance of a medical certificate. Once issued a medical certificate, the person may then use this rule if he or she meets all other requirements of FESSA.

## **X. Authority to Require Additional Information**

Section 2307(1)(1) of FESSA states that if the Administrator receives credible or urgent information, including from the National Driver Register or the FAA Hotline Program, that reflects on an individual's ability to safely operate a covered aircraft under the third-class medical certificate exemption in subsection (a) of section 2307, the Administrator may require the individual to provide additional information or history so that the Administrator may determine whether the individual is safe to continue operating a covered aircraft. Section 2307(1)(2) states that the Administrator may use credible or urgent information received to request an individual

to provide additional information or to take actions under section 44709(b) of title 49, United States Code.

The FAA has implemented the provisions of section 2307(l) in new § 68.11.

## **XI. Advisory Circular**

To further implement this final rule, the FAA has developed Advisory Circular 68-1, Alternative Pilot Physical Examination and Education Requirements. The advisory circular describes the relief and provides guidance on how to comply with the rule's provisions. It also includes frequently asked questions and guidance on how a nonprofit or not-for-profit general aviation stakeholder group can offer an approved course under this rule.

## **XII. Section-by-Section Discussion of the Final Rule**

In part 61, Certification: pilots, flight instructors, and ground instructors, § 61.3, requirement for certificates, ratings, and authorizations, is revised to add operations conducted under this rule to the list of exceptions to the requirement to hold a medical certificate.<sup>41</sup> Section 61.3 is also amended to add the documents establishing alternative medical qualification under part 68 to the list of documents available for inspection under paragraph (l).

Section 61.23, medical certificates: requirement and duration, is revised to provide an exception for operations conducted under this rule for persons otherwise required to hold a third-class medical certificate.

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<sup>41</sup> The FAA notes that § 61.113(i) contains the operating requirements for this rule. The FAA also notes that persons operating under this rule without a medical certificate must hold a valid U.S. driver's license.

For operations requiring either a medical certificate or U.S. driver's license, § 61.23(c)(1) is amended to state that a person must hold and possess either a medical certificate or a U.S. driver's license when exercising the privileges of a student, recreational or private pilot certificate and operating under this rule, or when exercising the privileges of a flight instructor certificate and acting as the PIC or as a required flight crewmember if the flight is conducted under this rule.

The FAA is also adding § 61.23(c)(3), which contains the requirements for persons using a U.S. driver's license to operate under this rule.

In § 61.89, the FAA is adding paragraph (d) to allow the holder of a student pilot certificate to operate under this rule without holding a medical certificate.

In § 61.101, the FAA is adding paragraph (k) to allow a recreational pilot to operate under this rule without holding a medical certificate.

Section 61.113 is revised to add paragraph (i), which contains the operational requirements of section 2307.

The FAA is adding part 68, Requirements for operating certain small aircraft without a medical certificate, to title 14 of the Code of Federal Regulations. Section 68.1 provides the applicability of the part.

Section 68.3 provides the Medical Education Course Requirements.

Section 68.5 implements the requirements for the Comprehensive Medical Examination, including the requirements for the physician and the individual.

Section 68.7 provides the requirements for the Comprehensive Medical Examination Checklist.

Section 68.9 implements the requirements for the Special Issuance Process.

Section 68.11 provides the FAA with authority to require additional information as described in FESSA.

In § 91.319, the FAA is adding paragraph (j) to make clear that experimental aircraft may operate under the conditions and limitations of § 61.113(i).

### **XIII. Regulatory Notices and Analyses**

#### **A. Regulatory Evaluation**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96-39 as amended) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) has benefits that justify its costs, (2) is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866, (3) is not “significant” as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of this Rule

**Total Savings and Costs of the Rule (2017 to 2026)**

<b>SAVINGS</b>		<b>COSTS</b>	
Medical Examination: 3 <sup>rd</sup> Class Medical Certificates for Pilots Age 40-and-Over	\$290,421,038	Physical Examinations by State-Licensed Physician: Pilots Age 40-and-Over	\$262,656,213
		Physical Examinations by State-Licensed Physician: Special Issuance	\$3,055,973
Medical Examination: 3 <sup>rd</sup> Class Medical Certificates with a Special Issuances	\$90,679,136	Online Training Course	\$42,004,478
FAA Savings	\$1,782,230	NDR Checks	\$7,422,763
<b>Total Savings</b>	<b>\$382,882,405</b>	<b>Total Costs</b>	<b>\$315,139,427</b>
<b>Present Value</b> (7% discount rate)	<b>\$272,835,610</b>	<b>Present Value</b> (7% discount rate)	<b>\$227,799,517</b>

Totals may not add due to rounding.

## Who is Potentially Affected by this Rule?

All pilots with eligible pilot certificates are affected by this rule. Eligible pilots will need to have held a valid FAA medical certificate within the 10 years preceding the date of enactment of FESSA, July 15, 2016, and will need a valid U.S. driver's license.

### Assumptions:

- Costs and benefits are estimated over 10 years from 2017 through 2026.
- Costs and benefits are presented in 2016 dollars.
- The present value discount rate of seven percent is used as required by the Office of Management and Budget.
- An FAA medical examination with an AME is approximately \$117.
- An FAA follow-up evaluation with an AME is approximately \$58.50.
- A pilot's medical examination with a state-licensed physician is approximately \$225.<sup>42</sup>
- An annual growth rate of 1.0 percent per year is applied to hourly wages per Department of Transportation Guidance.<sup>43</sup>
- Vehicle operating cost per mile (VOC) as determined by the Internal Revenue Service (IRS) is \$0.19.<sup>44</sup>

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<sup>42</sup> Four Coding and Payment Opportunities You Might Be Missing, American Academy of Family Physicians. 2016 May-June;23(3):30-35. <http://www.aafp.org/fpm/2016/0500/p30.html>

<sup>43</sup> 2015 Department of Transportation Value of Travel Time Guidance; <https://www.transportation.gov/administrations/office-policy/2015-value-travel-time-guidance>.

- The hourly rate of a pilot's travel time (VTTS) as determined by the Department of Transportation (DOT) is \$12.50 in 2013. This value is augmented by 1.0 percent per year to project future benefits of travel time saved from 2013 to 2026.<sup>45</sup>
- The hourly rate of a pilot's time (VPT) as determined by DOT is \$25.00 in 2013. This value is augmented by 1.0 percent per year to project the annual growth rate of real median household income from 2013 to 2026.<sup>46</sup>
- The FAA assumes 0.5 hours to complete the MedXpress form.
- The FAA assumes that the time required to fill out the MedXpress form will be the same time required to fill out section 1 of the medical checklist that must be partially completed by the pilot and taken to the physician.
- The FAA assumes 1 hour to complete a medical examination.
- The FAA assumes 0.5 hours to complete a follow-up evaluation.
- The value of FAA time to review medical applications per hour is shown in table 1 and includes fringe benefits for federal employees.<sup>47</sup>

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<sup>44</sup> Internal Revenue Service (IRS) Standard Mileage Rate for 2016, 0.19 cents per mile driven for medical or moving purposes; <https://www.irs.gov/uac/newsroom/2016-standard-mileage-rates-for-business-medical-and-moving-announced-Dec-17>, 2015.

<sup>45</sup> 2015 Departmental Guidance on Valuation of Travel Time in Economic Analyses; Table 4: Recommended Hourly Values of Travel Time Savings (Personal category for local surface modes of transportation). <https://www.transportation.gov/administrations/office-policy/2015-value-travel-time-guidance>.

<sup>46</sup> 2015 Departmental Guidance on Valuation of Travel Time in Economic Analyses; Table 3: Recommended Hourly Earning Rates for Determining Values of Travel Time Savings, <https://www.transportation.gov/administrations/office-policy/2015-value-travel-time-guidance>.

<sup>47</sup> <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

**Table 1: 2016 Weighted Average of Hourly Wage for FAA Employees Reviewing Applications for Medical Certificates**

	<b>Wages with Benefits</b>	<b>Number of people</b>	
	A	b	a x b
Legal instrument examiners <sup>48</sup>	\$50.46	42	\$2,119
Regional Flight Surgeons <sup>49</sup>	\$139.59	9	\$1,256
Senior Executives <sup>50</sup>	\$139.59	3	\$419
Civil Aerospace Medicine Institute (CAMI) Medical Officers <sup>51</sup>	\$139.59	6	\$838
Civil Aerospace Medicine Institute (CAMI) Physicians <sup>52</sup>	\$139.59	3	\$419
Total		63	\$5,051
Weighted Average Wage Rate = \$5,051 / 63			\$80.17

**Totals may not add due to rounding.**

**Benefits of this Rule**

The FAA estimates potential savings to pilots, based on age and a pilot’s medical condition, from eliminating medical examinations with an AME. The elimination of these examinations will save pilots the time to complete the online medical application (MedXpress), travel time to the medical examination, the time required to complete the medical examination, vehicle operating costs based on miles traveled to the examination, and the cost of the medical

<sup>48</sup> 2016 General Schedule (GS) Locality Pay Tables; GS-11 Step 5 locality pay The REST OF UNITED STATES; [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS_h.pdf) ; plus fringe benefits; <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

<sup>49</sup> SALARY TABLE NO. 2016-ES plus fringe benefits; <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/ES.pdf>, Agencies with a Certified SES Performance Appraisal System Maximum; <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

<sup>50</sup> SALARY TABLE NO. 2016-ES plus fringe benefits; <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/ES.pdf>, Agencies with a Certified SES Performance Appraisal System Maximum; <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

<sup>51</sup> 2016 General Schedule (GS) Locality Pay Tables; GS-11 Step 5 locality pay The REST OF UNITED STATES; [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS_h.pdf) ; plus fringe benefits; <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

<sup>52</sup> 2016 General Schedule (GS) Locality Pay Tables; GS-11 Step 5 locality pay The REST OF UNITED STATES; [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/RUS_h.pdf) ; plus fringe benefits; <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2008/m08-13.pdf>

examination. For pilots with special-issuances, the FAA anticipates added savings by eliminating follow-up medical evaluations, determined by their medical condition, with an AME.

Additionally, the FAA will save time by reducing the number of applications reviewed for special-issuance medical certificates. Total savings are estimated at \$382.9 million (\$272.8 million at a 7 percent present value) over 10 years.

#### Costs of this Rule

Costs for this rule are attributed to the physical examination completed by a State-licensed physician every 48 months, the medical education course that pilots will complete every 24 calendar months, and an increase in NDR checks for pilots under age 40 with a special issuance medical certificate. Unlike pilots 40 years of age and older, who the FAA expects will benefit from the elimination of the AME examinations, the FAA expects the savings to pilots under 40 years of age will only occur for those pilots requiring Authorization for a special issuance medical certificate. Total costs are estimated at \$315.1 million (\$227.8 million at a 7 percent present value) over 10 years.

Overall, the rule results in a net benefit of \$67.7 million over 10 years.

#### B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to

explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA believes that this final rule would not have a significant impact on a substantial number of entities for the following reason: Pilots that choose to use this alternative requirement will receive a savings, however this final rule is voluntary hence there are no costs imposed on small entities.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not

operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will only have a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

#### D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

#### E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act, (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. As required by the Paperwork

Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA will submit these information collection amendments to OMB for its review.

To implement the Act, the FAA is establishing one new information collection. This information collection includes the medical education course as well as the Individual Checklist for Medical Examination. Pursuant to the requirements of the Paperwork Reduction Act, the FAA published a 60-day notice seeking comment regarding this new information collection.

For those individuals who elect to use this rule the FAA considers that they no longer possess any airman medical certificate. Thus, the FAA is making a corresponding change to information collection 2120-0034, Application for Airman Medical Certificate, to reduce the burden associated with that information collection. The FAA published a 60-day notice seeking comment regarding the revision of this existing information collection.

#### F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed ICAO Standards and Recommended Practices (SARPs) applicable to private pilots.

The FAA has filed new differences and modified certain existing differences to reflect that certain U.S. private pilots no longer are required to hold a current FAA airman medical certificate. A filing is required for certain ICAO Annex 1 SARPs found in Chapters 1, 2, and 6.

## G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6f and involves no extraordinary circumstances.

## **XIV. Executive Order Determinations**

### A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

### B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

### C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

## **XVI. Additional Information**

### A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA's Regulations and Policies website at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
- Accessing the Government Publishing Office's website at <http://www.fdsys.gov>

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Requestors must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

## B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

### **List of Subjects**

#### 14 CFR part 61

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

#### 14 CFR part 68

Aircraft, Airmen, Health, Reporting and recordkeeping requirements.

#### 14 CFR part 91

Aircraft, Airmen, Aviation safety.

### **The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

## **PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS**

1. The authority citation for part 61 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 44701-44703, 44707, 44709-44711, 44729, 44903, 45102-45103, 45301-45302; Sec. 2307 Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note).

2. In §61.3, revise paragraph (c)(2)(viii) and paragraphs (c)(2)(x) through (xii) and add paragraphs (c)(2)(xiii) and (c)(2)(xiv), and revise the introductory text of paragraph (l) to read as follows:

**§ 61.3 Requirement for certificates, ratings, and authorizations.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(viii) Is exercising the privileges of a flight instructor certificate, provided the person is not acting as pilot in command or as a required pilot flight crewmember;

\* \* \*

(x) Is operating an aircraft within a foreign country using a pilot license issued by that country and possesses evidence of current medical qualification for that license;

(xi) Is operating an aircraft with a U.S. pilot certificate, issued on the basis of a foreign pilot license, issued under §61.75, and holds a medical certificate issued by the foreign country that issued the foreign pilot license, which is in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that airman certificate;

(xii) Is a pilot of the U.S. Armed Forces, has an up-to-date U.S. military medical examination, and holds military pilot flight status;

(xiii) Is exercising the privileges of a student, recreational or private pilot certificate for operations conducted under the conditions and limitations set forth in § 61.113(i) and holds a U.S. driver's license; or

(xiv) Is exercising the privileges of a flight instructor certificate and acting as pilot in command for operations conducted under the conditions and limitations set forth in § 61.113(i) and holds a U.S. driver's license.

\* \* \* \* \*

(1) *Inspection of certificate.* Each person who holds an airman certificate, medical certificate, documents establishing alternative medical qualification under part 68 of this chapter, authorization, or license required by this part must present it and their photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

\* \* \* \* \*

3. Revise § 61.23 paragraph (a)(3), paragraph (c)(1), the introductory text of paragraph (c)(2), and add paragraph (c)(3), to read as follows:

**§ 61.23 Medical certificates: Requirement and duration.**

(a) \* \* \*

(3) Must hold at least a third-class medical certificate—

(i) When exercising the privileges of a private pilot certificate, recreational pilot certificate, or student pilot certificate, except when operating under the conditions and limitations set forth in § 61.113(i);

(ii) When exercising the privileges of a flight instructor certificate and acting as the pilot in command or as a required flightcrew member, except when operating under the conditions and limitations set forth in § 61.113(i);

(iii) When taking a practical test in an aircraft for a recreational pilot, private pilot, commercial pilot, or airline transport pilot certificate, or for a flight instructor certificate, except when operating under the conditions and limitations set forth in § 61.113(i); or

(iv) When performing the duties as an Examiner in an aircraft when administering a practical test or proficiency check for an airman certificate, rating, or authorization.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Exercising the privileges of a flight instructor certificate with a sport pilot rating while acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon;

(iv) Serving as an Examiner and administering a practical test for the issuance of a sport pilot certificate in a light-sport aircraft other than a glider or balloon;

(v) Exercising the privileges of a student, recreational or private pilot certificate if the flight is conducted under the conditions and limitations set forth in § 61.113(i); or

(vi) Exercising the privileges of a flight instructor certificate and acting as the pilot in command or as a required flight crewmember if the flight is conducted under the conditions and limitations set forth in § 61.113(i).

(2) A person using a U.S. driver's license to meet the requirements of paragraph (c) while exercising sport pilot privileges must—

\* \* \*

(3) A person using a U.S. driver's license to meet the requirements of paragraph (c) while operating under the conditions and limitations of § 61.113(i) must meet the following requirements—

(i) The person must—

(A) Comply with all medical requirements or restrictions associated with his or her U.S. driver's license;

(B) At any point after July 14, 2006, have held a medical certificate issued under part 67 of this chapter;

(C) Complete the medical education course set forth in § 68.3 of this chapter during the 24-calendar months before acting as pilot in command in an operation conducted under § 61.113(i) and retain a certification of course completion in accordance with § 68.3(b)(1) of this chapter;

(D) Receive a comprehensive medical examination from a State-licensed physician during the 48 months before acting as pilot in command of an operation conducted under § 61.113(i) and that medical examination is conducted in accordance with the requirements in part 68 of this chapter; and

(E) If the individual has been diagnosed with any medical condition that may impact the ability of the individual to fly, be under the care and treatment of a State-licensed physician when acting as pilot in command of an operation conducted under § 61.113(i).

(ii) The most recently issued medical certificate—

(A) May include an authorization for special issuance;

(B) May be expired; and

(C) Cannot have been suspended or revoked.

(iii) The most recently issued Authorization for a Special Issuance of a Medical Certificate cannot have been withdrawn; and

(iv) The most recent application for an airman medical certificate submitted to the FAA cannot have been completed and denied.

\* \* \* \* \*

4. Add paragraph (d) to § 61.89 to read as follows:

**§ 61.89 General Limitations**

\* \* \* \* \*

(d) The holder of a student pilot certificate may act as pilot in command of an aircraft without holding a medical certificate issued under part 67 of this chapter provided the student pilot holds a valid U.S. driver's license, meets the requirements of § 61.23(c)(3), and the operation is conducted consistent with the requirements of paragraphs (a) and (b) of this section and the conditions of § 61.113(i). Where the requirements of paragraphs (a) and (b) of this

section conflict with § 61.113(i), a student pilot must comply with paragraphs (a) and (b) of this section.

5. Add paragraph (k) to § 61.101 to read as follows:

**§ 61.101 Recreational pilot privileges and limitations**

\* \* \* \* \*

(k) A recreational pilot may act as pilot in command of an aircraft without holding a medical certificate issued under part 67 of this chapter provided the pilot holds a valid U.S. driver's license, meets the requirements of § 61.23(c)(3), and the operation is conducted consistent with this section and the conditions of § 61.113(i). Where the requirements of this section conflict with § 61.113(i), a recreational pilot must comply with this section.

6. Add paragraph (i) to § 61.113 to read as follows:

**§ 61.113 Private pilot privileges and limitations: Pilot in command.**

\* \* \* \* \*

(i) A private pilot may act as pilot in command of an aircraft without holding a medical certificate issued under part 67 of this chapter provided the pilot holds a valid U.S. driver's license, meets the requirements of § 61.23(c)(3), and complies with this section and all of the following conditions and limitations:

(1) The aircraft is authorized to carry not more than 6 occupants, has a maximum takeoff weight of not more than 6,000 pounds, and is operated with no more than five passengers on board; and

(2) The flight, including each portion of the flight, is not carried out—

(i) At an altitude that is more than 18,000 feet above mean sea level;

(ii) Outside the United States unless authorized by the country in which the flight is conducted; or

(iii) At an indicated airspeed exceeding 250 knots; and

(3) The pilot has available in his or her logbook—

(i) The completed medical examination checklist required under § 68.7 of this chapter;

and

(ii) The certificate of course completion required under § 61.23(c)(3).

7. Add part 68 to read as follows:

**PART 68 – REQUIREMENTS FOR OPERATING CERTAIN SMALL AIRCRAFT  
WITHOUT A MEDICAL CERTIFICATE**

Sec.

68.1 Applicability.

68.3 Medical Education Course Requirements.

68.5 Comprehensive Medical Examination.

68.7 Comprehensive Medical Examination Checklist.

68.9 Special Issuance Process.

68.11 Authority to require additional information.

**Authority:** 49 U.S.C. 106(f), 44701-44703, sec. 2307 of Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note).

### **§ 68.1 Applicability.**

This part prescribes the medical education and examination requirements for operating an aircraft under § 61.113(i) of this chapter without holding a medical certificate issued under part 67 of this chapter.

### **§ 68.3 Medical Education Course Requirements.**

(a) The medical education course required to act as pilot in command in an operation under § 61.113(i) of this chapter must—

- (1) Educate pilots on conducting medical self-assessments;
- (2) Advise pilots on identifying warning signs of potential serious medical conditions;
- (3) Identify risk mitigation strategies for medical conditions;
- (4) Increase awareness of the impacts of potentially impairing over-the-counter and prescription drug medications;
- (5) Encourage regular medical examinations and consultations with primary care physicians;
- (6) Inform pilots of the regulations pertaining to the prohibition on operations during medical deficiency and medically disqualifying conditions; and
- (7) Provide the checklist developed by the FAA in accordance with § 68.7.

(b) Upon successful completion of the medical education course, the following items must be electronically provided to the individual seeking to act as pilot in command under the conditions and limitations of § 61.113(i) of this chapter and transmitted to the FAA—

(1) A certification of completion of the medical education course, which shall be retained in the individual's logbook and made available upon request, and shall contain the individual's name, address, and airman certificate number;

(2) A release authorizing single access to the National Driver Register through a designated State Department of Motor Vehicles to furnish to the FAA information pertaining to the individual's driving record;

(3) A certification by the individual that the individual is under the care and treatment of a physician if the individual has been diagnosed with any medical condition that may impact the ability of the individual to fly, as required under § 61.23(c)(3) of this chapter;

(4) A form that includes—

(i) The name, address, telephone number, and airman certificate number of the individual;

(ii) The name, address, telephone number, and State medical license number of the physician performing the comprehensive medical examination;

(iii) The date of the comprehensive medical examination; and

(iv) A certification by the individual that the checklist described in § 68.7 was followed and signed by the physician during the medical examination required by this section; and

(5) A statement, which shall be signed by the individual certifying that the individual understands the existing prohibition on operations during medical deficiency by stating: “I understand that I cannot act as pilot in command, or any other capacity as a required flight crew

member, if I know or have reason to know of any medical condition that would make me unable to operate the aircraft in a safe manner.”.

### **§ 68.5 Comprehensive Medical Examination.**

(a) Prior to the medical examination required by § 61.23(c)(3) of this chapter, an individual must—

(1) Complete the individual's section of the checklist described in § 68.7; and

(2) Provide the completed checklist to the State-licensed physician performing the medical examination.

(b) The physician must—

(1) Conduct the medical examination in accordance with the checklist set forth in § 68.7,

(2) Check each item specified during the examination; and

(3) Address, as medically appropriate, every medical condition listed and any medications the individual is taking.

### **§ 68.7 Comprehensive Medical Examination Checklist.**

The comprehensive medical examination required to conduct operations under § 61.113(i) must include a checklist containing the following:

(a) A section, for the individual to complete that contains—

(1) Boxes 3 through 13 and boxes 16 through 19 of the FAA Form 8500–8 (3–99); and

(2) A signature line for the individual to affirm that—

(i) The answers provided by the individual on that checklist, including the individual's answers regarding medical history, are true and complete;

(ii) The individual understands that he or she is prohibited under FAA regulations from acting as pilot in command, or any other capacity as a required flight crew member, if he or she knows or has reason to know of any medical deficiency or medically disqualifying condition that would make the individual unable to operate the aircraft in a safe manner; and

(iii) The individual is aware of the regulations pertaining to the prohibition on operations during medical deficiency and has no medically disqualifying conditions in accordance with applicable law;

(b) A section with instructions for the individual to provide the completed checklist to the State-licensed physician performing the comprehensive medical examination required under § 68.5; and

(c) A section, for the physician to complete, that instructs the physician—

(1) To perform a clinical examination of—

(i) head, face, neck, and scalp;

(ii) nose, sinuses, mouth, and throat;

(iii) ears, general (internal and external canals), and eardrums (perforation);

(iv) eyes (general), ophthalmoscopic, pupils (equality and reaction), and ocular motility (associated parallel movement, nystagmus);

(v) lungs and chest (not including breast examination);

(vi) heart (precordial activity, rhythm, sounds, and murmurs);

- (vii) vascular system (pulse, amplitude, and character, and arms, legs, and others);
- (viii) abdomen and viscera (including hernia);
- (ix) anus (not including digital examination);
- (x) skin;
- (xi) G–U system (not including pelvic examination);
- (xii) upper and lower extremities (strength and range of motion);
- (xiii) spine and other musculoskeletal;
- (xiv) identifying body marks, scars, and tattoos (size and location);
- (xv) lymphatics;
- (xvi) neurologic (tendon reflexes, equilibrium, senses, cranial nerves, and coordination, etc.);
- (xvii) psychiatric (appearance, behavior, mood, communication, and memory);
- (xviii) general systemic;
- (xix) hearing;
- (xx) vision (distant, near, and intermediate vision, field of vision, color vision, and ocular alignment);
- (xxi) blood pressure and pulse; and
- (xxii) anything else the physician, in his or her medical judgment, considers necessary;

(2) To exercise medical discretion to address, as medically appropriate, any medical conditions identified, and to exercise medical discretion in determining whether any medical tests are warranted as part of the comprehensive medical examination;

(3) To discuss all drugs the individual reports taking (prescription and nonprescription) and their potential to interfere with the safe operation of an aircraft or motor vehicle;

(4) To sign the checklist, stating: “I certify that I discussed all items on this checklist with the individual during my examination, discussed any medications the individual is taking that could interfere with his or her ability to safely operate an aircraft or motor vehicle, and performed an examination that included all of the items on this checklist. I certify that I am not aware of any medical condition that, as presently treated, could interfere with the individual's ability to safely operate an aircraft.”; and

(5) To provide the date the comprehensive medical examination was completed, and the physician's full name, address, telephone number, and State medical license number.

### **§ 68.9 Special Issuance Process.**

(a) An individual who has met the qualifications to operate an aircraft under § 61.113(i) of this chapter and is seeking to serve as a pilot in command under that section must have completed the process for obtaining an Authorization for Special Issuance of a Medical Certificate for each of the following:

(1) A mental health disorder, limited to an established medical history or clinical diagnosis of—

(i) A personality disorder that is severe enough to have repeatedly manifested itself by overt acts;

(ii) A psychosis, defined as a case in which an individual—

(A) Has manifested delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of psychosis; or

(B) May reasonably be expected to manifest delusions, hallucinations, grossly bizarre or disorganized behavior, or other commonly accepted symptoms of psychosis;

(iii) A bipolar disorder; or

(iv) A substance dependence within the previous 2 years, as defined in § 67.307(a)(4) of this chapter.

(2) A neurological disorder, limited to an established medical history or clinical diagnosis of any of the following:

(i) Epilepsy;

(ii) Disturbance of consciousness without satisfactory medical explanation of the cause;

or

(iii) A transient loss of control of nervous system functions without satisfactory medical explanation of the cause.

(3) A cardiovascular condition, limited to a one-time special issuance for each diagnosis of the following:

(i) Myocardial infarction;

- (ii) Coronary heart disease that has required treatment;
- (iii) Cardiac valve replacement; or
- (iv) Heart replacement.

(b) *Special rule for cardiovascular conditions.* In the case of an individual with a cardiovascular condition, the process for obtaining an Authorization for Special Issuance of a Medical Certificate shall be satisfied with the successful completion of an appropriate clinical evaluation without a mandatory wait period.

(c) *Special rule for mental health conditions.* (1) In the case of an individual with a clinically diagnosed mental health condition, the ability to operate an aircraft under § 61.113(i) of this chapter shall not apply if—

- (i) In the judgment of the individual's State-licensed medical specialist, the condition—
  - (A) Renders the individual unable to safely perform the duties or exercise the airman privileges required to operate an aircraft under § 61.113(i) of this chapter; or
  - (B) May reasonably be expected to make the individual unable to perform the duties or exercise the privileges required to operate an aircraft under § 61.113(i) of this chapter; or
- (ii) The individual's driver's license is revoked by the issuing agency as a result of a clinically diagnosed mental health condition.

(2) Subject to subparagraph (c)(1), an individual clinically diagnosed with a mental health condition shall certify every 2 years, in conjunction with the certification under § 68.3(b)(3), that the individual is under the care of a State-licensed medical specialist for that mental health condition.

(d) *Special rule for neurological conditions.* (1) In the case of an individual with a clinically diagnosed neurological condition, the ability to operate an aircraft under § 61.113(i) of this chapter shall not apply if—

(i) In the judgment of the individual's State-licensed medical specialist, the condition—

(A) Renders the individual unable to safely perform the duties or exercise the airman privileges required to operate an aircraft under § 61.113(i) of this chapter; or

(B) May reasonably be expected to make the individual unable to perform the duties or exercise the privileges required to operate an aircraft under § 61.113(i) of this chapter; or

(ii) The individual's driver's license is revoked by the issuing agency as a result of a clinically diagnosed neurological condition.

(2) Subject to subparagraph (d)(1), an individual clinically diagnosed with a neurological condition shall certify every 2 years, in conjunction with the certification under § 68.3(b)(3), that the individual is under the care of a State-licensed medical specialist for that neurological condition.

#### **§ 68.11 Authority to require additional information.**

(a) If the Administrator receives credible or urgent information, including from the National Driver Register or the Administrator's Safety Hotline, that reflects on an individual's ability to safely operate an aircraft under § 61.113(i) of this chapter, the Administrator may require the individual to provide additional information or history so that the Administrator may determine whether the individual is safe to continue operating under that section.

(b) The Administrator may use credible or urgent information received under paragraph (a) to request an individual to provide additional information or to take actions under 49 U.S.C. 44709(b).

## PART 91—GENERAL OPERATING AND FLIGHT RULES

8. The authority citation for part 91 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

9. Add paragraph (j) to § 91.319 to read as follows:

**§ 91.319 Aircraft having experimental certificates: Operating limitations.**

\* \* \* \* \*

(j) No person may operate an aircraft that has an experimental certificate under § 61.113(i) of this chapter unless the aircraft is carrying not more than 6 occupants.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and Sec. 2307 of Public Law

114-190 on **DEC 22 2016**



Michael P. Huerta,

Administrator.