■ a. Removing the amount ''$23,714'' and adding in its place the amount ''$24,483'' wherever it appears; and
■ b. Removing the amount ''$237,268'' and adding in its place the amount ''$244,958'' wherever it appears.

**Appendix A to Part 1158 [Amended]**

■ 5. Amend appendix A to part 1158 by removing the amount ''$23,714'' and adding in its place the amount ''$24,483'' and by removing the amount ''$237,268'' and adding in its place the amount ''$244,958'' in the following places:
■ a. In the last paragraph under the heading ''Certification for Contracts, Grants, Loans, and Cooperative Agreements''; and
■ b. In the last paragraph under the heading ''Statement for Loan Guarantees and Loan Insurance''.

Dated: January 16, 2024.

**Daniel Beattie,**

*Director of Guidelines and Panel Operations.*

[FR Doc. 2024–00992 Filed 1–18–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 391

**[Docket No. FMCSA–2022–0111]**

### Qualifications of Drivers: Medical Advisory Criteria

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FMCSA updates the Medical Advisory Criteria published as an appendix in the Code of Federal Regulations (CFR). The appendix provides guidance for medical examiners listed on FMCSA's National Registry of Certified Medical Examiners (National Registry) on the applicability and interpretation of the physical qualification standards for operators of commercial motor vehicles. The advisory criteria in the appendix are also intended to provide recommendations and information to assist medical examiners in applying the standards, basic information related to testing, and matters to consider when making a qualification determination. The updated Medical Advisory Criteria replace all previous versions of the criteria.

**DATES:** This final rule is effective on January 19, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4001, *FMCSAmedical@dot.gov.* If you have questions on viewing material in the docket, call Dockets Operations at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Availability of Documents

To view comments or any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0111/document* and choose the document to review. To view comments, click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

## II. Legal Basis

FMCSA has statutory authority under 49 U.S.C. 31136(a)(3) and 31149(c)(1)(A)(i)—delegated to the Agency by 49 CFR 1.87(f)—to establish regulations to ensure the physical condition of commercial motor vehicle operators is adequate to enable them to operate the vehicles safely. The guidance in the Medical Advisory Criteria is related to the physical qualification regulations required by those sections.

The notice and comment rulemaking procedures of the Administrative Procedure Act (APA) do not apply to interpretative rules and general statements of policy (commonly called ''guidance'') (5 U.S.C. 553(b)(A)). The Medical Advisory Criteria are interpretative rules that provide guidance, but do not amend any Agency regulation or establish any requirements for medical examiners or drivers not found in existing regulations. Accordingly, FMCSA was not required under the APA to solicit public comment on the criteria. Nevertheless, to ensure that the Medical Advisory Criteria provide clear, useful, and relevant information for stakeholders and as encouraged by DOT policy,[1] FMCSA opted to make a draft of the criteria available for public review and comment (87 FR 50282 (Aug. 16, 2022)). Although FMCSA voluntarily provided an opportunity for public comment on the Medical Advisory Criteria, its decision to do so does not make applicable any of the other procedural requirements in the APA or most of the other statutes or executive orders that would apply if the opportunity for prior notice and public comment were required.

Further, the APA does not require interpretive rules such as this to be published in the **Federal Register** with an effective date that is not less than 30 days after publication (5 U.S.C. 553(d)(2)). Therefore, this rule is effective on the date of publication in the **Federal Register** to coincide with the publication of the revised Medical Examiner's Handbook (MEH).

## III. Background

In 2000, FMCSA adopted a revised medical examination report that also contained the Agency's guidelines to help medical examiners assess an individual's physical qualifications. These guidelines, in the form of advisory criteria, were strictly advisory and were established after consultation with physicians, States, and industry representatives (65 FR 59363, 59364 (Oct. 5, 2000)). Subsequently, when FMCSA revised the report form again, the medical advisory criteria were removed from the report form and published as Appendix A to 49 CFR part 391 (80 FR 22790 (Apr. 23, 2015)).

On August 16, 2022, FMCSA made available for public comment a revised and updated draft MEH, which included updates to the Medical Advisory Criteria (87 FR 50282). The goal of the updated Medical Advisory Criteria was to provide guidance for medical examiners to consider when making physical qualification determinations in conjunction with established best medical practices. Information that was outdated, obsolete, or no longer relevant was removed from the Medical Advisory Criteria. The Agency stated that the revised Medical Advisory Criteria would be included in the MEH and would also be published in Appendix A to 49 CFR part 391. The final version of the criteria would be identical in both publications.

FMCSA notes that, as a procedural matter, a final rule is required by the Office of the Federal Register to change any text included in the CFR. This is so even if the CFR text changed is guidance in an interpretive rule, as is the case here.

[1] Section 14(f) of DOT 2100.6A (Rulemaking and Guidance Procedures) states that it is DOT policy to encourage providing an opportunity for public comment on guidance documents, as public input can be very helpful in formulating and improving the guidance that DOT offers.

## IV. New Regulatory Guidance

After consideration of the public comments and further internal review, FMCSA has published a revised MEH that includes revisions to the Medical Advisory Criteria. A **Federal Register** notice about this publication of the MEH and the treatment of some of the public comments is being issued concurrently with this notice. The revised criteria included in the MEH are identical to the criteria published by this notice in Appendix A to 49 CFR part 391; although, the order of the criteria differs. The criteria in the MEH reflects the order in which a medical examiner typically conducts the physical qualification examination, while Appendix A organizes the criteria in the same order that the physical qualification standards appear in 49 CFR 391.41(b). Consistent with previous practice, the Medical Advisory Criteria are advisory and are therefore considered guidance because they provide interpretations and recommendations for the physical qualification standards contained in the Federal Motor Carrier Safety Regulations. The updated Medical Advisory Criteria replace all previous versions of the criteria. Previous versions of the Medical Advisory Criteria should not be relied upon.

## V. Publication of the Regulatory Guidance

Each guidance document issued by FMCSA must be published on a publicly accessible DOT internet website on the date of issuance (49 U.S.C. 113 note).[2] Accordingly, in addition to being available in this docket and the MEH, the Medical Advisory Criteria will be available in FMCSA's Guidance Portal (*https://www.fmcsa.dot.gov/guidance*). The criteria also will be available on FMCSA's website at *https://www.fmcsa.dot.gov/regulations/medical/medical-regulations-and-guidance-resource-links* and on the National Registry website at *https://nationalregistry.fmcsa.dot.gov/resource-center.*

FMCSA expects to review the guidance no later than 5 years after it is published and will consider at that time whether the guidance should be withdrawn, reissued, or incorporated into FMCSA's regulations.

[2] See section 5203(a)(2)(A) and (a)(3) of the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1312, 1535 (Dec. 4, 2015).

## VI. Regulatory Analysis

### *A. Regulatory Flexibility Act (Small Entities)*

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis section, this action is not subject to notice and public comment under section 553(b) of the APA.

### *B. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

### *C. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $192 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. This final rule will not result in such an expenditure.

### *D. Paperwork Reduction Act*

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

### *E. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this action preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

### *F. Privacy Act*

The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Privacy impact assessments were completed when the physical qualification regulations relating to the guidance were adopted. The guidance in the Medical Advisory Criteria does not present any new privacy concerns that were not previously addressed in those assessments. Also, because this interpretive rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

### *G. E.O. 13175 (Indian Tribal Governments)*

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

### *H. National Environmental Policy Act of 1969*

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 1.a. regarding guidance documents.

### List of Subjects in 49 CFR Part 391

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

For the reasons stated in the preamble, FMCSA amends 49 CFR part 391, as follows:

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

■ 1. The authority citation for part 391 continues to read as follows:

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

■ 2. In part 391, Appendix A is revised to read as follows:

## Appendix A to Part 391—Medical Advisory Criteria

### I. Introduction

This appendix contains the Federal Motor Carrier Safety Administration's recommendations and guidance in the form of Medical Advisory Criteria to help medical examiners assess a driver's physical qualification. These recommendations and guidance are strictly advisory and do not have the force and effect of law. They were established after consideration of public comments and after consideration of recommendations from the Agency's Medical Review Board.

### II. Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial motor vehicle drivers, the Federal Motor Carrier Safety Administration has published recommendations and guidance called advisory criteria to help medical examiners in determining whether a driver meets the physical qualification standards for commercial driving. These recommendations have been derived from the Medical Examiner's Handbook to provide information to medical examiners that is directly relevant to the physical qualification examination.

*A. Medical Advisory Criteria for 49 CFR 391.41(b)(1)*

1. Only individuals with loss of all five fingers are considered to have loss of a hand under § 391.41(b)(1).

2. Unless an individual possesses a skill performance evaluation certificate, loss of a foot, a leg, a hand, or an arm precludes physical qualification. Even if an individual has a prosthesis that replaces the foot, leg, hand, or arm, as applicable, certification is precluded without a skill performance evaluation certificate.

3. An individual may be eligible for a skill performance evaluation certificate under § 391.41(b)(1) or § 391.41(b)(2), or both.

*B. Medical Advisory Criteria for 49 CFR 391.41(b)(2)*

1. Individuals with loss of fewer than all five fingers or any number of toes should be evaluated under § 391.41(b)(2) to determine whether there is an impairment, defect, or limitation of a hand or foot that interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle.

2. A skill performance evaluation certificate is only available under § 391.41(b)(2) for impairment, defect, or limitation of a limb. A skill performance evaluation certificate is not available for impairment of the spine or torso that does not result in impairment, defect, or limitation of a limb.

3. An individual may be eligible for a skill performance evaluation certificate under § 391.41(b)(1) or § 391.41(b)(2), or both.

*C. Medical Advisory Criteria for 49 CFR 391.41(b)(4)*

1. The phrase ''has no current clinical diagnosis of'' is specifically designed to encompass a clinical diagnosis of a current cardiovascular condition, or a cardiovascular condition that has not fully stabilized. The phrase ''known to be accompanied by'' is designed to include a clinical diagnosis of a cardiovascular disease that is accompanied by, or is likely to cause, symptoms of syncope, dyspnea, collapse, or congestive cardiac failure.

2. Coronary artery bypass surgery and pacemaker implantation are remedial procedures and, thus, do not preclude medical certification. Implantable cardioverter-defibrillators are installed to address an ongoing underlying cardiovascular condition and are likely to cause syncope or collapse as a result of the underlying cardiovascular condition, as well as when they discharge.

3. Anticoagulation therapy is a medical treatment, which can improve the health and safety of the individual, and should not, by its use alone, preclude certification of the individual. The emphasis should be on the underlying medical condition(s) that requires treatment and the general health of the individual.

*D. Medical Advisory Criteria for 49 CFR 391.41(b)(5)*

1. Many conditions interfere with oxygen exchange and may interfere with the ability to control and drive a commercial motor vehicle safely. These include, but are not limited to, emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis, and obstructive sleep apnea.

2. If the medical examiner detects a possible undiagnosed or inadequately treated respiratory dysfunction that may be likely to interfere with the individual's ability to control and drive a commercial motor vehicle safely, the medical examiner should confer with the treating provider or should recommend that the individual be referred to a specialist for further evaluation and therapy.

*E. Medical Advisory Criteria for 49 CFR 391.41(b)(6)*

1. An elevated blood pressure finding should be confirmed by at least two subsequent measurements.

2. Hypertension alone is unlikely to interfere with the ability to operate a commercial motor vehicle safely; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. The guidance on the stages of hypertension below is based on the Federal Motor Carrier Safety Administration's Cardiovascular Advisory Panel Guidelines for the Medical Examination of Commercial Motor Vehicle Drivers (October 2002), which adopted the sixth report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

3. Stage 1 hypertension corresponds to a systolic blood pressure of 140–159 mmHg and/or a diastolic blood pressure of 90–99 mmHg. An individual with a blood pressure in this range is at low risk for a hypertension-related event that is likely to interfere with the ability to operate a commercial motor vehicle safely and may be medically certified to drive for a 1-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100 but greater than 140/90 at the subsequent examinations, the individual may be given a one-time certification of 3 months to reduce the blood pressure to less than or equal to 140/90.

4. A blood pressure of 160–179 systolic and/or 100–109 diastolic is considered Stage 2 hypertension. A blood pressure in this range is an absolute indication for antihypertensive drug therapy. The individual may be given a one-time certification of 3 months to initiate or adjust antihypertensive drug therapy and to reduce the blood pressure to less than or equal to 140/90. Provided treatment is well tolerated and the driver demonstrates a blood pressure value of 140/90 or less, the individual may be certified for 1 year.

5. A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3 and carries a high risk for an acute blood pressure-related event that is likely to interfere with the ability to operate a commercial motor vehicle safely. The individual should not be qualified, even for a short period, until the blood pressure is reduced to 140/90 or less and treatment is well tolerated. The individual may be certified for 6 months and biannually (every 6 months) thereafter if at recheck blood pressure is 140/90 or less.

6. Annual certification is recommended if the medical examiner does not know the severity of hypertension prior to treatment.

7. Treatment includes non-pharmacologic and pharmacologic modalities as well as counseling to improve or eliminate the factors that contributed to the hypertension. Most antihypertensive medications also have side effects, such as somnolence or syncope. The importance of side effects must be evaluated on an individual basis and considering the underlying hypertension. Individuals should be alerted to the possibility that antihypertensive medications may interfere with the ability to operate a commercial motor vehicle safely.

8. Medical certification for secondary hypertension is based on the above stages. Evaluation is warranted if an individual is persistently hypertensive on maximal or near-maximal doses of two to three pharmacologic agents. Some causes of secondary hypertension may be amenable to surgical intervention or specific pharmacologic treatment.

*F. Medical Advisory Criteria for 49 CFR 391.41(b)(7)*

1. Once an individual has been diagnosed as having a rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease, then the individual has an established history of that disease.

2. The medical examiner, when examining an individual, should consider the following: the nature and severity of the individual's condition (such as sensory loss or loss of strength); the degree of limitation present (such as range of motion); the rate or stage of progression (symptoms may not be present initially but may manifest over time); and whether symptoms are likely to interfere with the ability to control and operate a commercial motor vehicle safely.

3. If severe functional impairment exists, the individual does not physically qualify. In cases where more frequent monitoring is required, a Medical Examiner's Certificate, Form MCSA–5876, for less than the maximum certification period may be issued.

*G. Medical Advisory Criteria for 49 CFR 391.41(b)(8)*

1. Epilepsy is a chronic functional disease characterized by seizures or episodes that usually occur without warning, resulting in loss of voluntary control that may lead to loss of consciousness. Therefore, the following individuals are not physically qualified:

- An individual who has a medical history of epilepsy or a seizure disorder, unless the individual satisfies the criteria described in paragraph 5 of the Medical Advisory Criteria for § 391.41(b)(8);
- An individual who has a current clinical diagnosis of epilepsy or a seizure disorder; or
- An individual who is taking antiseizure medication to prevent seizures.

2. When an individual has had a single unprovoked episode of loss of consciousness (*i.e.,* the cause is unknown or there is no clear provoking trigger) that is determined not to have been a seizure, the medical examiner may certify the individual if the medical examiner determines recurrence of loss of consciousness or loss of ability to control a commercial motor vehicle is unlikely and the individual is not taking antiseizure medication. The determination should be made on an individual basis by the medical examiner in consultation with the treating provider. Before certification is considered, it is recommended that a 6-month waiting period elapse from the time of the episode.

3. When an individual has had a single unprovoked nonepileptic seizure (*i.e.,* the cause is unknown or there is no clear provoking trigger) that was treated with antiseizure medication or left untreated, the medical examiner may certify the individual if the individual is both off antiseizure medication and seizure free for 5 years of more.

4. When an individual has had a single provoked nonepileptic seizure or episode of loss of consciousness (*i.e.,* there is a known medical condition or a clear provoking trigger that is reversible or avoidable, such as a drug reaction, alcohol or illicit drug withdrawal, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), the medical examiner may certify the individual if the individual has fully recovered, has no existing residual complications, and is not taking antiseizure medication and seizure recurrence and exposure to the provoking trigger in the future is unlikely.

5. When an individual has a medical history of epilepsy or a seizure disorder, the medical examiner may certify the individual if the individual is both off antiseizure medication and seizure free for 10 years or more.

6. If a medical examiner is unsure about whether to qualify an individual with a diagnosis of epilepsy or a seizure disorder, or a single nonepileptic seizure, the medical examiner may refer the individual to the Federal Motor Carrier Safety Administration for evaluation under the criteria for a Federal seizure exemption.

*H. Medical Advisory Criteria for 49 CFR 391.41(b)(9)*

1. Emotional or adjustment disorders contribute directly to an individual's level of memory, reasoning, attention, and judgment, and are often caused by physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness, or paralysis that may lead to incoordination, inattention, or loss of functional control that may be likely to interfere with the ability to drive a commercial motor vehicle safely. Physical fatigue, headache, impaired coordination, recurring physical ailments, and chronic ''nagging'' pain may be present to such a degree that they may be likely to interfere with the ability to drive a commercial motor vehicle safely. Somatic and psychosomatic complaints should be thoroughly evaluated when examining an individual.

2. The degree to which an individual is able to appreciate, evaluate, and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

3. It is unlikely that individuals who are highly susceptible to frequent states of emotional instability (*e.g.,* due to schizophrenia, affective psychoses, paranoia, severe anxiety, or depressive neuroses) would satisfy the physical qualification standard.

4. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. Medications used to treat mental, nervous, organic, or functional disease or psychiatric disorder may be likely to interfere with the ability to drive a commercial motor vehicle safely.

*I. Medical Advisory Criteria for 49 CFR 391.41(b)(11)*

1. Since the prescribed standard under the Federal Motor Carrier Safety Regulations is from the American National Standards Institute (ANSI), formerly the American Standards Association, it may be necessary to convert the audiometric results from the International Organization for Standardization (ISO) standard to the ANSI standard. To convert audiometric test results from ISO to ANSI, subtract 14 decibels (dBs) from the ISO result for 500 Hertz (Hz), subtract 10 dBs for 1,000 Hz, and subtract 8.5 dBs for 2000 Hz. To average, add the readings for the 3 frequencies tested and divide by 3.

2. For the whispered voice test, the individual should be stationed at least 5 feet from the medical examiner with the ear being tested turned toward the medical examiner. The other ear is covered. Using the breath that remains after a normal expiration, the medical examiner whispers words or random numbers such as 66, 18, 3, etc. The medical examiner should then ask the individual to repeat the words or sequence. The medical examiner should not use only sibilants (''s'' sounding materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test in both ears, the audiometric test should be administered.

3. If an individual does not meet the requirements with the use of a hearing aid and requires a Federal hearing exemption, the box for ''Wearing hearing aid'' should NOT be selected on either the Medical Examination Report Form, MCSA–5875, or Medical Examiner's Certificate, Form MCSA–5876. Instead, only the box for accompanied by a hearing exemption is selected on the Medical Examination Report Form, MCSA–5875, and the Medical Examiner's Certificate, Form MCSA–5876.

4. To obtain an application for a hearing exemption, individuals who do not meet the Federal hearing standard may call (202) 366–4001, email *fmcsahearingexemptions@dot.gov,* or go to *https://www.fmcsa.dot.gov/medical/driver-medical-requirements/new-hearing-applicant-doc-email-version.*

*J. Medical Advisory Criteria for 49 CFR 391.41(b)(12)*

1. Federal law prohibits Schedule I drugs or substances listed on 21 CFR 1308.11 from being prescribed for any purpose. Therefore, a medical examiner cannot physically qualify an individual who uses Schedule I drugs or substances.

2. A medical examiner may physically qualify an individual who uses an amphetamine, a narcotic, or other prescribed drug or substance listed on Schedules II through V in 21 CFR 1308.12 through 1308.15 if the prescription exception is met. A drug or substance that is prescribed by a licensed medical practitioner who is licensed under applicable Federal, State, local, or foreign laws to prescribe controlled drugs and substances, is familiar with the individual's medical history, and has advised the individual that the drug or substance will not adversely affect the individual's ability to safely operate a commercial motor vehicle meets the prescription exception in § 391.41(b)(12).

3. One of the ways for the medical examiner to obtain the information that shows the prescription exception is satisfied is to request a written communication from the prescribing licensed medical practitioner who satisfies the regulation's requirements. A voluntary form available on the Federal Motor Carrier Safety Administration's website (391.41 CMV Driver Medication Form, MCSA–5895) may be used, with the individual's consent, as an optional tool to obtain the required information.

4. The medical examiner may request a non-Department of Transportation drug test to aid in the physical qualification determination, including when signs exist indicating the individual may not have

disclosed use of a scheduled drug or substance. Use of a substance abuse professional, see 49 CFR 40.3 and 40.281, is not required as part of a non-Department of Transportation drug test.

*K. Medical Advisory Criteria for 49 CFR 391.41(b)(13)*

1. The phrase ''current clinical diagnosis of'' alcoholism is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized.

2. When in remission, the medical examiner may certify an individual who has a prior clinical diagnosis of alcoholism.

3. The medical examiner may request a non-Department of Transportation alcohol test to aid in the physical qualification determination, including when the individual discloses excessive use of alcohol or the medical examiner observes signs of alcoholism. The use of a substance abuse professional, see 49 CFR 40.3 and 40.281, is not required. The medical examiner may request that individuals provide documentation from a professional qualified to conduct an alcohol use assessment that includes an opinion concerning whether a current clinical diagnosis of alcoholism is present or the individual is in remission prior to making a medical certification determination.

Issued under authority delegated in 49 CFR 1.87.

**Robin Hutcheson,**

*Administrator.*

[FR Doc. 2024–00980 Filed 1–18–24; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[RTID 0648–XD197]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Scallop Specification Process Flexibility

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of agency decision.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces the approval of Amendment 18 to the Fishery Management Plan (FMP) for the Scallop Fishery off Alaska (Scallop FMP). Amendment 18 revises timing requirements for the Stock Assessment and Fishery Evaluation (SAFE) report to allow more flexibility for non-annual assessments and to set scallop harvest specifications less frequently than on an annual basis. This will reduce the burden on staff and provide more time for the development of new stock assessment methods. Amendment 18 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Scallop FMP, and other applicable laws.

**DATES:** The amendment was approved on January 11, 2024.

**ADDRESSES:** Electronic copies of Amendment 18, the Analysis, and the Categorical Exclusion (CE) prepared for this action may be obtained from *https://www.regulations.gov* under the docket NOAA–NMFS–2023–0094.

**FOR FURTHER INFORMATION CONTACT:** Megan Mackey, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The Notice of Availability (NOA) for Amendment 18 was published in the **Federal Register** on November 3, 2023 (88 FR 75535) with a 60-day comment period that ended on January 2, 2024. NMFS received one comment during the public comment period on the NOA. NMFS summarized and responded to this comment under Comments and Responses, below.

NMFS determined that Amendment 18 is consistent with the Magnuson-Stevens Act and other applicable laws, and the Secretary of Commerce approved Amendment 18 on January 11, 2024. The November 3, 2023, NOA (88 FR 75535) contains additional information on this action. No changes to Federal regulations are necessary to implement the Amendment.

The scallop fishery in the exclusive economic zone off Alaska under the Scallop FMP is jointly managed by NMFS and the State of Alaska (State). The Council prepared the Scallop FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the Scallop FMP appear at 50 CFR parts 600 and 679.

The Scallop FMP delegates many management aspects of the scallop fishery to the State but maintains Federal oversight. This authority is limited by the Magnuson-Stevens Act and the FMP. While the FMP includes scallop stocks off the coast of Alaska, including weathervane scallop (*Patinopecten caurinus*), reddish scallop (*Chlamys rubida*), spiny scallop (*Chlamys hastata*), and rock scallop (*Crassadoma gigantea*), the weathervane scallop is the only commercially targeted stock at this time. Commercial fishing for weathervane scallops occurs in the Gulf of Alaska, Bering Sea, and waters off the Aleutian Islands. There is currently no formal stock assessment model for the scallop fishery. Instead, the State sets guideline harvest levels informed by data collected through the scallop fishery observer program and fishery-independent scallop dredge surveys. Standardized catch per unit effort indices are estimated to account for depth, month, vessel, bed, and season variations.

Previously, the overfishing level (OFL) and acceptable biological catch (ABC) have been set based on the definition of optimal yield (OY). More recently, OFL and ABC have been based on the OY re-defined in 2012 (Amendment 13), when OY was re-defined as 0 to 1.29 million pounds (lb) (585 tons (t)) of shucked scallop meats to include estimated discards over the reference time frame. Annual specifications have been defined as: max OFL = OY, and ABC = 90 percent of OFL. Alaska scallop harvests have not exceeded OY in any year since it was first established.

In the absence of stock-size estimates, the status of the scallop stock relative to its overfished state is unknown. Consistent with assessments since the 2011–12 season, the 2022–23 OFL is set equal to the OY (1.284 million lb.; 582 t) as defined in the Scallop FMP, and the 2022–23 ABC is set equal to the maximum ABC control rule value (90 percent of OFL or 1.156 million lb.; 524 t). Estimated total fishing removals (retained and discarded) for the 2021–22 and 2022–23 seasons were 311,978 lb (141.5 t) and 345,690 lb (156.8 t) of shucked meats, respectively. These estimates are less than 30 percent of the ABC/annual catch limit and OFL; therefore, overfishing did not occur in 2021–22 or 2022–23.

Currently, the Scallop FMP requires the SAFE report to be created on an annual basis. The management measures in Amendment 18 will amend the FMP to allow flexibility for non-annual assessments. This will remove prescriptive language dictating that the SAFE report is produced on an annual basis. Amendment 18 will give the Council flexibility in modifying the assessment cycle with the potential to set multi-year specifications, based on a period of no more than 3 years, that best suit the needs of the stock. If a formal