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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 110

[Docket No. PHMSA-2015-0272 (HM-209A)]

RIN 2137-AF19

Hazardous Materials: Revisions to Hazardous Materials Grants Requirements

(FAST Act)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA),
Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is revising the Hazardous Materials Regulations pertaining to the Hazardous Materials Grants Program and the Hazardous Materials Emergency Preparedness Grant. This final rule aligns with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance") and implements new requirements set forth by the Fixing America's Surface Transportation (FAST) Act of 2015.

DATES: *Effective date:* This rule is effective as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Voluntary compliance date: Voluntary compliance with all amendments is authorized as of [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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I. Background

On October 11, 2016, PHMSA published a notice of proposed rulemaking (NPRM) [Docket No. PHMSA-2015-0272 (HM-209A); 81 FR 70067] proposing changes to the Hazardous Materials Grants Program in 49 CFR part 110. The NPRM proposed to align with guidance offered in the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) ("Uniform Guidance"), as well as new requirements set forth by the FAST Act of 2015 (Pub. L. 114-94; December 4, 2015).

OMB's Uniform Guidance was codified in 2 CFR part 200 in an interim final rule [79 FR 75867] on December 19, 2014. It streamlines the Federal Government's guidance on grant awards, with the goal of reducing administrative burden on grant recipients, as well as waste and misuse of Federal funding. Publication of the Uniform Guidance superseded the previous OMB circular guidance and requirements found in 49 CFR part 18. All Federal grants issued on or after December 26, 2014, were required to comply with these requirements.

The FAST Act was enacted December 4, 2015, to provide long-term funding for transportation infrastructure planning and investment. The FAST Act expanded funding appropriations for the Hazardous Materials Emergency Preparedness (HMEP) Grant. The FAST Act also merged the HMEP planning and training grant funding into a single grant fund, meaning that grantees no longer need to complete separate grant applications for their planning and training grant programs. Lastly, the FAST Act added a new, competitive Community Safety Grant.

Historically, the Hazardous Materials Grants Program was comprised of three grants: the HMEP Grant, the Supplemental Public Sector Training (SPST) Grant, and the Hazardous Materials Instructor Training (HMIT) Grant. These grants are funded by fees collected from hazardous materials (hazmat) shippers and carriers who offer for transportation or transport certain hazmat in intrastate, interstate, or foreign commerce and who must register with the U.S. Department of Transportation in accordance with 49 CFR part 107, subpart G. In 2015, the FAST Act established a new Community Safety Grant Program funded by Congressional appropriations. PHMSA awarded two Community Safety Grants for the first time in fiscal year 2017.

This final rule revises part 110 for the codified HMEP Grant requirements, reflecting changes mandated by the FAST Act, as proposed in the NPRM, and revising regulatory citations to OMB's Uniform Guidance in 2 CFR part 200. The requirements specific to the SPST, HMIT, and Community Safety Grants are not codified, but are found at <https://www.phmsa.dot.gov/>. PHMSA is also making a non-substantive change to the registration payment address in part 107 to reflect accurate PHMSA grant and registration program office information.

The HMEP Grant was established in 1990 by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA; Pub. L. 101-615). In 1993, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), began issuing grants to assist States, Territories, and Indian tribes to carry out emergency preparedness and training activities in order to ensure communities could effectively respond to transportation incidents involving hazmat. PHMSA's HMEP Grants fund public and first responder planning efforts to improve hazmat transportation incident response. This grant allows flexibility to implement training and planning programs that address differing needs based on demographics, emergency response capabilities, commodity flow studies, and hazard analysis. Prior to 2009, the HMEP Grant awarded \$12.8 million annually; award amounts thereafter increased to \$21.9 million annually.

II. Comment Discussion

PHMSA received no in-scope comments in response to the NPRM, and is adopting the proposed amendments except for certain modifications for enhanced clarity and

accuracy. The adopted changes and revisions are discussed as follows in the section-by-section review.

III. Section-by-Section Review

Part 107

Section 107.616

Section 107.616 details the payment procedures for the registration of persons who offer or transport hazmat in accordance with part 107 subpart G. This final rule revises paragraph (a) of § 107.616 to update the P.O. Box mailing address for registration payments. The new address is: U.S. Department of Transportation – Hazardous Materials, P.O. Box 6200-01, Portland, OR 97228-6200. This final rule also updates the web address for electronic payments. While not originally proposed in the NPRM, these changes are non-substantive and are necessary to ensure that information in the regulations pertaining to the PHMSA Grant and Registration Program office are up to date and readily understood. These revisions will ensure that there is no confusion on where to send registration payments, and therefore, PHMSA considers it within the scope of this rulemaking.

Part 110

Introduction

PHMSA is revising part 110 to reflect HMEP Grant requirements and is not including the proposed language from the NPRM related to HMIT, SPST, and

Community Safety Grants. This change will ensure consistency and clarity in the regulations. The following section-by-section review highlights instances of this change.

Section 110.1

Section 110.1 outlines the purpose of part 110. This final rule amends § 110.1 to align with OMB's Uniform Guidance (the government-wide framework for grants management) found in 2 CFR part 200 and makes editorial amendments. In this final rule, PHMSA is not including the proposed language addressing nonprofit organizations because they are not HMEP Grant recipients. PHMSA notes, however, that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients. Lastly, although not proposed in the NPRM, this final rule makes two minor editorial amendments and adds a sentence directing stakeholders to the following website for information on the HMIT, SPST, and Community Safety Grant Programs: <https://www.phmsa.dot.gov/>. Because these were clarifying amendments, PHMSA does not believe that notice and comment were required.

Section 110.5

Section 110.5 outlines the scope of the Hazardous Materials Grants Program in part 110. PHMSA is not adopting the NPRM's proposed language in paragraph (a) for nonprofit organizations because they are not eligible for HMEP Grants. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients.

As proposed in the NPRM, this final rule revises paragraph (b) to reflect the correct reference citation for OMB's Uniform Guidance, which is now found in 2 CFR part 200. Additionally, this section reflects the current name for OMB's Uniform Guidance, which is "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (previously titled "Uniform Administrative Requirements for Grants and Cooperative Agreements"). Although not proposed in the NPRM, this change is within the scope of this rulemaking to align with the 2 CFR part 200.

In this final rule, PHMSA is adding a website in paragraph (c) to locate and obtain electronic versions of standard forms and OMB circulars referenced throughout 2 CFR part 200. The website (*see* <https://www.grants.gov/web/grants/forms.html>) is revised from the NPRM, because the website proposed in the NPRM (https://www.whitehouse.gov/omb/grants_forms) no longer posts the standard forms or relevant OMB circulars. Alternatively, and as currently specified in the Hazardous Materials Program requirements, a person may obtain copies by contacting the Grants Chief in PHMSA's Office of Hazardous Materials Safety. Contact information for the program office is available at PHMSA's website (<https://www.phmsa.dot.gov/>). The change to the PHMSA office title is adopted in this final rule as was proposed in the NPRM, with additional minor editorial amendments.

Section 110.10

Section 110.10 specifies to whom part 110 and the HMEP Grant apply. This final rule amends the title of this section to "Administering the hazardous materials emergency

preparedness grants,” as opposed to the proposed title from the NPRM (“Administering hazardous materials grants”) in an effort to clarify that the regulations are specific to the HMEP Grant. As proposed in the NPRM, PHMSA is revising the language in § 110.10 to include Territories and is removing outdated language specifying which entities may apply for which grants. PHMSA is not adopting the proposed language for nonprofit organizations because they are not eligible for the HMEP Grant. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients.

Section 110.20

Section 110.20 outlines the definitions applicable to part 110. As proposed in the NPRM, the introductory language is amended to reflect that unless defined in part 110, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 2 CFR part 200, with respect to administrative requirements for grants, are used as defined therein. In addition, the remaining language in § 110.20 defines the other terms used in part 110. Finally, the definition of *Associate Administrator* is revised, the definition of *Public sector employee* is added, and the definition of *Indian country* is deleted, as proposed in the NPRM.

PHMSA is not adopting the proposed definition of *Nonprofit organizations* in this final rule because they are not eligible for HMEP Grants and therefore not referenced in part 110. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients. PHMSA is also not adopting the proposed definitions of *Tribal Emergency*

Planning Committee (TEPC) and *Tribal Emergency Response Committee (TERC)* because they are not referenced in part 110, and are therefore unnecessary to adopt.

Furthermore, while not proposed in the NPRM, PHMSA is removing the definitions of *Budget Period*, *Cost review*, *Indian Tribe*, *Local Emergency Planning Committee (LEPC)*, *Project*, *Project manager*, *Project officer*, *Project period*, *State Emergency Response Commission (SERC)*, and *Statement of Work* in this final rule. These definitions are either not referenced in part 110 or are already defined in 2 CFR part 200. Therefore, PHMSA determined that it is unnecessary to duplicate the definitions in part 110 and their removal will increase clarity and avoid the need for a conforming rulemaking by PHMSA should revisions be made to the definitions in 2 CFR part 200.

Lastly, while not proposed in the NPRM, PHMSA is revising the definition of *Allowable costs* and *Political subdivision*, to better reflect 2 CFR part 200 and to ensure consistency within part 110.

Section 110.30

Section 110.30 addresses application requirements for the HMEP Grant. In order to more appropriately communicate the requirements of this section, and as proposed in the NPRM, PHMSA is amending the title of § 110.30 to “Hazardous materials emergency preparedness grant application.” Additionally, as proposed in the NPRM, PHMSA is amending paragraph (a) to remove specific application requirements, instead referencing that instructions are available in the applicable Notice of Funding

Opportunity and application kit. As proposed, PHMSA is also amending paragraph (a) to require electronic submissions of grant applications.

Further, PHMSA discovered an editorial error in the title of grant announcements. Therefore, in this final rule, PHMSA is revising paragraph (a) to specify that an HMEP grant announcement is called a “Notice of Funding Opportunity,” instead of a “Notice of Funding Announcement.” Lastly, although not originally proposed in the NPRM, PHMSA is removing the reference to the website “<http://www.grants.gov>” and is directing the reader to submit the grant application package at “the OMB designated website.” This allows for future regulatory flexibility if the submission website were to change. Currently, HMEP Grant applications are submitted at <http://www.grants.gov>. Applicants can always contact the Grants Chief to verify the correct website for submittal of a grant application package.

In the NPRM, PHMSA proposed to remove and reserve paragraphs (b) and (c) because these requirements are now found in 2 CFR part 200 and the HMEP Grant is no longer separated between planning and training. However, in this final rule, PHMSA is removing these paragraphs (instead of removing and reserving), as it is not anticipated that these paragraphs will be added in future rulemakings. This change better aligns with required regulatory drafting practices in the *Office of the Federal Register Document Drafting Handbook*. Because of this change, the paragraph header “(a) *General*” is also removed.

Section 110.40

Section 110.40 addresses activities that may be eligible for HMEP Grant funding. This section is revised as proposed in the NPRM with the exception that in this final rule, PHMSA is making minor editorial amendments to the proposed language in paragraphs (a), (b), (g), and (m). These amendments provide additional clarity and better align with 2 CFR part 200. For example, paragraph (g) is revised to read as “[t]o train public sector employees to respond to hazardous materials transportation accidents and incidents” (previously “[t]o train public sector employees to respond to accidents and incidents involving the transportation of hazardous material”) and paragraph (m) is revised to read as “[a]dditional hazardous materials emergency preparedness activities not otherwise described in this section that the Associate Administrator deems appropriate under the grant agreement” (previously “[f]or additional activities the Associate Administrator deems appropriate to implement the scope of work for the proposed project and approved in the grant.”).

Furthermore, as proposed in the NPRM, paragraphs (a) and (b) are revised to address those activities previously described in paragraphs (a)(1) and (2). Paragraphs (a)(3) through (6) are now paragraphs (c) through (f), and paragraphs (b)(1) through (5) are now paragraphs (g) through (l). As the activities in (a)(7) and (b)(6) are nearly identical, the duplicative language is combined in paragraph (m). Furthermore, as proposed in the NPRM, the language in these paragraphs is revised for consistency, and the term “Territory” is added in paragraph (k).

Section 110.50

Section 110.50 addresses the requirements and procedures for Federal funding for both pre- and post-award purchases. Notably, 2 CFR 200.305 payment provisions state that a non-Federal entity:

[M]ust be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transport of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project.

While 2 CFR part 200 does not specify funding techniques for States, advanced payments to State grantees would more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.

In this final rule, paragraph (a) is revised to adopt provisions that allow grantees to receive reimbursement of pre-award costs, as proposed in the NPRM. However, PHMSA is not adopting the proposed first two sentences of paragraph (a) because they are duplicative of the 2 CFR 200.458 definition of *Pre-award costs*. Additionally, as proposed in the NPRM, PHMSA is revising paragraph (b) to use more appropriate language, revising “reimbursement” to “payment,” and specifying that for additional grant funds the amendment submitted must be a “supplemental amendment.”

To better align § 110.50 with 2 CFR part 200, maintain consistency throughout part 110, and provide clarity, PHMSA’s final rule includes several changes to language proposed in the NPRM. PHMSA is revising “grantee” to “recipient,” “project objectives” to “activities,” “award” to “grant” or “agreement,” “competing” to

“competitive,” and “non-competing” to “non-competitive,” as appropriate, to ensure § 110.50 remains consistent with other changes in this final rule. In addition, PHMSA is replacing language in the last sentence of paragraph (a)(1) from “time frame or in any way adversely affect the conduct of the project” to “period of performance” because this terminology is more consistent with 2 CFR part 200. Furthermore, PHMSA is revising “budget period” in paragraph (a)(2) to “period of performance” as they have the same intended meaning and because “period of performance” is defined in 2 CFR part 200.

PHMSA is also revising paragraph (a)(2) by removing the second half of the sentence and removing paragraph (b)(1) because they are duplicative of requirements addressed in 2 CFR part 200. Therefore, instead of redesignating paragraph (c) as paragraph (b)(2) as proposed in the NPRM, in this final rule PHMSA is merging paragraph (c) with the introductory sentence in paragraph (b). Lastly, paragraph (b) is revised to read as “Payments may not be made for activities not approved in the grant agreement” (proposed in the NPRM as “Payment may not be made for a project plan unless approved in the grant award”), because it simplifies the intended meaning of the requirement, and ensures consistency with other changes in this final rule. Though these changes were not proposed in the NPRM, they ensure that the regulations are more consistent with 2 CFR part 200 and therefore, are within the scope of this rulemaking.

Section 110.60

Section 110.60 addresses funding requirements for direct and indirect costs and funds that are acceptable or unacceptable for matching and cost sharing purposes. PHMSA inadvertently did not include this section in the NPRM, although there was a

citation reference to 49 CFR part 18. Because the scope of this rulemaking is to remove and replace the outdated 49 CFR part 18 requirements with 2 CFR part 200 requirements, PHMSA is revising this section without notice and comment as a conforming amendment consistent with similar revisions made within 49 CFR part 110.

Consistent with other changes in the final rule, in the first sentence of paragraph (a), “recipient agency” is revised as “recipient” and “activities covered under the grant award program” is revised as “activities approved in the grant agreement.” These changes ensure clarity, consistency, and reflect current PHMSA Grants Program terminology.

Furthermore, PHMSA notes that most of the cost sharing requirements of § 110.60 are addressed in 2 CFR part 200. In order to ensure that § 110.60 does not impose additional requirements, or requirements that differ from 2 CFR part 200, PHMSA is removing all regulatory text except the revised first sentence of paragraph (a), as that sentence sets out a unique requirement of the HMEP Grant. Because grantees are already subject to the cost sharing requirements of 2 CFR part 200, PHMSA does not believe the removal of this text imposes any new requirements on grantees, and thus does not warrant notice and comment.

Lastly, to maintain consistency with other changes in this final rule, PHMSA is revising the title of the section to “Cost sharing,” from its previous title “Cost sharing for planning and training,” because the HMEP Grant is no longer separated between planning and training.

Section 110.70

Section 110.70 outlines the requirements for a grant recipient to account and manage funds provided in a grant award. Although PHMSA proposed a number of revisions to better align this section with the financial and program management requirements outlined in 2 CFR 200.302, PHMSA has determined that this section does not include any requirements that are not already required of a grantee in 2 CFR part 200. Therefore, to avoid redundancy and ensure consistency with 2 CFR part 200, in this final rule, PHMSA is removing and reserving § 110.70. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.80

Section 110.80 outlines the requirements for grant recipients to use procurement procedures and practices. Although PHMSA proposed amendments in the NPRM to update regulatory requirements and direct grant recipients to 2 CFR part 200 for procurement standards in § 110.80, PHMSA has identified that there were no specific agency procurement standards in this section. Therefore, to avoid redundancy and ensure consistency with 2 CFR part 200, in this final rule, PHMSA is removing and reserving this section. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.90

Section 110.90 outlines grant monitoring, reporting, and record retention requirements for recipients. In the NPRM, PHMSA proposed to make amendments to align with requirements in 2 CFR part 200. However, following publication of the NPRM, PHMSA determined that the proposed language in § 110.90 did not differ from the requirements in 2 CFR part 200. Therefore, for greater consistency and to avoid redundancy, in this final rule, PHMSA is removing and reserving § 110.90. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.100

Section 110.100 outlines requirements for failure to comply with any portion of the grant agreement. In this final rule, PHMSA is revising § 110.100 as proposed in the NPRM, except that PHMSA is not revising the 49 CFR part 18 references to 2 CFR part 200 references. Instead, PHMSA is removing those references because, as outlined in the rulemaking scope (see § 110.5), grantees are subject to all of 2 CFR part 200, and therefore the references are redundant. Furthermore, this change does not remove any regulatory requirements and is consistent with other changes in this final rule. PHMSA noted that references to “grant award” in the NPRM should instead say “grant agreement” to better reflect current requirements and OMB’s Uniform Guidance. Additionally, “recipient agency” is revised to “recipient” to allow more

regulatory flexibility. While these changes were not proposed in the NPRM, they clarify the current regulatory requirements and are within the scope of this rulemaking.

Section 110.110

Section 110.110 outlines requirements for the closure of a grant, including when a grant is considered closed and requirements for report submissions. PHMSA notes that the revised section title “Post-award requirements” more appropriately reflects the requirements of this section, as opposed to the title proposed in the NPRM (“After-grant requirements”).

As proposed in the NPRM, the title of Associate Administrator is revised to reflect current terminology. PHMSA is not making the proposed change to replace the outdated citation of subpart D of 49 CFR part 18 to 2 CFR part 200 because, as identified in the scope of part 110 (see § 110.5), grantees are subject to 2 CFR part 200 requirements and this reference is duplicative. While not proposed in the NPRM, PHMSA is also revising instances of “award” to “grant,” and “project manager” is revised to “recipient,” consistent with other changes in this final rule.

Section 110.120

Section 110.120 outlines how a recipient may request deviation from the non-statutory provisions of part 110. For deviation requests, PHMSA is revising the mailing address to an email address, as proposed in the NPRM. Although not proposed in the NPRM, PHMSA revised “recipient agencies” to “recipient” in this final rule to better align § 110.120 with 2 CFR part 200 and to maintain regulatory consistency. In this final

rule, although not proposed in the NPRM, PHMSA is also removing reference to part 110, as the language was redundant.

Section 110.130

Section 110.130 addresses who is responsible for resolving any disputes. As proposed in the NPRM, the position titles of the PHMSA Hazardous Materials Grants Program staff are updated, with a correction to the title of “Grant Specialist” to “Grant Management Specialist.” Additionally, as proposed in the NPRM, “Administrator, PHMSA” is revised to read as “Associate Administrator.” These regulatory changes reflect current operational titles. If a grantee has further questions regarding who their respective contact is within PHMSA, they may wish to contact the Hazardous Materials Grants Program office at 202-366-1109.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5107, as amended, establishes a competitive program for making grants to nonprofit organizations for conducting national outreach and training programs to assist communities in preparing for and responding to accidents and incidents involving the transportation of hazardous materials, including Class 3

flammable liquids by rail; and training State and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids. Section 5108 permits the Secretary to collect registration fees from people transporting certain quantities of hazardous materials for deposit into an account used to fund the HMEP Grant Program. Section 5116, as amended, authorizes the Secretary to make grants to States and Indian tribes by combining planning and training grants, and to create supplemental training grants to national nonprofit fire service organizations. The Secretary has delegated these authorizations to PHMSA's Administrator (see 49 CFR 1.97(b)). This final rule revises the regulations as they pertain to hazardous materials public sector training and planning grants.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," [58 FR 51735 (Oct. 4, 1993)] and was not reviewed by OMB. This final rule is considered a non-significant rule under the DOT Regulatory Policies and Procedures of February 26, 1979 [44 FR 11034]. This final rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; rather, it revises regulations to comply with the current Federal statute and guidance, as well as PHMSA policies and procedures.

PHMSA evaluated the Hazardous Materials Grants Program regulations and determined that they are outdated and, in part, unnecessarily burdensome. The current regulation citations for grant management are out-of-date and are superseded by

2 CFR part 200. Therefore, PHMSA is updating 49 CFR part 110 to reflect current Federal statute and guidance, as well as PHMSA policies and procedures. This final rule does not generate any quantifiable cost or cost savings, however it does reduce burden on grantee applicants. Specifically, this final rule removes out-of-date citations, revises definitions and other regulations that do not align with current statutory requirements, OMB guidance, or PHMSA policies and procedures. Therefore, these changes will ease potential burden on any stakeholders reviewing and complying with 49 CFR part 110. As no in-scope public comments were received, PHMSA believes that the change in regulatory requirements will not impose undue burden on applicable parties.

C. Executive Order 13771

This final rule is considered an Executive Order 13771 deregulatory action, as explained above.

D. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”) [64 FR 43255 (Aug. 10, 1999)] and the presidential memorandum on “Preemption” [74 FR 24693 (May 22, 2009)]. Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have “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.” This final rule does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law, 49 U.S.C. 5101-5128, contains an express preemption provision [49 U.S.C. 5125(b)] that preempts State, local, and Indian tribal requirements on the following subjects:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and
- (5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule does not address any of these covered subjects.

E. *Executive Order 13175*

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” [65 FR 67249 (Nov. 9, 2000)] which requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing “substantial direct compliance costs” or “substantial direct effects” on such communities or that affect the relationship and distribution of power between the Federal Government and Indian tribes. This final rule does not have such implications, as Tribes are currently subject to the statutory requirements that PHMSA is adopting in the regulations. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply.

F. *Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. There are no costs to small entities associated with this final rule. The amendments herein are to clarify and simplify existing regulations surrounding PHMSA-issued grants and to comply with current statutes. The grant recipients affected by this final rule are States, Territories, and Indian tribes. These entities currently comply with the statutory requirements that PHMSA is incorporating in the regulations; therefore, no burden is

added. Consequently, PHMSA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

PHMSA currently has an approved information collection package under OMB Control Number 2137-0586 titled, “Hazardous Materials Public Sector Training & Planning Grants,” with an expiration date of June 29, 2019. This final rule will not result in an increase in the time spent to apply, maintain, and close out a grant application cycle and therefore, does not necessitate the revision of this information collection package in either the annual burden or cost for changes under part 110.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it was approved by OMB and displays a valid OMB control number. Regulations implementing the Paperwork Reduction Act of 1995 require that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requirements (see Title 5 CFR 1320.8(d)). We received no in-scope comments associated with this rulemaking.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (“Unified Agenda”). The Regulatory Information Service Center publishes the Unified Agenda in the Spring and the Fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. *Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$155 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the object of the rulemaking.

J. *Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of major Federal actions and to prepare a detailed statement on actions that significantly affect the quality of the human environment.

This final rule is procedural in nature and revises the regulations pertaining to the Hazardous Materials Grant Program, which generally supports state and tribal governments in emergency preparedness and hazmat safety training. The regulatory changes in this final rule reflect current Federal statute and guidance, as well as PHMSA's policies and procedures. Therefore, PHMSA has determined that the implementation of the final rule will not have a significant impact on the quality of the human environment.

If PHMSA took no action and opted to not make revisions to reflect current Federal statute and guidance and PHMSA's policies and procedures, PHMSA would not expect a different environmental outcome. However, with no action, PHMSA's grant

program would not get the benefit of a more streamlined and efficient process, which is in place to reduce threats to the human environment from hazmat incidents.

In developing this final rule, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

PHMSA did not receive any adverse comments on the amendments in this final rule from these Federal agencies. In addition, PHMSA did not receive any in-scope public comments regarding the environmental impact of this final rule.

K. *Privacy Act*

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

L. *Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609, “Promoting International Regulatory Cooperation,” [77 FR 26413 (May 4, 2012)] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are

unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. This final rule does not impact international trade.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. This final rule makes revisions to PHMSA Hazardous Materials Grants Program requirements consistent with current Federal statute and guidance, as well as PHMSA policies and procedures; it does not involve use of voluntary consensus standards.

N. Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” [66 FR 28355 (May 22, 2001)] requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy

action.” A “significant energy action” is defined as any action by an agency (normally published in the *Federal Register*) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

PHMSA has evaluated this final rule in accordance with Executive Order 13211 and determined that it will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

List of Subjects

49 CFR part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR part 110

Disaster assistance, Education, Grant programs-environmental protection, Grant programs – Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; Pub. L. 101-410 section 4; Pub. L. 104-121, sections 212-213; Pub. L 104-134, section 31001; Pub. L. 114-74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

2. In § 107.616, revise paragraph (a) to read as follows:

§ 107.616 Payment procedures.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation – Hazardous Materials, P.O. Box 6200-01, Portland, OR 97228-6200, or submit the statement and payment electronically through the Department's e-Commerce Internet site. Access to this service is provided at <https://www.phmsa.dot.gov/hazmat/registration>. A registrant required to file an amended registration statement under § 107.608(c) of this subpart must mail it to the same address or submit it through the same Internet site.

* * * * *

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

3. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.97.

4. Revise § 110.1 to read as follows:

§ 110.1 Purpose.

This part sets forth procedures for grants to States, Territories, and Indian tribes to support emergency planning and training to respond to hazardous materials emergencies, particularly those involving transportation. Grants may also be used to enhance the implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 *et seq.*). For information regarding the Hazardous Materials Instructor Training, Supplemental Public Sector Training, and Community Safety grants, please refer to PHMSA's website at: <https://www.phmsa.dot.gov/>.

5. Revise § 110.5 to read as follows:

§ 110.5 Scope.

(a) This part applies to States, Territories, and Indian tribes and contains the program requirements for public sector grants to support hazardous materials emergency planning and training efforts.

(b) The requirements contained in 2 CFR part 200 "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," apply to grants issued under this part.

(c) Copies of standard forms and OMB circulars referenced in this part are available at <https://www.grants.gov/web/grants/forms.html> or from the Grants Chief, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety

Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue SE, Washington DC 20590-0001.

6. Revise § 110.10 to read as follows:

§ 110.10 Administering the hazardous materials emergency preparedness grants.

This part applies to States, Territories, and Indian tribes.

7. Revise § 110.20 to read as follows:

§ 110.20 Definitions.

Unless defined in this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 2 CFR part 200 with respect to administrative requirements for grants are used as defined therein. Other terms used in this part are defined as follows:

Allowable costs means those costs that are: eligible, reasonable, necessary, and allocable to the activities permitted by the appropriate Federal cost principles, and approved in the grant.

Associate Administrator means the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration or a person designated by the Associate Administrator.

National curriculum means the curriculum required to be developed under 49 U.S.C. 5115 and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in 49 U.S.C. 5115(c).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Public sector employee means an individual employed by a State, political subdivision of a State, Territory, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material, including an individual employed by a State, political subdivision of a State, Territory, or Indian tribe as a firefighter or law enforcement officer and an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, Territory, or Indian tribe.

8. Revise § 110.30 to read as follows:

§ 110.30 Hazardous materials emergency preparedness grant application.

An application must comply with the applicable Notice of Funding Opportunity that will include or reference forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to electronically submit application packages at the OMB designated website. Applications must adhere to the instructions outlined in the Notice of Funding Opportunity and application kit.

9. Revise § 110.40 to read as follows:

§ 110.40 Activities eligible for hazardous materials emergency preparedness grant funding.

Eligible applicants may receive funding for the following activities:

(a) To develop, improve, and implement emergency plans required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises that test the emergency plan. To enhance emergency plans to include hazard analysis, as well as response procedures for emergencies involving transportation of hazardous materials.

(b) To determine commodity flow patterns of hazardous materials within a State, between a State and another State, Territory, or Tribal lands, and develop and maintain a system to keep such information current.

(c) To determine the need for regional hazardous materials emergency response teams.

(d) To assess local response capabilities.

(e) To conduct emergency response drills and exercises associated with emergency preparedness plans.

(f) To provide for technical staff to support the planning effort.

(g) To train public sector employees to respond to hazardous materials transportation accidents and incidents.

(h) To determine the number of public sector employees employed or used by a political subdivision who need the proposed training and to select courses consistent with national consensus standards or the National Curriculum.

(i) To deliver comprehensive preparedness and response training to public sector employees, which may include design and delivery of preparedness and response training to meet specialized needs, and financial assistance for trainees and for the trainers, if appropriate, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility.

(j) To deliver emergency response drills and exercises associated with training, a course of study, and tests and evaluation of emergency preparedness plans.

(k) To pay expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof, a Territory, or an Indian tribe) and activities necessary to monitor such training including, but not limited to examinations, critiques, and instructor evaluations.

(l) To maintain staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.

(m) Additional hazardous materials emergency preparedness activities not otherwise described in this section that the Associate Administrator deems appropriate under the grant agreement.

10. Revise § 110.50 to read as follows:

§ 110.50 Disbursement of grant funds.

(a) *Pre-award costs.* (1) PHMSA expects the recipient to be fully aware that pre-award costs result in borrowing against future support and that such borrowing must not impair the recipient's ability to accomplish the activities in the approved period of performance.

(2) A recipient may, at its own risk, incur pre-award costs to cover costs up to 90 days before the beginning date of the initial period of performance.

(3) The incurrence of pre-award costs in anticipation of a competitive or non-competitive grant imposes no obligation on PHMSA under any circumstances, including in the event of:

- (i) The absence of appropriations;
- (ii) A grant is not subsequently being made; or
- (iii) A grant being made for a lesser amount than the recipient anticipated.

(b) Payments may not be made for activities not approved in the grant agreement.

If a recipient seeks additional grant funds, the supplemental amendment request will be evaluated on the basis of needs, performance, and availability of grant funds. An existing grant is not a commitment of future funding.

11. Revise § 110.60 to read as follows:

§ 110.60 Cost sharing.

The recipient must provide 20 percent of the direct and indirect costs of all activities approved in the grant agreement with non-Federal funds.

12. Remove and reserve §§ 110.70, 110.80, and 110.90.

§§ 110.70, 110.80, and 110.90 [Removed and Reserved]

13. Revise § 110.100 to read as follows:

§ 110.100 Enforcement.

If a recipient fails to comply with any term of the grant agreement, a noncompliance action may be taken. The recipient will have the opportunity to object and provide information and documentation challenging the suspension or termination action. Costs incurred by the recipient during a suspension or after termination of the grant agreement are not allowable unless the Associate Administrator authorizes it in writing. Grant agreements may also be terminated in whole or in part with the consent of the recipient at any agreed upon effective date, or by the recipient upon written notification.

14. Revise § 110.110 to read as follows:

§ 110.110 Post-award requirements.

The Associate Administrator will close out the grant upon determination that all applicable administrative actions and all required work of the grant are complete. The recipient must submit all financial, performance, and other reports required as a condition of the grant within 90 days after the expiration or termination of the grant. This time frame may be extended by the Associate Administrator for cause.

15. Revise § 110.120 to read as follows:

§ 110.120 Deviation from this part.

Recipients may request a deviation from the non-statutory provisions of this part. The Associate Administrator will respond to such requests in writing. If appropriate, the decision will be included in the grant agreement. Request for deviations from this part must be submitted electronically to the Grants Chief at HMEP.Grants@dot.gov.

16. Revise § 110.130 to read as follows:

§ 110.130 Disputes.

Disputes should be resolved at the lowest level possible, beginning with the Grants Management Specialist, the Grants Team Lead, and the Grants Chief. If an agreement cannot be reached, the Associate Administrator will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC on February 8, 2019 under authority delegated in 49 CFR part 1.97.

Howard R. Elliott

Administrator, Pipeline and Hazardous Materials Safety Administration.
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