



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 385**

**[Docket No. FMCSA-2019-0068]**

**RIN 2126-AC28**

**Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FMCSA proposes to amend its Hazardous Materials Safety Permits regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook. The Out-of-Service Criteria provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for roadside inspections. Currently, the regulations reference the April 1, 2018, edition of the handbook. Through this document, FMCSA proposes to incorporate by reference the April 1, 2019, edition.

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

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2019-0068 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 202-493-2251.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001 by telephone at (202) 366-9209 or by e-mail at michael.huntley@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:** This notice of proposed rulemaking (NPRM)

is organized as follows:

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## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2019-0068), indicate the specific section of this document to which each comment applies and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2019-0068, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the

text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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

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

#### Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington DC 20590. Any comments FMCSA receives which

are not specifically designated as CBI will be placed in the public docket for this rulemaking.

**B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2019-0068, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**C. Privacy Act**

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

**D. Advance Notice of Proposed Rulemaking Not Required**

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) if a proposed rule is likely to lead to the promulgation of a major rule, unless the Agency either develops the proposed rule through a negotiated rulemaking process or finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. To be a major rule, a rule must result in or be likely to

result in: (1) “an annual effect on the economy of \$100,000,000 or more;” (2) “a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;” or (3) “significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.” 5 USC 804(2). This proposed rule does not meet the criteria of a major rule because it simply incorporates by reference updates to the 2018 CVSA handbook edition made on April 1, 2019, which, as described below, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. Therefore, this proposed rule is not likely to lead to the promulgation of a major rule and does not require an ANPRM.

## **II. EXECUTIVE SUMMARY**

This rulemaking proposes to update an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b). The provision at § 385.4(b) currently references the April 1, 2018, edition of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” The Out-of-Service Criteria, while not regulations, provide enforcement personnel nationwide, including FMCSA’s State partners, with uniform enforcement tolerances for roadside inspections. In this rulemaking, FMCSA proposes to incorporate by reference the April 1, 2019 edition of the handbook.

Thirteen (13) updates distinguish the April 1, 2019, handbook edition from the 2018 edition. The incorporation by reference of the 2019 edition does not impose new regulatory requirements.

### **III. LEGAL BASIS FOR THE RULEMAKING**

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations to address the congressional mandate on hazardous materials. Those regulations on hazardous materials are the underlying provisions to which the material incorporated by reference discussed in this NPRM is applicable.

### **IV. BACKGROUND**

In 1986, the U.S. Department of Energy (DOE) and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select

radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.” As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the U.S. All highway route controlled quantities of radioactive material shipments entering the U.S. must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the U.S.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403.”

According to 2012-2017 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3.5 million Level I – Level VI roadside inspections were performed annually. Nearly 97 percent of these were Level I,<sup>1</sup> Level II,<sup>2</sup> and Level III<sup>3</sup> inspections. During the same period, an average of 842 Level VI inspections were performed annually, comprising only 0.024 percent of all roadside inspections. On average, out-of-service violations were cited in only 10 Level VI inspections annually (1.19 percent), whereas on average, out-of-service violations were cited in 269,024 Level I inspections (25.3 percent), 266,122 Level II inspections (22.2 percent), and 66,489 Level III inspections (6.2 percent) annually. Based on these statistics, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are clearly among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

## **V. DISCUSSION OF PROPOSED RULEMAKING**

Section 385.4(b)(1), as amended on July 8, 2019, references the April 1, 2018, edition of the CVSA handbook. This rule proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2018, edition date with a reference to the new edition date of April 1, 2019.

The changes made in the 2019 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and

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<sup>1</sup> Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

<sup>2</sup> Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

<sup>3</sup> Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules. Amending § 385.4(b), ensures that the publication is available for interested parties to view at the FMCSA's Washington, DC office and that the publication may be purchased from the CVSA's website address, mail address, and phone.

***April 1, 2019, Changes***

The 2019 edition identifies (1) driver-related violations of the FMCSRs that are so severe as to warrant placing the CMV driver out of service, (2) vehicle equipment-related violations of the FMCSRs that are so severe as to warrant placing the CMV out of service, and (3) unsafe conditions in the transportation of hazardous materials. The purpose of the publication is to provide inspection criteria for Federal and State motor carrier safety enforcement personnel to promote uniform and consistent inspection procedures of CMVs operated in commerce.

Thirteen changes to the 2019 edition of the CVSA handbook distinguish it from the April 1, 2018 edition. The first change amended Part I, Item 4(a) to clarify that a driver operating a CMV without complying with the requirements indicated on a Skill Performance Evaluation (SPE) Certificate shall be declared out of service. Currently, the Out-of-Service Criteria state that a driver will be placed out of service for "No skill performance evaluation in possession, when required." The CVSA Driver-Traffic Enforcement Committee agreed that operating a CMV without complying with the requirements indicated on the SPE (e.g., the driver possesses an SPE requiring a prosthetic limb, but is not using the prosthetic limb while driving) is as serious as not having the SPE in possession when required. Part I, Item 4(a) was amended to read "No

skill performance evaluation in possession, when required, or when operating a commercial motor vehicle without complying with the requirements indicated on the skill performance evaluation.” This clarification is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The second change amended the Out-of-Service Criteria Part II Policy Statement to address a discrepancy between language in CVSA Operational Policy 5 and the Out-of-Service Criteria Part II Policy Statement regarding removing or replacing a CVSA decal. Operational Policy 5 states that any expired CVSA decal shall be removed before a new CVSA decal is affixed. However, prior to the amendment, the Policy Statement in Part II of the Out-of-Service Criteria stated that “a current CVSA decal shall be affixed and no other CVSA decals shall be visible.” As such, the language in the Out-of-Service Criteria allowed an existing decal to be covered up rather than removed, while the language in the Operation Policy does not. CVSA noted that covering up expired decals is problematic because colors can show on the corners and new decals layered on the vehicle can be easily removed. It was determined that removing old decals first is most appropriate, and the Policy Statement in Part II of the Out-of-Service Criteria was amended to reflect the same guidance that is in Operational Policy 5. This amendment will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The third change amended Part II, Item 1(g)(2) to clarify that a vehicle should be placed out of service if any rotor (disc) has a crack in length of more than 75 percent of the friction surface and passes completely through a structural support connecting the rotor friction surfaces. The CVSA Vehicle Committee received information from a

Society of Engineers workgroup indicating that a collapse of the rotor is imminent if there is a crack through the vents, and the vehicle should be placed out of service. Part II, Item 1(g)(2) was amended to clarify that a vehicle should be placed out of service if any rotor (disc) has “a crack in length of more than 75 percent of the friction surface and passes completely through the rotor to the center vent from either side, or completely through a solid rotor, or completely through a structural support connecting the rotor friction surfaces.” A picture was added to clearly outline the condition of the rotor. FMCSA records indicate that no out-of-service violations have been issued regarding brake drums and rotors (discs) as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The fourth change amended the Cargo Securement section of the Out-of-Service Criteria (Part II, Item 2) to add headings to subparagraphs (a) – (f), consistent with the other sections of the Out-of-Service Criteria. The new headings are intended to help with the uniformity of content, as well as to make it easier to distinguish between the different sections of the Out-of-Service Criteria. This amendment is editorial in nature and will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The fifth change amended the Out-of-Service Criteria Tiedown Defect Table by adding language to address a new type of tiedown used in cargo securement applications.

Doleco USA has developed a new cargo and equipment securement tiedown assembly comprised of synthetic chain links of Ultra High Molecular Weight Poly Ethylene (UHMWPE) Dyneema® webbing with specialized hooks and binders. The high-performance webbing is as strong as steel chain link but weighs up to 85 percent less. Due to the unique nature of its synthetic links, the manufacturer also provides product specific hooks/fittings for securing the tiedown ends and a specialized load tensioner for tightening. CVSA developed an Inspection Bulletin outlining the characteristics and use of the Doleco USA textile link system. The Out-of-Service Criteria Tiedown Defect Table was amended, consistent with the information provided in the CVSA Inspection Bulletin, to ensure that an inspector can adequately determine if the tiedown is defective once it is in use. Because of the sensitive nature of the cargo being transported, motor carriers transporting transuranics and highway route controlled quantities of radioactive materials are especially diligent regarding use of tiedowns that do not have any defects, as evidenced by the lack of any out-of-service violations cited for defective tiedowns during inspections conducted between 2012-2017. As such, this amendment is not expected to have any effect on the number of out-of-service violations cited during Level VI inspections.

The sixth change amended Part II, Item 4(b)(3) to clarify that any broken bearing strap on a universal joint of a driveline/driveshaft would constitute the same imminent hazard as a missing, broken, or loose retainer bolt, and a vehicle with this condition should be placed out of service. Part II, Item 4(b)(3) was amended to read “Any missing, broken or loose universal joint bearing cap bolt, bearing strap or retainer bolt,” and a descriptive label was added to the current picture of a universal joint in the Out-of-

Service Criteria to help identify and clarify a bearing strap. FMCSA records indicate that no out-of-service violations have been issued regarding universal joints as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The seventh change amended Part II of the Out-of-Service Criteria to add a new section regarding temporary driver seats. The CVSA Vehicle Committee approved the addition of a new out of service condition for vehicles using any temporary seating for the driver, as opposed to a permanent seat that is secured to the vehicle in a workmanlike manner. Temporary seating includes, but is not limited to, a milk crate, lawn chair, patio chair, folding chair, plastic step-stool, or a cooler. The Out-of-Service Criteria were amended to include a new item, Part II, Item 4. DRIVER’S SEAT, a. Temporary Seating, to read “Any vehicle that has temporary seating for the driver.”<sup>4</sup> A note was also added to this section to provide the list of things that may constitute temporary seating. As noted above, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported. FMCSA believes that it is highly unlikely that the CMVs transporting these sensitive commodities will be equipped with

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<sup>4</sup> This addition results in the renumbering of all the Critical Vehicle Inspection Items in the Out-of-Service Criteria from Driveline/Driveshaft forward.

temporary seating for the driver, and as such, the Agency does not expect the addition of this item to the Out-of-Service Criteria to affect the number of out-of-service violations cited during Level VI inspections.

The eighth change amended the Exhaust Systems section of the Out-of-Service Criteria (Part II, Item 5) to add headings to subparagraphs (a) – (d), consistent with the other sections of the Out-of-Service Criteria. The new headings are intended to help with the uniformity of content, as well as to make it easier to distinguish between the different sections of the Out-of-Service Criteria. This amendment is editorial in nature and will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The ninth change amended Part II, Item 6 to include subsection (5) in the note that was already contained in the Out-of-Service Criteria. The CVSA Passenger Carrier Committee, in consultation with manufacturers, determined that subsection (5) should not pertain to buses having monocoque-style frames. The note to Part II, Item 6 was amended to read “Items (1) and (2) apply to all buses, including those having unitized (monocoque) construction. Items (3), (4) and (5) apply only to buses having a body-on-chassis design, such as most school buses.” As this change applies only to buses, it will not have any effect on the number of out-of-service violations cited during Level VI inspections, which are applicable to carriers transporting transuranics and highway route controlled quantities of radioactive materials.

The tenth change amended Part II, Item 9 to add language to address non-manufactured holes in the drag link of the steering system. Following a recommendation from industry partners, the CVSA Vehicle Committee determined that when a drag link is

sufficiently worn to cause a non-manufactured hole, the link could buckle and lead to the loss of steering control. Based on the above, if a vehicle is found to have a non-manufactured hole in a drag link, the vehicle should be placed out of service, and the Out-of-Service Criteria were amended to add a new subparagraph (3) to Part II, Item 9(h) to read “When a drag link is so worn to cause a non-manufactured hole.” FMCSA records indicate that no out-of-service violations have been issued regarding steering systems as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that this component is well maintained and in safe and proper operating condition at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

The eleventh change amended the title of Part II, Item 15, applicable to buses, motorcoaches, passenger vans, or other passenger-carrying vehicles, to clarify that the seating requirements in subparagraph (c) of that item apply to temporary and aisle seats only. As this change applies only to passenger-carrying vehicles, it will not have any effect on the number of out-of-service violations cited during Level VI inspections, which are applicable to carriers transporting transuranics and highway route controlled quantities of radioactive materials.

The twelfth change amended Part III, Items (1) – (10) to make the formatting of this section consistent with the remainder of the Out-of-Service Criteria, and to remove redundant language related to hazardous and dangerous materials inspection standards.

This amendment is editorial in nature and will not have any effect on the number of out-of-service violations cited during Level VI inspections.

The thirteenth change amended the North American Standard Out-of-Service Criteria and Level VI Inspection Procedures to add a note to Item 30, Trupact II Package Tiedown Assemblies. The CVSA Level VI Inspection Program Committee added a note to address empty packages that may be transported with loaded packages during a Level VI inspection, noting that an empty package (TRUPACT II/HALFPACT) shall be subject to the same tiedown requirements as those applicable to a loaded package when transported and inspected during a Level VI inspection. FMCSA records indicate that no out-of-service violations have been issued regarding securement of packages as a result of a Level VI inspection in the past 3 years, demonstrating that motor carriers transporting transuranics and highway route controlled quantities of radioactive materials ensure that packages are properly secured at all times. The changes are intended to ensure clarity in the presentation of the out-of-service conditions, and are not expected to affect the number of out-of-service violations cited during Level VI inspections.

## **VI. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State and Provincial motor carrier safety enforcement agencies in the United States, Canada and Mexico. The Out-

of-Service Criteria provide uniform enforcement tolerances for roadside inspections conducted in all three countries.

## **VII. SECTION-BY-SECTION ANALYSIS**

### **Section 385.4 Matter incorporated by reference**

Section 385.4(b), as amended on July 8, 2019, references the April 1, 2018, edition of the CVSA handbook. This proposed rule would replace the reference to the April 1, 2018, edition date with a reference to the new edition date of April 1, 2019.

## **VIII. REGULATORY ANALYSES**

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

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). The Office of Management and Budget (OMB) did not, therefore, review this document.

FMCSA also determined that the proposed rule does not warrant formal analysis of costs and benefits under DOT Policies and Procedures for Rulemaking [DOT Order 2100.6 dated December 20, 2018, section 11(e)(1)]. The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2018, edition to the April 1, 2019, edition of CVSA's handbook titled "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." FMCSA reviewed its

MCMIS data on roadside inspections performed from 2012 to 2017 and determined that the handbook updates would not have any effect on the number of out-of-service violations cited during Level VI inspections. Therefore, the impact of a final rule would be de minimis.

**B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs**

E.O. 13771, “Reducing Regulation and Controlling Regulatory Costs,” does not apply to this action because it is not a significant regulatory action, as defined in section 3(f) of E.O. 12866.

**C. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act of 1980 (RFA), Pub. L. 96-354, 94 Stat. 864 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 et seq.), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.<sup>5</sup> In compliance with the RFA, FMCSA evaluated the effects of the proposed rule on small entities. The proposed rule incorporates by reference updates to the 2018 CVSA handbook edition made on April 1, 2019, which, as described above, are largely editorial and provide clarity and guidance to inspectors and motor carriers transporting transuranics. DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities.

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<sup>5</sup> 5 U.S.C. 601.

None of the updates from the 2018 edition imposes new requirements or makes substantive changes to the FMCSRs.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to “prepare and make available an initial regulatory flexibility analysis” that will describe the impact of the proposed rule on small entities (5 U.S.C 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the proposed rule is not expected to impact a substantial number of small entities. The proposed rule is largely editorial and provides guidance to inspectors and motor carriers transporting transuranics in interstate commerce. Accordingly, I hereby certify that if promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities. FMCSA invites comments from anyone who believes there will be a significant impact on small entities from this action.

**D. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **For Further Information Contact** section of this rule.

**E. Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 \$165 million (which is the value equivalent to \$100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. This proposed rule will not result in such an expenditure.

**F. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this proposed rule.

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

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

FMCSA analyzed this proposed rule and determined that it does not have implications for federalism.

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

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

**I. E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules to include an evaluation of their environmental health and safety effects

on children, if the agency has reason to believe that the rule may disproportionately affect children. The Agency determined this proposed rule is not economically significant.

Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could pose an environmental or safety risk that could affect children disproportionately.

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

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

**K. Privacy**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 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. This proposed rule does not require the collection of personally identifiable information or affect the privacy of individuals.

**L. E.O. 12372 (Intergovernmental Review)**

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

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

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is

not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects.

**N. E.O. 13175 (Indian Tribal Governments)**

This proposed 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.

**O. National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies.

FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this proposed rule is discussed in detail in sections V, Discussion of Proposed Rulemaking, and VII, Section by Section Analysis, and is reasonably available at FMCSA and through the CVSA website.

**P. Environment (National Environmental Policy Act)**

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The content in this proposed rule is covered by this CE, there are no extraordinary circumstances present, and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under **ADDRESSES**.

**List of Subjects in 49 CFR Part 385**

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 385, as set forth below:

**PART 385--SAFETY FITNESS PROCEDURES**

1. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113 13901-13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311, 108 Stat. 1673, 1676; Sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

2. Revise § 385.4(b)(1) to read as follows:

**§ 385.4 Matter incorporated by reference.**

\* \* \* \* \*

(b) \* \* \*

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2019, incorporation by reference approved for § 385.415(b).

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Issued under authority delegated in 49 CFR 1.87 on:

Dated: September 19, 2019.

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Raymond P. Martinez,  
Administrator.

[FR Doc. 2019-20905 Filed: 10/1/2019 8:45 am; Publication Date: 10/2/2019]