



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA-2024-0073]

RIN 2126-AC65

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

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes amendments to its Hazardous Materials Safety Permits (HMSPs) regulations to incorporate by reference the updated Commercial Vehicle Safety Alliance (CVSA) handbook containing inspection procedures and Out-of-Service Criteria (OOSC) for inspections of shipments of transuranic waste and highway route-controlled quantities (HRCQs) of radioactive material (RAM). The OOSC provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. Currently, the regulations reference the April 1, 2023, edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2024, edition.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2024-0073 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2024-0073/document>. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at the National Transportation Library, DOT, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-1812. Copies of the material are available as indicated in the “Incorporation by Reference” section of this preamble.

FOR FURTHER INFORMATION CONTACT: David Sutula, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-9209, david.sutula@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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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 (FMCSA-2024-0073), indicate the specific section of this document to which your 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 email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0073/document>, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the 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 the 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 Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0073/document> and choose the document to review. To view comments, click this NPRM, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notice>. The comments are posted without edit and are searchable by the name of the submitter.

II. Executive Summary

This NPRM proposes to update an incorporation by reference found at 49 Code of Federal Regulations (CFR) 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2023, 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 Transuramics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403." The CVSA handbook contains inspection procedures and OOSC for inspections of shipments of transuranic waste and HRCQs of RAM. The OOSC, while not regulations, provide enforcement personnel nationwide, including FMCSA's State partners, with uniform enforcement tolerances for inspections. The material is available, and will continue to be available, for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue SE, Washington, DC 20590 (Attention: Chief, Hazardous Materials Division) at (202) 493-0027. The document may be purchased from the Commercial Vehicle Safety Alliance 99 M Street, SE, Suite 1025, Washington, DC 20003, 202-998-1002, www.cvsa.org.

In this NPRM, FMCSA proposes to incorporate by reference the April 1, 2024, edition of the handbook. This NPRM will discuss all updates to the currently incorporated 2023 edition of the handbook.

Eleven updates distinguish the April 1, 2024, handbook edition from the April 1, 2023, edition. The incorporation by reference of the 2024 edition does not impose new regulatory requirements.

III. Abbreviations

ATIS	Automatic Tire Inflation Systems
CBI	Confidential Business Information
CDL	Commercial Driver's License
CE	Categorical Exclusion
CFR	Code of Federal Regulations
CLP	Commercial Learner's Permit
CVSA	Commercial Vehicle Safety Alliance
DACH	Drug and Alcohol Clearinghouse
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FR	Federal Register
HM	Hazardous Materials
HMSP	Hazardous Materials Safety Permit
HRCQ	Highway Route Controlled Quantity
MCMIS	Motor Carrier Management Information System
OOS	Out-of-Service
OOSC	Out-of-Service Criteria
PBBT	Performance-Based Brake Test
PIA	Privacy Impact Assessment
PTA	Privacy Threshold Assessment
RAM	Radioactive Material
RFA	Regulatory Flexibility Act
TSA	Transportation Security Administration
UMRA	The Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

IV. Legal Basis

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 ("HMSPs"), the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on HMSPs. The FMCSA Administrator has been delegated authority under 49 U.S.C. 113(f) and 49 CFR 1.87(d)(2) to carry out the functions vested in the Secretary of Transportation related to HMSPs. Consistent with

that authority, FMCSA has promulgated regulations under 49 CFR part 385, subpart E to address the congressional mandate on HMSPs. Those regulations are the underlying provisions to which the material incorporated by reference discussed in this notice is applicable.

Congress authorized DOT by statute to promote safe transportation of hazardous materials in interstate commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures for inspections and safety permits for motor vehicles carrying certain hazardous materials. 49 U.S.C. 5105(d); 49 U.S.C. 5109. The purpose of this rule is to incorporate by reference the 2024 edition of the CVSA handbook outlining the OOSC and inspection procedures for commercial highway vehicles transporting RAMs. The provisions within the CVSA handbook are intended to operate holistically in addressing a range of issues necessary to ensure the safe transport of hazardous materials. However, FMCSA recognizes that certain provisions focus on unique topics. Therefore, FMCSA finds that the various provisions within the CVSA handbook would be severable and the remaining provision or provisions within the handbook would continue to operate functionally if any one or more provisions were invalidated and any other provision(s) remained.

V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and HRCQs of RAM. 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 HRCQs of RAM are covered by the U.S. Department of Transportation’s HM Safety Permit rules (June 30, 2004; 69 FR 39350). All HRCQs of RAM must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All HRCQs of RAM shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the United States.

Operational requirements for motor carriers transporting hazardous materials for which a HMSP is required are prescribed by § 385.415. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a HRCQ 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 2020 through 2023 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 2.9 million Level I through Level VI inspections were performed annually. Nearly 96.2 percent of these were Level I,¹ Level II,² and Level III³ inspections. During the same period, an average of 876 Level VI

¹ 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.

² 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.

³ Level III is a driver-only inspection that includes examination of the driver’s credentials and documents.

inspections were performed annually, comprising only 0.03 percent of all inspections. On average, OOS violations were cited in only 5 Level VI inspections annually (0.6 percent), whereas on average, OOS violations were cited in 223,679 Level I inspections (27 percent), 265,132 Level II inspections (27 percent), and 59,179 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2024 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2024 edition of the CVSA handbook to significantly affect the number of OOS violations cited during Level VI inspections.

VI. Discussion of Proposed Rulemaking

Section 385.4(b)(1), as amended on November 8, 2023 (88 FR 77010), references the April 1, 2023, edition of the CVSA handbook. This NPRM proposes to amend § 385.4(b)(1) by replacing the reference to the April 1, 2023, edition date with a reference to the new edition date of April 1, 2024.

The changes made based on the 2024 edition of the handbook are outlined below. It is necessary to update the materials incorporated by reference to ensure motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria referenced in the rules.

In preparing this NPRM, FMCSA obtained clarification from CVSA on various aspects of the 2024 edition of the handbook. FMCSA contacted CVSA on February 28, 2024, regarding why CVSA released a version in February 2024 before the changes were effective. Following this, on March 8, 2024, FMCSA contacted CVSA again to highlight

a minor typographical error in the OOSC handbook. Finally, on April 3, 2024, FMCSA contacted CVSA regarding the change relating to the distinction between vehicles equipped with automatic tire inflation systems (ATIS) and vehicles not equipped with ATIS in the North American Standard OOSC Part II, Item 12(b)(1) and 12(b)(2). CVSA explained how the tires are treated differently. In each instance, CVSA provided clarifying information that aided the Agency with drafting the NPRM. FMCSA has placed a memorandum in the rulemaking docket documenting these communications.

April 1, 2024, Changes

Eleven changes in the 2024 edition of the CVSA handbook distinguish it from the April 1, 2023, edition:

1. Part I, Item 2.b (“Endorsements and Restrictions”), was amended to add a note clarifying the status of a Hazardous Materials (HM) endorsement in cases where a U.S. driver’s Transportation Security Administration (TSA) screening/HM determination is expired, and the driver requires renewal. The HM endorsement threat assessment program is administered by TSA, which conducts security threat assessments for drivers seeking to obtain, renew, or transfer an HM endorsement on a State-issued commercial driver’s license (CDL). A note was added to clarify that if a driver possesses a State-issued CDL and transports HM but fails to renew their HM endorsement, typically required to be renewed every 5 years, the HM endorsement becomes invalid, irrespective of the license’s expiration date. Additionally, the note specifies that a driver will be placed OOS if transporting HM in a quantity necessitating placards. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

2. Part I, Item 4.b (“Medical Certificate”) was amended by removing language in the note regarding the requirement that Class D license-holders in Ontario, Canada provide additional evidence of compliance with medical prerequisites. The

language was removed because a cyclical renewal of driver medical certification is now mandatory and integrated into this class of license. This amendment is applicable only to the enforcement of Canadian regulations and will not have any effect on the number of OOS violations cited during Level VI inspections in the United States.

3. Part I, Item 7.c (“Prohibited from performing safety-sensitive functions”) was amended by adding a new regulation code and a note addressing the use of this new regulation code for drivers prohibited from performing safety-sensitive functions.

FMCSA agrees with CVSA’s determination that the language was needed for instances where drivers are found operating a CMV while in prohibited status in the Drug and Alcohol Clearinghouse (DACH or Clearinghouse) under § 392.15. However, because § 392.15 is presently unavailable in the inspection software, a note was added stating that a citation to § 390.3(e) may be used until November 18, 2024,⁴ prior to the addition of the updated regulatory code into the inspection software and to provide U.S. jurisdictions a means of achieving early compliance with the requirement. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

4. Part I, Item 7.c (“Prohibited from performing safety-sensitive functions”) was also amended by adding language in the applicability table regarding the prohibition against commercial learner’s permit (CLP) holders performing safety-sensitive functions after engaging in prohibited use of drugs or alcohol, until the CLP holder has completed the return to duty requirements established by 49 CFR part 40, subpart O.⁵ CVSA concluded that the table should also refer to CLP holders in the “Current CDL Holder”

⁴ On October 7, 2021, FMCSA published a final rule in the *Federal Register* (86 FR 55718) establishing requirements for State driver’s licensing agencies to access and use information obtained through the DACH, an FMCSA-administered database containing driver-specific controlled substance (drug) and alcohol records. Among other actions, the final rule added a new § 392.15 to prohibit any driver subject to the CMV driving prohibition in § 382.501(a) from operating a CMV. The deadline for States to come into compliance with that requirement is November 18, 2024.

⁵ Similar to the previous change, this is necessary to meet the November 2024 compliance date for the October 2021 DACH final rule.

section. CLP holders were not added to the “Former CDL Holder” section because a former CDL holder would possess a non-CDL license not subject to the Clearinghouse requirements. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

5. Part II, Item 1.a.5.a (“Drum (Cam-Type and Wedge) Air Brakes”) was amended to include language specifying that missing camshaft bushings must be included in the 20 percent brake criterion. The 20 percent criterion relates to the proportion of brakes on a vehicle or combination that are found to be defective during an inspection. Specifically, if 20 percent or more of the total number of brakes on the vehicle are found to be defective, the vehicle is considered OOS. During a roadside inspection, CVSA found a missing camshaft bushing in the drum brake system of a CMV. However, due to the positioning of the camshaft within the spider casting, the brake was not out of adjustment and was still partially operative. Subsequently, FMCSA agrees with CVSA’s determination it was appropriate to include missing camshaft bushings in the 20 percent brake criterion. With this update, CVSA added language clarifying that a brake can be considered defective if it has a missing camshaft bushing. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

6. Part II, Item 1 (“Brake Systems”) was amended by adding language that more clearly identifies which violations are to be included in the 20 percent criterion calculation for defective brakes. Previously, this specification was only found at the end of the list of brake violations. CVSA has added standard language to the side of each criterion as a visual indicator for Items 1.a. (“Defective Brakes”) and 1.b (“Front Steering Axle(s) Brakes”), to facilitate identification of the violations included in the 20 percent criterion. Additionally, language was added at the end of the list of violations to clarify

that the remaining OOS conditions are not part of the 20 percent criterion but are standalone OOS violations. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

7. Part II, Item 1.q (“Performance-Based Brake Test”) was amended by changing the language in the note from “shall” to “may,” providing inspectors discretion regarding retesting the vehicle on an approved Performance-Based Brake Test (PBBT). The previous OOSC noted that, if a PBBT was accessible, the vehicle had to undergo retesting on the PBBT. However, this requirement for a vehicle to return for re-inspection posed a traffic hazard at certain inspection locations, particularly due to the layout of some inspection pull-off locations. While it is still advisable to conduct the retest whenever feasible, there may be circumstances where it cannot be carried out. Changing the language in the note from “shall” to “may” will allow inspector discretion during the vehicle retest, ensuring the safety of the motoring public. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

8. Part II, Item 3.c.1 (“Pintle Hooks: Mounting and Integrity”) and 3.g.1 (“Hitch Systems (Excluding Fifth Wheels and Pintle Hooks): Mounting and Integrity”) were amended by adding language that specifies an OOSC for latches that are not in use and ball hitches that are mismatched with the receiver, respectively. Roadside inspectors encountered a situation where a CMV had a pintle hook disconnected from the trailer, with the full trailer only connected by the safety chains and wedged under the bumper. Additionally, during inspections, ball and coupler type connections were found with mismatched components, such as the wrong size ball or receiver hitch. Adding language to specify the OOSC if latches are not in use and for mismatched ball hitches with the receiver will help cover such occurrences. The changes are intended to ensure clarity in

the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

9. Part II, Item 9.a was amended by changing the title for the part from “When Lights Are Required To Be On” to “When Lights Are Required To Be On (does not include lamps that are not turned on).” The added language is intended to indicate that the absence of activated lights does not constitute an OOS condition. FMCSA agrees with CVSA’s determination that if the lights are operational upon inspection and no mechanical issues are identified with the vehicle, it would be unreasonable to declare the vehicle OOS when operational lights are not turned on. Each State, Province, and Territory has regulatory provisions regarding drivers operating vehicles without activating necessary lights. In such instances, the driver should be cited, and the violation should be recorded as a traffic violation on the inspection report. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

10. Part II, Item 9 (“Lighting Devices (Headlamps, Tail Lamps, Stop Lamps, Turn Signals, and Lamps/Flags on Projecting Loads)”) was amended by adding a note applicable to the entire item, clarifying that required lighting that is operational but outside the scope of the requirements of 393.11/National Safety Code Standard 11B for issues such as height, lens color, or position is considered a violation. However, in such cases, the vehicle should not be placed OOS. FMCSA agrees with CVSA’s determination that adding such a note would clarify the OOSC. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to significantly affect the number of OOS violations cited during Level VI inspections.

11. Part II, Item 12.b (“All Tires Other Than Those Found on the Front Steering Axle(s) of a Power Unit”) was amended by introducing a new section and renumbering the subsequent sections within item 12.b. CVSA believes that with the

increasing prevalence of ATIS the OOSC should distinguish between leaks in the tread area of a tire equipped with ATIS versus a tire without ATIS. Underinflated tires pose a significant risk of tire blowouts due to increased susceptibility to overheating and structural damage. While ATIS help mitigate this risk by continuously monitoring and adjusting tire inflation levels, it is essential to acknowledge that they may not entirely prevent the occurrence of underinflated tires. For ATIS-equipped tires, if, at any point during the inspection, a tire is found to have a noticeable leak that can be heard or felt, which is specific to the tread area, and significant enough that the ATIS cannot maintain inflation pressure greater than 50 percent of the maximum inflation pressure marked on the tire sidewall, the vehicle will be placed OOS. However, if a tire not connected to an operable ATIS has a noticeable leak or is inflated to 50 percent or less of the maximum inflation pressure marked on the tire sidewall, the vehicle will also be placed OOS. Therefore, CVSA added language to the 12.b.1 and 12.b.2 OOSC to distinguish vehicles equipped with and without ATIS. The changes are intended to ensure clarity in the presentation of the OOS conditions and are not expected to significantly affect the number of OOS violations cited during Level VI inspections.

VII. Section-by-Section Analysis

Section 385.4 Matter incorporated by reference

Section 385.4(b)(1), as amended on November 8, 2023, references the April 1, 2023, edition of the CVSA handbook. This NPRM proposes to replace the reference to the April 1, 2023, edition date with a reference to the new edition date of April 1, 2024.

VIII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O.

The proposed rule, if finalized, would update an incorporation by reference from the April 1, 2023, edition to the April 1, 2024, 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 inspections performed from 2020 to 2023 and does not expect the handbook updates to have a significant effect on the number of OOS violations cited during Level VI inspections. Therefore, the proposed rule's impact would be de minimis.

B. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. As this proposed rule is not

likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,⁶ 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 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. None of the updates from the 2024 edition impose new requirements or make substantive changes to the Federal Motor Carrier Safety Regulations.

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 would update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and would incorporate by reference the April 1, 2024, edition of the CVSA handbook. The changes to the 2024 edition of the CVSA handbook from the 2023 edition are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As noted above, FMCSA does not expect the changes made in the 2024 edition of the CVSA handbook to significantly affect the number of OOS violations

⁶ Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

cited during Level VI inspections in the United States. Accordingly, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) 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 \$192 million (which is the

value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

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

G. E.O. 13132 (Federalism)

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

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,⁷ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

⁷ Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

The E-Government Act of 2002,⁸ requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA was adjudicated by DOT's Chief Privacy Officer on March 26, 2024.

I. E.O. 13175 (Indian Tribal Governments)

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

J. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph 6(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The proposed requirements in this rulemaking are covered by this CE.

K. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at

⁸ Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2126-AC65>.

List of Subjects in 49 CFR 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 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901-13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; sec. 350, Pub. L. 107-87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

2. Amend § 385.4 by revising paragraph (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 173.403,” April 1, 2024, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Sue Lawless,

Acting Deputy Administrator.

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