



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 385**

**[Docket No. FMCSA-2025-0104]**

**RIN 2126-AC74**

### **Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits (2025)**

**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, 2024 edition of the handbook. Through this notice, FMCSA proposes to incorporate by reference the April 1, 2025 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-2025-0104 using any of the following methods:

- Federal eRulemaking Portal: Go to <https://www.regulations.gov/docket/FMCSA-2025-0104/document>. Follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building, Ground Floor, Washington, D.C. 20590-0001.
- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., West Building, Ground Floor, Washington, D.C. 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 S.E., Washington, D.C. 20590-0001 between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-4000. 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, S.E., Washington, D.C. 20590-0001, (202) 961-1373, [mcpsv@dot.gov](mailto:mcpsv@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

FMCSA organizes this notice of proposed rulemaking (NPRM) as follows:

- I. Public Participation and Request for Comments
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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-2025-0104), 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-2025-0104/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 S.E., Washington, D.C. 20590-0001 or via email at [brian.g.dahlin@dot.gov](mailto: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-2025-0104/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 S.E., Washington, D.C. 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), FMCSA 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](http://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, 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." 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 for inspection at the FMCSA, Office of Safety, 1200 New Jersey Avenue S.E., Washington, D.C. 20590 (Attention: Chief, Hazardous Materials Division) at (202) 493-0027. The document may be purchased from the Commercial Vehicle Safety Alliance 99 M Street, S.E., Suite 1025, Washington, D.C. 20003, 202-998-1002, [www.cvsa.org](http://www.cvsa.org).

In this NPRM, FMCSA proposes to incorporate by reference the HMSP-related provisions contained in the April 1, 2025 edition of the handbook. This NPRM will discuss all proposed updates to the currently incorporated 2024 edition of the handbook.

Fourteen HMSP-related updates distinguish the April 1, 2025 handbook edition from the April 1, 2024 edition. The incorporation by reference of the 2025 edition does not impose new regulatory requirements.

### **III. ABBREVIATIONS**

ANPRM	Advance notice of proposed rulemaking
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
DOT	Department of Transportation
E.O.	Executive Order
FMCSA	Federal Motor Carrier Safety Administration
FR	Federal Register
HMSP	Hazardous Materials Safety Permit
HRCQ	Highway Route Controlled Quantity
MCMIS	Motor Carrier Management Information System
NPRM	Notice of proposed rulemaking
OOS	Out-of-service
OOSC	Out-of-Service Criteria
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
PSI	Pounds per square inch
PTA	Privacy Threshold Assessment
RAM	Radioactive material
RFA	Regulatory Flexibility Act
TDG	Transportation of Dangerous Goods
TPS	Tractor protection system
TPV	Tractor protection valve
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 HMSPs for motor carriers, the Secretary of Transportation (the Secretary) 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 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 rulemaking is to incorporate by reference the 2025 edition of the CVSA handbook outlining the OOSC and inspection procedures for commercial highway vehicles transporting RAMs.

Unless stated otherwise, FMCSA generally considers provisions that are not inextricably intertwined to be severable, meaning that if any provision in a rulemaking is later held to be invalid, the remainder of the rulemaking is not affected (49 CFR 389.41). The CVSA Handbook being incorporated by reference in this rulemaking contains numerous, unrelated provisions that focus on unique aspects of FMCSA's regulations. Therefore, FMCSA finds that the various provisions of the CVSA Handbook are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of the CVSA Handbook's unique provisions, the remaining provisions should stand.

## **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 2021 through 2024 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 3 million Level I through Level VI inspections were performed annually. Nearly 96 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 1,089 Level VI inspections were performed annually, comprising only 0.04 percent of all inspections. On average, OOS violations were cited in only 6 Level VI inspections annually (0.6 percent), whereas on average, OOS violations were cited in 231,803 Level I inspections (27 percent), 283,872 Level II inspections (27 percent), and 63,114 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 2025 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 2025 edition of the CVSA handbook to affect significantly the number of OOS violations cited during Level VI inspections.

## **VI. DISCUSSION OF THE PROPOSED RULEMAKING**

Section 385.4(b)(1), as amended on August 21, 2024 (89 FR 67560), references the April 1, 2024, edition of the CVSA handbook. This NPRM proposes to amend

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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 or 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.

§ 385.4(b)(1) by replacing the reference to the April 1, 2024, edition date with a reference to the new edition date of April 1, 2025.

The HMSP-related changes made in the 2025 edition of the handbook, and proposed for incorporation by reference herein, 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.

FMCSA spoke with CVSA on April 29, 2025, during the Vehicle Committee meeting, to discuss the use of the term tractor protection valve (TPV). The Federal Motor Carrier Safety Regulations (FMCSR) use the term TPV whereas the inspections guidance from CVSA uses the term trailer supply valve for the same piece of equipment. To ensure consistency between the FMCSR and the CVSA guidance, it was agreed to standardize on the term tractor protection system (TPS) as described in the 2025 edition of the OOSC Handbook. CVSA provided the information needed for FMCSA to proceed with drafting the NPRM. FMCSA has placed a memorandum in the rulemaking docket documenting these communications.

#### *April 1, 2025, Changes*

Fourteen HMSP-related changes in the 2025 edition of the CVSA handbook distinguish it from the April 1, 2024, edition:

1. Part I, Item 3.b.1 (“Commercial Learner’s Permit”) was amended to clarify that an accompanying driver of a commercial learner’s permit (CLP) holder cannot be unauthorized to drive for any reason. This change follows FMCSA’s clarification that the accompanying driver must be a valid CDL holder authorized to operate the vehicle for that trip. Language was added to ensure consistency with the FMCSR. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

2. Part I, Items 2.b and 3.c (“Endorsements and Restrictions”) were updated to provide clarity on the Transportation of Dangerous Goods (TDG) certificate. Specifically, it reflects changes in Canadian TDG regulations, which do not require hazardous materials or dangerous goods classes to be listed on the certificate, though drivers can only transport classes listed if they are present in the certificate. This amendment applies to both CDL and non-CDL drivers, specifically in the enforcement of Canadian regulations. These updates will not impact the number of OOS violations cited during Level VI inspections in the United States.

3. Part I, Item 4.b.3 (“Medical Examiner’s Certificate”) was amended to include both passenger-carrying and property-carrying vehicles. Part I, Item 4.b.4 was removed, as its language was incorporated into the revised 4.b.3. The change ensures consistency with the OOSC’s emphasis on imminent hazards and clarifies that operating without a medical examiner’s certificate, Form MCSA-5876, is an imminent hazard. The updates are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect significantly the number of OOS violations cited during Level VI inspections.

4. Part II, Items 1.a.7.h (“Defective Brakes”) and 9 (“Lighting Devices (Headlamps, Tail Lamps, Stop Lamps, Turn Signals, and Lamps/Flags on Projecting Loads)”) were amended to include an OOS condition for inoperative brakes due to an unplugged electrical cable. Previously, electric trailer brakes that were non-functional due to a disconnected electrical line could result in multiple violations, with each inoperative brake being cited separately. This amendment ensures that only a single OOS violation is recorded for this condition, aligning the treatment of inoperative electric brakes with that of inoperative lamps on the rear of a trailer due to an unplugged electrical connection. In addition, a note was added instructing inspectors to reference both the “Lighting Devices” and “Brakes” sections to ensure all relevant conditions are properly considered.

The updates are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect significantly the number of OOS violations cited during Level VI inspections.

5. Part II, Item 1.h.7 (“Air Brake Hose/Tubing”) was amended to include an OOS condition for inoperative brakes due to a disconnected service gladhand. Previously, a trailer with non-functional air brakes caused by a disconnected service gladhand could result in multiple violations, with each inoperative brake being cited separately. This amendment ensures that only a single OOS violation is recorded for this condition, aligning it with the treatment of inoperative lamps on the rear of a trailer due to an unplugged electrical connection. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

6. Part II, Item 1.h.5 (“Air Brake Hose/Tubing”) was amended to remove the OOS condition for crimped air hoses and tubing that restrict airflow. During roadside inspections, it is challenging for inspectors to determine whether an air hose or tube restriction is severe enough to warrant an OOS violation. Industry discussions revealed that a crimped air hose or tube primarily impacts brake release rather than brake application. CVSA determined that if a brake fails to apply or release entirely, other detectable violations would likely result in an OOS determination. While a kinked or crimped air hose or tube remains a violation requiring repair before the next dispatch, the subjectivity of the previous language led to its removal from the OOS. This update makes the OOS conditions more objective and ensures that enforcement focuses on clearly unsafe conditions rather than subjective assessments of crimp severity. The change is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

7. Part II, Item 1.h (“Air Brake Hose/Tubing”) and Item 1.o.3 (“Hydraulic Brakes”) were amended to include language specifying that brake hoses or lines marked for applications other than brake systems constitute an OOS violation. During a roadside inspection, a fuel line was found in an air brake system, clearly marked as a fuel line. As a result, FMCSA concurs with CVSA’s decision that a fuel line found in any brake system, such as air or hydraulic brakes, will now be subject to an OOS violation. The updates are intended to ensure clarity in the presentation of the OOS conditions and are not expected to affect significantly the number of OOS violations cited during Level VI inspections.

8. Part II, Item 1.I (“Tractor Protection System”) was amended to clarify that a vehicle will be declared OOS if the TPS fails to close automatically before pressure drops below 20 pounds per square inch (psi) in both the primary and secondary air systems, rather than either system. In a dual-circuit brake system, air is supplied to the TPS by a two-way check valve that is connected to both the primary and secondary circuits. The two-way check valve only takes air from the highest-pressure circuit, which prevents loss of air from a failed circuit. This will allow the TPS to close automatically in the event of a significant drop in air pressure in one of the circuits. This automatic closure mechanism activates when the air pressure in both circuits falls between 20 and 45 psi. This design helps prevent a large amount of air from escaping the towing vehicle’s air brake system, which could otherwise lead to a dangerous reduction in braking power. However, if the air pressure reaches 20 psi and the TPS has not automatically closed, it likely indicates that both circuits have failed to supply air. This condition would compromise the trailer’s ability to engage the parking or emergency brakes. It is important to note that this section was initially developed when single-circuit systems were common, and as such, the evolution and widespread adoption of dual-circuit systems were not fully reflected in the original language. The amendment addresses this gap by incorporating the operational

characteristics of modern dual-circuit systems, providing clearer guidance on when the TPS should automatically close. The clarification stems from discussions with brake manufacturers regarding the overall functionality of single and dual-circuit brake systems. Therefore, FMCSA agrees it is appropriate that the vehicle will be declared OOS if the TPS fails to close automatically before pressure drops below 20 psi in both the primary and secondary air systems. The update is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

9. Part II, Item 2.a (“Cargo Securement”) was amended to clarify that violations for loose dunnage, vehicle components, and similar items are considered vehicle OOS conditions. The inspectors believed that the driver was OOS when cargo, load components, spare tires, dunnage, or other unsecured items fell onto the roadway. However, CVSA clarifies that the intention of the OOS criteria is specific to the vehicle and would not affect driver status. The driver would be placed OOS based on driver-specific violations. As such, language was added to specify that the vehicle will be declared OOS which will help clarify this OOS condition. The update is intended to ensure clarity in the presentation of the OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

10. Part II, Item 9.b (“Lamps on Projecting Loads”) was amended to add a section specifically addressing projecting load lamps. This change is necessary due to a previous update (89 FR 36742) to this section regarding lamps required to be on during specific times of the day. The previous update aimed to clarify situations where drivers may have lights turned off on the power unit. Unlike headlamps or tail lamps, projecting load lamps operate differently and may not have a traditional on/off switch, requiring them to be addressed separately. Therefore, an OOS condition was added to address this unique scenario. The update is intended to ensure clarity in the presentation of the OOS

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

11. Part II, Item 11.a.1 (“Axle Parts/Members”) was amended to clarify that a U-bolt bottom plate is part of the U-bolt assembly and should be considered an OOS condition if cracked or broken. This clarification addresses potential confusion during inspections by explicitly including the bottom plate as a critical component of the U-bolt assembly. The update is intended to ensure consistency in the identification of OOS conditions and is not expected to affect significantly the number of OOS violations cited during Level VI inspections.

12. Part II, Items 12.b.1 and 12.b.3 (“All Tires Other Than Those Found on the Front Steering Axle(s) of a Power Unit”) were amended to address leaks in tires with and without automatic tire inflation systems (ATIS). Previously, a tire without an ATIS was considered OOS if it had a noticeable leak that could be heard or felt, or if it had 50 percent or less of the maximum inflation pressure marked on the tire sidewall. Item 12.b.1 has now been revised to specify that the tread area is the relevant location for identifying a noticeable leak on tires without an ATIS. Item 12.b.2 remains unchanged and continues to address leaks in the tread area of tires equipped with an ATIS. In addition, the original language of Item 12.b.3 has been relocated to Item 12.b.4. New language has been introduced in Item 12.b.3 to state explicitly that any tire with a leak in the sidewall, regardless of ATIS presence, is an OOS condition. The updates are intended to ensure consistency in the application of OOS conditions and are not expected to affect significantly the number of OOS violations cited during Level VI inspections.

13. Part II, Item 12.a.8 and 12.b.4 (“Any Tire on Any Front Steering Axle(s) of a Power Unit”) were amended to add a note clarifying that if only the rubber portion of a mudflap is contacting a tire, it should not be considered an OOS condition. This clarification aims to prevent misinterpretation during inspections and ensures that minor

rubber contact does not incorrectly result in an OOS violation. Due to the revised language introduced in Item 12.b.3, discussed above, and the relocation of the original 12.b.3 content to 12.b.4, as noted in the previous change, the existing Item 12.b.4 has been renumbered as 12.b.5. The updates are intended to ensure consistency in the application of OOS conditions and are not expected to affect significantly the number of OOS violations cited during Level VI inspections.

14. Part II, Items 12.b.7, 12.b.8, 12.b.9, and 12.b.10 (“All Tires Other Than Those Found on the Front Steering Axle(s) of a Power Unit”) were amended to remove the distinction between radial and bias tires. Previously, the criteria for OOS conditions were separated by tire type, radial tires and bias tires, despite being identical in nature. This separation caused confusion due to the differing item numbers and slightly varied wording. CVSA has removed the radial and bias tire language and clarified that the OOS condition applies to all tires, regardless of construction type. With the reorganization resulting from the new language introduced in the preceding changes, these items have now been shortened and simplified into two consolidated items: 12.b.8 and 12.b.9. This consolidation simplifies and clarifies the confusion and makes it easier to apply the OOS criteria consistently. The updates are intended to ensure consistency in the application of OOS conditions and are not expected to affect significantly 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 August 21, 2024, references the April 1, 2024, edition of the CVSA handbook. This NPRM proposes to replace the reference to the April 1, 2024, edition of the CVSA handbook with a reference to the new edition date of April 1, 2025.

## **REGULATORY ANALYSES**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and 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), as amended, 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. 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, 2024, edition to the April 1, 2025, 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 2021 to 2024 and does not expect the HMSP-related 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. E.O. 14192 (Unleashing Prosperity Through Deregulation)**

This rulemaking is not a significant regulatory action as defined in Section 3(f) of E.O. 12866 or in section 11 of DOT Order 2100.6B, and therefore does not meet the significance criterion for being an E.O. 14192 regulatory action. Consequently, this rulemaking is not an E.O. 14192 regulatory action and no further action under E.O. 14192 is required.

### 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,<sup>4</sup> 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 for any rule subject to notice-and-comment rulemaking under the Administrative Procedure Act unless the agency head certifies that the rule will not have a significant economic impact on a substantial number of small entities. 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 HMSP-related updates from the 2025 edition impose new requirements or make substantive changes to the Federal Motor Carrier Safety Regulations.

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 49 CFR 385.4(b)(1) and 49 CFR 385.415(b), and would incorporate by reference the April 1, 2025, edition of the CVSA handbook. The changes to the 2025 edition of the CVSA handbook from the 2024 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 2025 edition of the CVSA handbook to affect significantly the number of OOS violations cited during Level VI inspections in the

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<sup>4</sup> Pub. L. No. 104–121, 110 Stat. 857, (Mar. 29, 1996).

United States. Accordingly, FMCSA certifies 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. No. 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 \$206 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2024 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, FMCSA discusses the effects of this rulemaking 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 rulemaking 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 rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

**H. Privacy**

The Consolidated Appropriations Act, 2005,<sup>5</sup> requires agencies 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 (PII).

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.

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<sup>5</sup> Pub. L. No. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

The E-Government Act of 2002,<sup>6</sup> 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 rulemaking. Accordingly, FMCSA has not conducted a PIA.

FMCSA will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing PII. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

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

This rulemaking 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 DOT Order 5610.1D, section 29. 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 rulemaking can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at

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<sup>6</sup> Pub. L. No. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

AC74.

**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. No. 103-311, 108 Stat. 1673, 1676; sec. 408, Pub. L. No. 104-88, 109 Stat. 803, 958; sec. 350, Pub. L. No. 107-87, 115 Stat. 833, 864; sec. 5205, Pub. L. No. 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 Part 173.403,” April 1, 2025, incorporation by reference approved for § 385.415(b).

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Issued under authority delegated in 49 CFR § 1.87.

**Derek Barrs,**  
*Administrator.*

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