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Marlene Dortch,
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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: Final rule.

SUMMARY: FMCSA amends 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 final rule, FMCSA incorporates by reference the April 1, 2024, edition.

DATES: Effective September 20, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of September 20, 2024.

Petitions for reconsideration of this final rule must be submitted to the FMCSA Administrator no later than September 20, 2024.

FOR FURTHER INFORMATION CONTACT: David Sutula, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–9209, MCPSV@dot.gov.

SUPPLEMENTARY INFORMATION: FMCSA organizes this final rule as follows:

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I. Availability of Rulemaking 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 final rule, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations at U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Executive Summary

This final rule updates 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 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,

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.

Eleven updates distinguish the April 1, 2024, handbook edition from the April 1, 2023, edition. The updates are all described in detail in the May 3, 2024, notice of proposed rulemaking (NPRM) for this rule (89 FR 36742). The incorporation by reference of the 2024 edition does not impose new regulatory requirements.

III. Abbreviations

CE Categorical Exclusion
 CFR Code of Federal Regulations
 CVSA Commercial Vehicle Safety Alliance
 DOT Department of Transportation
 FMCSA Federal Motor Carrier Safety Administration
 FR Federal Register
 HMSP Hazardous Materials Safety Permit
 HRCQ Highway Route Controlled Quantity
 NPRM Notice of Proposed Rulemaking
 OOS Out-of-Service
 OOSC Out-of-Service Criteria
 PIA Privacy Impact Assessment
 PTA Privacy Threshold Assessment
 RAM Radioactive Material
 RFA Regulatory Flexibility Act
 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 United States Code (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 rule 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. Discussion of Proposed Rulemaking and Comments

A. Proposed Rulemaking

FMCSA published an NPRM on May 3, 2024 (89 FR 36742). Because the incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b) references the outdated April 1, 2023, edition of CVSA's "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 NPRM proposed to incorporate by reference the current April 1, 2024, edition. Eleven updates distinguish the April 1, 2024, edition from the 2023 edition. Each of the changes was described and discussed in detail in the NPRM. Generally, the changes serve to clarify or provide additional guidance to inspectors regarding uniform implementation and application of the OOSC, and none is expected to affect the number of OOS violations cited during Level VI inspections. The incorporation by reference of the 2024 edition does not change what constitutes a violation of FMCSA regulations.

B. Comments and Responses

FMCSA solicited comments concerning the NPRM for 30 days ending June 3, 2024. No comments were submitted.

C. Final Rule

As FMCSA received no comments on the NPRM, the Agency finalizes the incorporation by reference of the April 1, 2024, edition of the CVSA handbook without modification.

VI. 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 final rule replaces the reference to the April 1, 2023, edition date with a reference to the new edition date of April 1, 2024.

VII. 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 final rule 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 final rule 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.

This final rule will 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 Motor Carrier Management Information System (MCMIS) data on inspections performed from 2020 to 2023 and does not expect the handbook updates to have any effect on the number of OOS violations cited during Level VI inspections. Therefore, the final rule's impact will be de minimis.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).¹

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 1996,² 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 final rule, the RFA requires the Agency to "prepare and make available an initial regulatory flexibility analysis" that will describe the impact of the final 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 final rule is not expected to impact a substantial number of small entities. The final rule will update an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and will 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 affect the number of OOS violations cited during Level VI inspections in the United States. Accordingly, I certify that the proposed

¹ A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) 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 U.S.C. 802(4)).

² Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

action will 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 final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **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 \$200 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. Though this final rule will 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 final 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 final rule will 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 final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,³ requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This final rule will 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.

The E-Government Act of 2002,⁴ 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 will 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 final 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 final 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 rule are covered by this CE.

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 amends 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 part 173.403,” April 1, 2024; incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Vincent G. White,
Acting Administrator.

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³ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

⁴ Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).