



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 385

[Docket No. FMCSA-FMCSA-2015-0075]

RIN 2126-AB78

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

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

ACTION: Final rule.

SUMMARY: FMCSA amends its Hazardous Materials Safety Permits rules to update the current incorporation by reference of 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.” Currently the rules reference the April 1, 2014, edition of the out-of-service criteria and, through this final rule, FMCSA incorporates the April 1, 2015, edition.

DATES: Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Huntley, Federal Motor Carrier Safety Administration, Office of Policy, 1200 New Jersey Avenue SE.,

Washington, DC 20590-0001, by telephone at (202) 366-9209 or via email michael.huntley@dot.gov. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing the docket, contact Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This rulemaking updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b)(1). The rules currently reference the April 1, 2014, edition of “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.” In this final rule, FMCSA incorporates the April 1, 2015, edition. The revision does not impose new requirements or substantively amend the Code of Federal Regulations.

II. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to improve the safety of hazardous materials transported in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(e), relating to inspections of motor vehicles carrying hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, it has required the Secretary of the Department of Transportation to promulgate regulations as part of a comprehensive safety program on hazardous material safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87 to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that

authority, FMCSA has promulgated regulations to address the congressional mandate. Such regulations on hazardous materials are the underlying provisions that have utilized the material incorporated by reference discussed in this notice.

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that adherence to its notice and public comment rulemaking procedures are not required where the Agency finds there is good cause to dispense with such procedures (and incorporates the finding and a brief statement of reasons to support the finding in the rules issued). Generally, good cause exists where the Agency determines that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553 (b)(3)(B)). This document updates an incorporation by reference found at 49 CFR 385.4 and referenced at 49 CFR 385.415(b)(1). The revision does not impose new requirements or substantively change the Code of Federal Regulations. For these reasons, the FMCSA finds good cause that notice and public comment procedures are unnecessary.

III. Background

Currently, 49 CFR 385.415 prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b)(1) requires that motor carriers must ensure a pre-trip inspection be performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of 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.” With regard to the specific edition of the out-of-service criteria, 49 CFR 385.4, as amended on May 15, 2014 (79 FR 27766), references the April 1, 2014, edition. Specifically, this final rule amends § 385.4 (b) by replacing the reference to the April 1, 2014, edition date with the new edition date of April 1, 2015.

FMCSA reviewed the April 1, 2015, edition and determined there are no substantive changes that would result in motor carriers being subjected to a new or amended standard. The changes are highlighted below for reference. It is necessary to update the reference to ensure that motor carriers and enforcement officials have convenient access to the correctly identified inspection criteria that are referenced in the rules.

There are eight changes made in the 2015 edition. Additional conforming changes have been made to the table of contents, but those are not included in this summary. (All references are to the April 1, 2015 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 first change is to create consistency in the language used between commercial driver’s license (CDL) and non-CDL drivers, when being taken out of service. (Part I, item 2.a.(1)) It does not change the criteria used to take drivers out of service, therefore this is not a substantive change. The second change is to align the standard with FMCSA’s regulation governing operation of a vehicle while fatigued, found at 49 CFR 392.3. (Part

I, Item 6.) Again, this change does not alter the criteria an inspector would use to take a driver out of service and as such does not rise to a substantive change.

The third change removes Part I, Item 7, which addresses communication. The 2014 edition included an item covering the responsibility of the driver and motor carrier to ensure adequate communication in Canada, Mexico, and the United States (the three countries covered by the standard). However, because the FMCSRs only require drivers in the United States to be able to communicate in English for basic purposes (converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records), there should be no additional burden placed on drivers in the United States as a result of the change in the 2015 standard. As a result, removing this item will not have a substantive impact on drivers.

The fourth, fifth and sixth changes amend Part II, Item 1. (BRAKE SYSTEMS). The language for the out-of-service condition for Defective Brakes and Front Steering Axle(s) Brakes was modified to add loose and missing caliper mounting bolts to the 20% calculation for determining OOSC for hydraulic brakes. Its omission was an oversight when the criterion for brakes was rewritten; FMCSA views this change as nonsubstantive. (Part II, Item 1.a. & b.) An amendment to the language for the application of OOSC for worn hoses clarifies that this section is intended for air brake hoses only, and as such is not a substantive change. (Part II, Item 1.h.) Also, the amendment to the OOSC addresses the improper repair of hydraulic brake lines by means of placing a piece of tubing over the metal tubing and attaching with hose clamps. As this

method of repair is not permitted under the FMCSRs, this change will not have a substantive impact. (Part II, Item 1.o.)

The seventh change revises wording that was causing confusion in Part II, Item 3. (COUPLING). The current language causes confusion and gives the impression that the entire fifth wheel is not being taken into consideration. The new OOSC language clarifies how to measure cracks in parent metal, how to determine the 20% weld cracks, and defines a “well defined (especially open) crack” as well as a crack in a repair weld. This revision is a clarification and not a substantive change. (Part II, Item 3.a. & b.)

The final change adds a paragraph (c) to Part II, Item 15. This new paragraph explicitly calls out the practice of using loose or temporary seating. As the practice is already prohibited under the FMCSRs (see 49 CFR 393.91, 390.33), the additional language does not alter the criteria an inspector would use to take a driver out of service and as such does not rise to a substantive change. (Part II, Item 15.c.)

IV. Regulatory Analyses

Regulatory Planning and Review (Executive Order (E.O.) 12866) and DOT

Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). FMCSA expects the final rule will have no costs; therefore, a full regulatory evaluation is unnecessary. The Office of Management and Budget (OMB) did not, therefore, review this document.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

Assistance for Small Entities

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

Unfunded Mandates Reform Act of 1995

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$151 million (which is the 2012 inflation-adjusted value of the 1995 threshold of \$100 million) or more in any 1 year.

Federalism (E.O. 13132)

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on States or localities. FMCSA

analyzed this rule under that Order and has determined that it does not have implications for federalism.

Civil Justice Reform (E.O. 12988)

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

Protection of Children (E.O. 13045)

FMCSA analyzed this action under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined that this final rule will not create an environmental risk to health or safety that may disproportionately affect children. In addition, it is not an economically significant rule, and no such analysis is therefore required.

Taking of Private Property (E.O. 12630)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII).

Intergovernmental Review (E.O. 12372)

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

Paperwork Reduction Act

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

National Environmental Policy and Clean Air Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680). This final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor revisions such as found in this rulemaking; therefore preparation of an environmental assessment or environmental impact statement is not necessary.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it will have no effect on air emissions.

Environmental Justice (E.O. 12898)

FMCSA evaluated the environmental effects of this final rule in accordance with E.O. 12898 and determined that there are no environmental justice issues associated with

its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a “disproportionate” and “high and adverse impact” on minority or low-income populations. FMCSA analyzed this action under NEPA and found the action to be categorically excluded from analysis due to the lack of impact to the environment. This final rule simply updates an incorporation by reference and would not result in high and adverse environmental impacts.

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

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a “significant energy action” under that E.O. because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under E.O. 13211.

Indian Tribal Governments (E.O. 13175)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

National Technology Transfer and Advancement Act (Technical Standards) and 1 CFR Part 51

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider

whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt its own technical standards, there is no need to submit a separate statement to OMB on this matter. The standard incorporated by reference is discussed in detail in section III. Background and is reasonably available through the CSVA website.

E-Government Act of 2002

The E-Government Act of 2002, Pub. L. 107-347, section 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment 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 privacy impact assessment.

List of Subjects in 49 CFR Part 385

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

In consideration of the foregoing, FMCSA is amending 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(e), 5109, 13901-13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88; Sec. 350 of Pub. L. 107-87; and 49 CFR 1.87.

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

§ 385.4 Matter incorporated by reference.

* * * * *

(b) * * *

(1) “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,” April 1, 2015; incorporation by reference approved for § 385.415(b).

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Issued under the authority of delegation in 49 CFR 1.87 on: June 5, 2015.

T. F. Scott Darling, III,
Chief Counsel.

[FR Doc. 2015-14961 Filed: 6/17/2015 08:45 am; Publication Date: 6/18/2015]