



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 385**

**[Docket No.FMCSA-2016-0120]**

**RIN 2126-AB92**

**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 Commercial Vehicle Safety Alliance's (CVSA) "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, 2015, edition of the out-of-service criteria and, through this final rule, FMCSA incorporates the April 1, 2016, 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. Rulemaking Documents**

#### *A. Availability of Rulemaking Documents*

For access to docket FMCSA-2016-0120 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### *B. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT although this action adopts a final rule and, thus, comments are not solicited, DOT accepts comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

### **II. 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, 2015, 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, 2016, edition.

Ten actions were completed to update the 2016 edition of the handbook and distinguish it from the previous edition of the handbook. The revision does not impose new requirements or substantively amend the Code of Federal Regulations.

### **III. 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(d), relating to inspections of motor vehicles carrying hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of the Department of Transportation is required 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). As discussed in detail below, this 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.

#### **IV. 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 June 18, 2015 (80 FR 34839), references the April 1, 2015, edition. This final rule amends § 385.4(b) by replacing the reference to the April 1, 2015, edition date with the new edition date of April 1, 2016.

FMCSA has reviewed the April 1, 2016, 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 outlined 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 were ten actions taken to update the 2016 edition that distinguish it from the previous edition of the handbook. 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, 2016, 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 action addresses consistency with 49 CFR 383.25, the out-of-service condition that prohibits drivers from holding a commercial driver's learner's permit (CLP) and transporting passengers. (Part I, Item 3.b.) This action updates the language used in the criteria to align with the regulatory language and is not a substantive change. The second and third actions modified the language regarding medical certificates and how to handle Canadian Class 5 or G licenses. These updates occur in Part I, Item 4 (Driver Medical/Physical Requirements). Part I, Item 4.b.(3) is necessary due to recent changes in FMCSA policy regarding the verification of a valid medical certificate. And, the note that clarifies how to handle the discrepancy when applying Canadian and U.S. driver medical requirements was amended in section 4.b., to require Canadian drivers operating a commercial motor vehicle within the United States with a valid Class 5 or G license to provide evidence of compliance with medical requirements. FMCSA views these changes as non-substantive, as they are already found in the relevant U.S. or Canadian regulations.

The fourth action in Part II, Item 2 (Cargo Securement, Tiedown Defect Table) involves an adjustment made to the table that would eliminate the possibility of an inspector declaring a vehicle out-of-service for a defect-only violation instead of an out-of-service condition. The Agency does not consider this a substantive change.

The fifth action adds language to (Driveline/Driveshaft) specifically, Part II, Item 4.b. which indicates that a missing bearing cap retainer clip is a condition for placing a vehicle out-of-service. This addition is not considered substantive, as it acknowledges that light duty vehicles may use retainer clips as opposed to bolts to secure the bearing cap. Because a missing bolt had previously been determined to be an out-of-service condition, it was determined that a missing bearing cap retainer clip should similarly be considered an out-of-service condition. Modification of language in Part II, Item 7 (Fuel Systems) is the sixth action taken to address the criteria and it consolidates and clarifies the section on the measurement of gaseous fuels. Again, this change is not considered substantive as it clarifies, based on consultation and input from industry experts, that a leak measured to be below 5,000 parts per million is not an imminent hazard and, therefore, not an out-of-service condition.

The seventh action, Part II (Lighting Devices), Item 8 involves the creation of new out-of-service criteria that resolves situations where a trailer light cord is either left unplugged, had become unplugged in transit, or there was a defect in the cord or connector that causes all or many of the trailer lamps to become inoperative. It was determined that in these situations, a single out-of-service condition would be recorded rather than multiple out-of-service conditions listed for the single defect, the cord or

connector. Because inoperable lamps on the rear of trailers are already an out-of-service condition, this is not a substantive change.

In the eighth action, language was amended to the out-of-service criteria from Part II, Item 9.f. Steering Mechanisms that would quantify how loose a power assist cylinder must be in order to warrant placing the CMV out-of-service. The revision clarifies the existing language and is not a substantive change.

The ninth action required in Part II, Item 10.b. Suspensions adds a clarifying note and reference to an existing operational policy that explains what a secondary air bag is. FMCSA does not consider this to be a substantive change.

The final action establishes a new out-of-service condition for debris between tires in a dual set. This is not considered to be a substantive change, as the change was established to account for the infrequent event in which a solid object can become a projectile and impact a trailing vehicle when dislodged from between the tires of a dual tire set. In reality, these solid objects, when noticed, will be remedied on the spot with an inspector, so the likelihood of an ensuing out-of-service order is very low.

## **V. Regulatory Analyses**

### **E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of

potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) did not, therefore, review this document.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.<sup>1</sup>

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the legal basis section, this action is not subject to notice and comment under section 553(b) of the Administrative Procedure Act.

### **Assistance for Small Entities**

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

**For Further Information Contact** section of this rule.

### **Unfunded Mandates Reform Act of 1995**

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<sup>1</sup> Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at <http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html>

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, 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 \$155 million (which is the value equivalent to \$100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any one year. This final rule will not result in such an expenditure.

### **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.

### **E.O. 13132 Federalism**

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

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

### **E.O. 12988 Civil Justice Reform**

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

### **E.O. 13045 Protection of Children**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing “economically significant” rules, to include an evaluation of their environmental health and safety effects on children, if the agency has reason to believe that the rule may disproportionately affect children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could pose an environmental or safety risk that could disproportionately affect children.

#### **E.O. 12630 Taking of Private Property**

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

#### **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) or affect the privacy of individuals.

#### **E.O. 12372 Intergovernmental Review**

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

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

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

**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 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)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this final rule is discussed in detail in section IV, Background, and

is reasonably available through the CVSA website.

**Environment (NEPA, CAA, Environmental Justice)**

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(b). This Categorical Exclusion (CE) covers minor revisions to regulations. The content in this rule is covered by this CE and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

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 does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA has determined that this rule has no environmental justice implications, nor does its promulgation cause any collective environmental impact.

## 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 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 13901-13905, 31133, 31135, 31136, 31137, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88 109 Stat. 803, 958 Sec. 350 of Pub. L. 107-87; and 49 CFR 1.87.

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

#### **§ 385.4 Matter incorporated by reference.**

\* \* \* \* \*

(b) “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, 2016; incorporation by reference approved for § 385.415(b).

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Issued under authority delegated in 49 CFR 1.87 on: June 10, 2016

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T. F. Scott Darling, III,  
Acting Administrator.

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