

\$81.11 million decrease in LAE payments to WYO companies in FY 2018.

### C. Methodology Based on Invoices

In a third possible methodology, FEMA would pay WYO companies on a direct, invoice-supported, dollar-for-dollar reimbursement basis, similar to how FEMA currently pays for SALAE. This approach would be based on the actual expenditures of WYO companies and would allow FEMA to collect detailed expenditure data. This would give FEMA more monitoring and control over WYO expenditures while ensuring that payments directly reflect an individual WYO company's incurred expenses. It would also avoid the consequences associated with the year-to-year variability of expenses discussed above. However, this approach would likely create significant administrative burdens for the NFIP and WYO companies. FEMA employs several legal and program staff members in order to oversee current SALAE reimbursements, and an expansion of direct reimbursements to cover all loss adjustment expenses would entail expanded cost burdens, given the volume of losses and the number of claims against which compensation would be tied. The timely processing of each claim's related expenses from each WYO company would not be possible given current staff and administrative capacity of FEMA and as a result, expansion of the reimbursement concept would likely require hiring numerous new staff members. Without such an increase in FEMA processing staff, a direct reimbursement methodology for all LAE expenses would result in reimbursement delays and disruption to both the policyholders and WYO companies. WYO companies would likely incur significant additional administrative expenses.

### V. Public Comment

FEMA seeks public comment on all aspects of a revised WYO payment methodology, with particular interest in better understanding the implication of the three methodologies described above. FEMA will use the received comments to inform future rulemaking on the subject. Comments accompanied by supporting data and analysis of the issues addressed in those comments would provide the greatest assistance to FEMA. Additionally, FEMA would derive particular benefit from commenters addressing one or more of the following questions:

1. What are the limitations with the current WYO expense compensation methodology that you believe FEMA

needs to address in the revised methodology?

2. What recommendations do you have for improving the current WYO expense compensation methodology?

3. What credibility weighting procedures should FEMA consider using, if any?

4. Do the five non-flood property/casualty lines of insurance act as a good approximation of flood insurance general expenses in the credibility weighting-based approach? If FEMA continues to use non-flood property/casualty lines of insurance, what lines should FEMA consider adding or subtracting from this list?

5. Should FEMA merge payments for ULAE into the existing ALAE fee schedule so that ULAE payments are better tailored to the severity of a flood event?

6. Does NAIC flood expense data accurately reflect the actual expenses incurred by WYO companies? What are the challenges of ensuring accurate data are provided to the NAIC and how can they best be overcome?

7. What, if any, alternative data sources can provide WYO company expense data that are more accurate than what the NAIC captures?

8. What, if any, additional costs would WYO companies incur if required to submit all NFIP-related expenses for reimbursement as they are incurred (*i.e.*, the third alternative referenced above)?

9. Does the structure of the current ALAE fee schedule adequately take into account the differences in incurred expenses between catastrophic and non-catastrophic loss years?

10. What changes to the current methodology would allow FEMA to better distinguish between catastrophic and non-catastrophic years in paying out LAE?

11. What individual characteristics of WYO companies could be used to better tailor a payment methodology to the actual expenses of individual companies?

12. What additional data may help FEMA better understand actual expenses of WYO companies?

**Authority:** 42 U.S.C. 4081 note.

**Pete Gaynor,**

*Acting Administrator, Federal Emergency Management Agency.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 385

[Docket No. FMCSA-2019-0081]

RIN 2126-AA64

### Certification for Conducting Driver or Vehicle Inspections, Safety Audits, or Investigations

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FMCSA proposes to incorporate by reference the current policy and practices for FMCSA employees, State or local government employees, and contractors to obtain and maintain certifications for conducting driver or vehicle inspections, safety audits, or investigations. The Fixing America's Surface Transportation Act (FAST Act) requires FMCSA to incorporate by reference in its regulations the Commercial Vehicle Safety Alliance's (CVSA) "Operational Policy 4: Inspector Training and Certification." The CVSA policy is currently Attachment A to FMCSA's "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits." This proposed rule, if adopted, also would replace an interim final rule (IFR) in place since 2002 that referenced the certification procedures published on the FMCSA website. FMCSA proposes to replace selected provisions of the IFR by incorporating by reference the FMCSA policy. No changes would be made to the certification policy or procedures currently followed by individuals to obtain and maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. Other provisions of the IFR would be republished without change.

**DATES:** Comments on this document must be received on or before September 6, 2019.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2019-0081 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

*Viewing incorporation by reference material:* You may view the material proposed for incorporation by reference in the docket, online at <https://www.fmcsa.dot.gov/certification>, or at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590-0001 between 8:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 385-2400.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Bomgardner, Chief, Hazardous Materials Division, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, by telephone at (202) 493-0027 or by email, [paul.bomgardner@dot.gov](mailto:paul.bomgardner@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

#### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice of proposed rulemaking (NPRM) (Docket No. FMSCA-2019-0081), indicate the specific section of this document to which the 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 telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMSCA-2019-0081, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type

your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

#### *B. Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMSCA-2019-0081, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

#### *C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits 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.transportation.gov/privacy](http://www.transportation.gov/privacy).

#### *D. Waiver of Advance Notice of Proposed Rulemaking*

If a regulatory proposal is likely to lead to the promulgation of a major rule, FMCSA is required to either publish an advance notice of proposed rulemaking (ANPRM), unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest, or conduct a negotiated rulemaking (49 U.S.C. 31136(g)). However, this rulemaking would not result in the promulgation of a major rule under the statute.

## **II. Executive Summary**

### *A. Summary of the Proposed Regulatory Action*

FMCSA proposes to incorporate by reference the current policy and practices for FMCSA employees, State or local government employees, and contractors to obtain and maintain certifications for conducting driver or vehicle inspections,<sup>1</sup> safety audits, or investigations. Under section 5205 of the FAST Act (note following 49 U.S.C. 31148), the FMCSA Administrator is required to incorporate by reference the certification standards for conducting driver or vehicle inspections issued by CVSA. Currently, CVSA’s “Operational Policy 4: Inspector Training and Certification” (rev. Sept. 21, 2017) is Attachment A to FMCSA’s “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.”

FMCSA also proposes to replace an IFR titled “Certification of Safety Auditors, Safety Investigators, and Safety Inspectors,” published March 19, 2002 (67 FR 12776). That IFR provided the certification requirements by referencing FMCSA’s website, which contains FMCSA’s policy on certification and training requirements. Rather than simply referencing the policy on the FMCSA website, this NPRM proposes to replace selected provisions of the IFR by formally incorporating by reference the FMCSA policy. No changes would be made to the certification policy or procedures currently followed by individuals to obtain and maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. Other provisions of the IFR would be republished without change.

The certification policy only applies to FMCSA employees and contractors and State or local government employees and contractors funded through FMCSA’s Motor Carrier Safety Assistance Program (MCSAP) who wish to obtain or maintain certification to conduct driver or vehicle inspections, safety audits, or investigations. This rulemaking would not change any regulatory requirements applicable to motor carriers, drivers, or commercial motor vehicles. As such, there would be no impact on motor carriers or drivers.

### *B. Costs and Benefits*

Because no changes are proposed to the current FMCSA certification policy,

<sup>1</sup> Throughout this NPRM, FMCSA uses the term “driver or vehicle inspection” in lieu of the term “roadside inspection,” recognizing that these inspections are not necessarily conducted at “roadside.”

there are neither costs nor benefits associated with this rulemaking.

### III. Legal Basis for the Rulemaking

FMCSA's authority for this rulemaking is from two statutes, section 211 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Public Law 106–159, 113 Stat. 1748, 1765–1766, 49 U.S.C. 31148 (Dec. 9, 1999), and section 5205 of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1537, note following 49 U.S.C. 31148 (Dec. 4, 2015).

Section 211 of the MCSIA requires the Secretary of Transportation to issue regulations “to improve training and provide for the certification of motor carrier safety auditors . . . to conduct safety inspection audits and reviews” under specified statutory provisions (49 U.S.C. 31148(a)). Subject to a grandfathering provision applicable to Federal and State employees who were qualified to conduct a safety inspection audit or review on December 9, 1999, the statute requires that covered safety inspection audits or reviews be conducted by individuals certified under the regulations (49 U.S.C. 31148(b)). While private contractors are authorized to obtain certification, the Secretary is not permitted to delegate authority to private contractors to issue ratings or operating authority (49 U.S.C. 31148(a) and (d)). Finally, the statute grants the Secretary authority over certified safety auditors, including the authority to withdraw their certification (49 U.S.C. 31148(e)). As further explained below in the background section, on March 19, 2002, FMCSA issued an IFR implementing this statutory provision (67 FR 12776).

Section 5205 of the FAST Act requires FMCSA's Administrator to revise 49 CFR part 385 “to incorporate by reference the certification standards for roadside inspectors issued by the Commercial Vehicle Safety Alliance” (note following 49 U.S.C. 31148).

This NPRM proposes to replace the 2002 IFR issued under section 211 of the MCSIA and to carry out section 5205 of the FAST Act.

### IV. Background

Prior to the MCSIA, certification of Federal safety investigators and State or local government employees participating in MCSAP who performed compliance reviews or driver or vehicle inspections meant that those officials had successfully completed certain training programs. The training requirements had been in effect for a number of years.

FMCSA relied on the compliance review, an in-depth investigation, to

assess a motor carrier's safety performance and compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). Compliance reviews were traditionally performed only of motor carriers with poor performance, high crash rates, high vehicle or driver out-of-service rates, or past poor compliance, or of motor carriers against which a non-frivolous complaint was made.

As noted above, section 211 of the MCSIA required the Secretary to issue regulations to conduct “safety inspection audits and reviews.” The Agency determined that phrase was equivalent to the “safety review” of new entrants into the motor carrier industry that was mandated by section 210 of the MCSIA. Section 210 also required the Secretary to “establish the elements of the safety review,” and the Agency inferred that a “safety review” may be something less than a full compliance review (67 FR 12776, Mar. 19, 2002). FMCSA selected the term “safety audit” for the new type of safety review to avoid confusion with safety reviews that were previously conducted by the Agency (67 FR 12777, Mar. 19, 2002).

In response to the requirement in section 211 of the MCSIA that the Agency improve training and provide for the certification of motor carrier safety auditors, FMCSA issued an IFR on March 19, 2002, titled “Certification of Safety Auditors, Safety Investigators, and Safety Inspectors” (67 FR 12776). This IFR modified 49 CFR 350.211 and 385.3, and added a new subpart C to part 385 consisting of §§ 385.201, 385.203, and 385.205 pertaining to certification requirements.

New subpart C referenced FMCSA's website for the specific certification requirements. The IFR stated in the preamble that all individuals who conduct safety audits, compliance reviews, or driver or vehicle inspections would be required to perform a specific number of safety audits, compliance reviews, or inspections annually with acceptable quality; to successfully complete any required training to obtain and maintain certification; and, when necessary, to obtain recertification to perform reviews of motor carriers (67 FR 12777, Mar. 19, 2002). The IFR, however, did not include specific training or certification requirements in the regulatory text. Instead, the Agency noted that it needed “flexibility to modify course content quickly to match changes in the FMCSRs and HMRs, or to adapt other elements of the training process to changed circumstances” (67 FR 12777, Mar. 19, 2002).

The IFR added a “safety audit” in § 385.3 as a new type of safety review with the purpose of assessing safety performance in new entrant motor carriers. Finally, the IFR added § 350.211(17)<sup>2</sup> to require State and local MCSAP partners to follow the certification requirements, a requirement that is not affected by this proposed rule.

On December 29, 2015, FMCSA issued its current “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.” FMCSA's policy includes four attachments. In October 2017, FMCSA amended Attachment A of its policy to incorporate the most recent version of CVSA's “Operational Policy 4: Inspector Training and Certification,” which was revised on September 21, 2017. In March 2019, FMCSA amended Attachment B, “Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification.”

### V. Incorporations by Reference

#### A. CVSA's “Operational Policy 4: Inspector Training and Certification”

In accordance with section 5205 of the FAST Act (note following 49 U.S.C. 31148), FMCSA proposes to incorporate by reference in its regulations CVSA's “Operational Policy 4: Inspector Training and Certification,” revised September 21, 2017. This rulemaking would amend an incorporation by reference found at 49 CFR 385.4 to include CVSA's policy. The policy would be referenced in proposed § 385.209.

The CVSA policy ensures that commercial motor vehicle inspectors uploading driver or vehicle inspection reports and data into FMCSA information systems are certified under a training program that is approved by CVSA. The policy provides the standards for initial inspector certification and maintenance of inspector certification. It also provides the decertification process and paths to regain certification.

The CVSA policy provides the minimum training and testing requirements and number of inspections an individual must complete to be certified to conduct the following types of driver or vehicle inspections:

- North American Standard Level I, II, III, and V Inspections;

<sup>2</sup> This provision, as amended, is found currently at 49 CFR 350.211(p).

- Hazardous Materials/Dangerous Goods Inspection;
- Cargo Tank Inspection;
- Other Bulk Packaging Inspection;
- Passenger Carrier Vehicle Inspection;
- North American Standard Level VI Inspection for Transuranic Waste and Highway Route Controlled Quantities (HRCQ) of Radioactive Material; and
- Performance-Based Brake Testing.

CVSA's "Operational Policy 4: Inspector Training and Certification" that FMCSA is proposing to incorporate by reference is Attachment A of FMCSA's "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits," and is available in the docket for this rulemaking. Additionally, the CVSA policy is available, and will continue to be available, for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 385-2400, and online at <https://www.fmcsa.dot.gov/certification>.

*B. FMCSA's "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits"*

FMCSA also proposes to incorporate by reference in its regulations FMCSA's December 29, 2015, "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits," as amended, without change. This rulemaking would incorporate by reference FMCSA's policy in 49 CFR 385.4 and reference it in proposed § 385.211.

FMCSA's policy applies to FMCSA employees and contractors. It also applies to State or local government employees and contractors who are funded through MCSAP, who enforce applicable Federal statutes and regulations, or who upload data into FMCSA information systems. The policy includes the following attachments:

*Attachment A:* CVSA's "Operational Policy 4: Inspector Training and Certification," revised September 21, 2017;

*Attachment B:* Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification, amended March 2019;

*Attachment C:* Acknowledgement of Initial Certification Completion and Maintenance Requirement; and

*Attachment D:* Employee Certification Status.

FMCSA's policy establishes certification requirements for individuals performing inspections, safety audits, and investigations. Attachment A of the policy provides CVSA's "Operational Policy 4: Inspector Training and Certification," as discussed above. Attachment B to the FMCSA policy includes provisions addressing certification requirements to conduct safety audits, investigations, commercial enforcement investigations, as well as additional certification requirements for Commercial Enforcement Specialists, and cargo tank facility reviews. Attachment B also outlines the circumstances when individuals conducting audits or investigations will be decertified and the process for decertification. It describes a temporary waiver process that may be available when an individual becomes decertified due to reasons beyond his or her control and the recertification process. Finally, Attachment B supplements the provisions of CVSA's "Operational Policy 4: Inspector Training and Certification" (Attachment A), particularly as applicable to FMCSA employees.

Attachments C and D provide templates addressing the documentation of individuals' certification for FMCSA employees. Other entities have the option of using these templates or their own documentation.

FMCSA's "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits" is available in the docket for this rulemaking. Additionally, FMCSA's policy is available, and will continue to be available, for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 385-2400, and online at <https://www.fmcsa.dot.gov/certification>.

## VI. Other Proposed Changes

This NPRM proposes to replace the 2002 IFR. That IFR amended § 385.3 by adding the term "safety audit" in paragraph (2) of the definition of "reviews." If the IFR is replaced, it is necessary procedurally to adopt the safety audit definition provided in the IFR, given that it has not been amended since adoption of the IFR. Therefore, FMCSA proposes to republish the definition of a safety audit without change to allow comment on the definition.

## VII. Section-by-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order.

### A. Section 385.3 Definitions and Acronyms

FMCSA proposes to republish the definition of "safety audit" in paragraph (2) of the definition of "reviews" without change. As noted above, this action is necessary procedurally because the Agency proposes to replace the 2002 IFR.

### B. Section 385.4 Matter Incorporated by Reference

FMCSA would make technical changes to § 385.4(a) to update the locations where the materials proposed to be incorporated by reference are available for inspection. Paragraph (b) would be revised to provide information about how CVSA's "Operational Policy 4: Inspector Training and Certification" (rev. Sept. 21, 2017) can be accessed and to incorporate it by reference. FMCSA also would add a new § 385.4(c) that would incorporate by reference FMCSA's December 29, 2015, "Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits," as amended, and provide information about how to access the policy.

### C. Subpart C—Certification To Conduct Driver or Vehicle Inspections, Safety Audits, and Safety Investigations

Sections 385.201, 385.203, and 385.205

FMCSA would remove and reserve the provisions of existing subpart C of part 385, which consist of §§ 385.201, 385.203, and 385.205, added by the IFR on March 19, 2002 (67 FR 12779). FMCSA would add new provisions consisting of §§ 385.207, 385.209, and 385.211, under the revised subpart heading, "Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Safety Investigations."

Section 385.207 Qualifications To Perform a Driver or Vehicle Inspection, Safety Audit, or Investigation of a Motor Carrier.

The heading of this new section reflects the current language for describing driver or vehicle inspections. New § 385.207(a) would identify FMCSA employees, State or local government employees, and contractors as those who may qualify to perform a driver or vehicle inspection, safety audit, or investigation. It would update the terminology "driver or vehicle inspection, safety audit, or

investigation.” Paragraph (b) would provide that personnel who were certified before any final rule is effective are grandfathered as long as they maintain their certification.

#### Section 385.209 Requirements To Obtain and Maintain Certification To Conduct Driver or Vehicle Inspections.

New § 385.209(a) would provide the certification requirements to conduct driver or vehicle inspections and specifically reference the requirements in CVSA’s “Operational Policy 4: Inspector Training and Certification,” proposed to be incorporated by reference in § 385.4. Paragraph (b) would provide that an individual who qualifies to conduct inspections would be required to maintain certification or obtain recertification in accordance with CVSA’s policy.

#### Section 385.211 Requirements To Obtain and Maintain Certification To Conduct Safety Audits or Investigations.

New § 385.211(a) would contain the requirements for certification to conduct safety audits or investigations and specifically reference the requirements in FMCSA’s “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,” proposed to be incorporated by reference in § 385.4. Paragraph (b) would address the requirements to maintain certification and how an individual who has lost certification would be recertified.

### VIII. Regulatory Analyses

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

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this proposed rule does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. This proposed rule is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6, dated Dec. 20, 2018)). Accordingly, the Office of Management and Budget has not reviewed it under these Orders. Because no changes are proposed to the current FMCSA certification policy, there are neither costs nor benefits associated with this rulemaking.

#### B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, does not apply to this action because it is not a significant regulatory action, as defined in section 3(f) of E.O. 12866.

#### C. Regulatory Flexibility Act

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 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), 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. 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.

This proposed rule would directly affect States and a limited number of contractors requiring certification. States do not meet the definition of a “small entity” in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5), both because State government is not included among the various levels of government listed in section 601(5), and because no State, including the District of Columbia, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under section 601(5). As the proposed rule would not result in costs or benefits, it would not impose impacts on the limited number of contractors that would be regulated under this rulemaking. Therefore, this proposed rule would not have an impact on a substantial number of small entities. Because no changes are proposed to the current FMCSA certification policy, this rule would not result in changes for those affected. Thus, this rulemaking would not have a significant economic impact on the regulated entities.

Consequently, I certify that the 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 SBREFA, FMCSA wants to assist

small entities in understanding this proposed rule so that 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 FMCSA point of contact, Paul Bomgardner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

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 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) 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 \$161 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

#### F. Paperwork Reduction Act

This proposed rule calls for no new collection of information 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.” Nothing in this document preempts any State law or regulation. Therefore, this proposed rule

would not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

#### *H. E.O. 12988 (Civil Justice Reform)*

This proposed 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.

#### *I. 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, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. The Agency determined this proposed 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 proposed regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

#### *J. E.O. 12630 (Taking of Private Property)*

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

#### *K. Privacy*

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This proposed rule would not require the collection of personally identifiable information.

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

The E-Government Act of 2002, Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate

information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

#### *L. E.O. 12372 (Intergovernmental Review)*

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

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

FMCSA has analyzed this proposed 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 under E.O. 13211.

#### *N. E.O. 13175 (Indian Tribal Governments)*

This proposed 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.

#### *O. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (note following 15 U.S.C. 272) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, 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. This proposed rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

#### *P. National Environmental Policy Act of 1969 (NEPA)*

FMCSA analyzed this NPRM for the purpose of NEPA (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, Mar. 1, 2004), Appendix 2, paragraph 6.d. The Categorical Exclusion (CE) in paragraph 6.d. covers regulations concerning the training, qualifying, licensing, certifying, and managing of personnel. The proposed requirements in this rule would be covered by this CE and the NPRM would not have any effect on the quality of the environment. The CE determination is available for review in the docket.

#### **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 proposes to amend 49 CFR chapter III, part 385 to read as follows:

#### **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(e), 5109, 5113, 13901–13905, 13908, 31136, 31144, 31148, 31151, 31502; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864–868; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

- 2. In § 385.3, republish paragraph (2) of the definition of “Reviews” to read as follows:

#### **§ 385.3 Definitions and acronyms.**

\* \* \* \* \*

*Reviews.* \* \* \*

(2) *Safety audit* means an examination of a motor carrier’s operations to provide educational and technical assistance on safety and the operational requirements of the FMCSRs and applicable HMRs and to gather critical safety data needed to make an assessment of the carrier’s safety performance and basic safety management controls. Safety audits do not result in safety ratings.

\* \* \* \* \*

- 3. Revise § 385.4 to read as follows:

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

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal

Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notification of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590, telephone (202) 385-2400, and is available from the sources listed in paragraphs (b) and (c) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(b) Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, telephone (301) 830-6143, [www.cvsal.org](http://www.cvsal.org).

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

(2) “Operational Policy 4: Inspector Training and Certification,” as revised September 21, 2017, incorporation by reference approved for § 385.209. The policy is available to the public online as Attachment A of FMCSA’s “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits” available at <https://www.fmcsa.dot.gov/certification>.

(c) Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Ave. SE, Washington, DC 20590, telephone (202) 385-2400.

(1) “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits,” December 29, 2015, as amended October 2017 with respect to Attachment A (Commercial Vehicle Safety Alliance’s “Operational Policy 4: Inspector Training and Certification” (revised September 21, 2017)), and as amended March 2019 with respect to Attachment B (“Certification of Safety Inspectors, Safety Investigators, New Entrant Safety Auditors, Commercial Enforcement Specialists[,] Safety Investigators Who Perform Cargo Tank Facility Reviews, and Other Employees Who Maintain Certification”), incorporation by reference approved for § 385.211. The

policy is available to the public online at <https://www.fmcsa.dot.gov/certification>.

(2) [Reserved]

■ 5. Revise the subpart C to read as follows:

**Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Investigations**

Sec.

385.201–385.205 [Reserved]

385.207 Qualifications to perform a driver or vehicle inspection, safety audit, or investigation of a motor carrier.

385.209 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.

385.211 Requirements to obtain and maintain certification to conduct safety audits or investigations.

**Subpart C—Certification to Conduct Driver or Vehicle Inspections, Safety Audits, and Investigations**

§ 385.201–385.205 [Reserved]

**§ 385.207 Qualifications to perform a driver or vehicle inspection, safety audit, or investigation of a motor carrier.**

(a) *General*. Subject to paragraph (b) of this section, an FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program or authorized to upload data to FMCSA, may qualify to perform a driver or vehicle inspection, safety audit, or investigation by complying with the requirements of this subpart.

(b) *Previously qualified personnel*. An FMCSA employee or contractor, or a State or local government employee or contractor funded through the Motor Carrier Safety Assistance Program or authorized to upload data to FMCSA, who was qualified to perform a driver or vehicle inspection, safety audit, or investigation before [DATE 60 DAYS AFTER PUBLICATION OF FINAL RULE IN **Federal Register**], may perform a driver or vehicle inspection, safety audit, or investigation if the employee or contractor maintains the appropriate certification under this subpart.

**§ 385.209 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.**

(a) *Certification*. An individual may conduct driver or vehicle inspections under this subpart only if the individual meets the requirements of § 385.207(b), or meets requirements as specified in the Commercial Vehicle Safety Alliance’s “Operational Policy 4: Inspector Training and Certification” (incorporated by reference, see § 385.4). The individual may conduct a driver or

vehicle inspection only at a level for which the individual is certified.

(b) *Maintaining certification and obtaining recertification*. An individual who qualifies to conduct driver or vehicle inspections under this section must meet the requirements for maintaining certification or obtaining recertification as specified in the Commercial Vehicle Safety Alliance’s “Operational Policy 4: Inspector Training and Certification.”

**§ 385.211 Requirements to obtain and maintain certification to conduct safety audits or investigations.**

(a) *Certification*. An individual may conduct safety audits or investigations under this subpart only if the individual meets the requirements of § 385.207(b), or meets the requirements specified in FMCSA’s “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits” (incorporated by reference, see § 385.4).

(b) *Maintaining certification and obtaining recertification*. An individual who qualifies to conduct safety audits or investigations under this section must maintain certification or obtain recertification by successfully completing the requirements specified in FMCSA’s “Certification Policy for Employees Who Perform Inspections, Investigations, and Safety Audits.”

Issued under authority delegated in 49 CFR 1.87: June 26, 2019.

**Raymond P. Martinez,**  
Administrator.

[FR Doc. 2019-14224 Filed 7-5-19; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

[Docket No. FWS-HQ-MB-2018-0030; FF09M21200-189-FXMB1231099BPP0]

RIN 1018-BD10

**Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2019–20 Season**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (hereinafter, Service or we) proposes special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2019–20 migratory bird hunting season.