

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 88 FR 60611 on September 5, 2023. The Petitioner filed comments in support of the petition reaffirming its commitment to apply for channel \*34. No other comments were received.

The Bureau believes the public interest would be served by substituting channel \*34 for channel \*11 at Des Moines. Petitioner asserts that the channel substitution from a VHF to UHF channel would serve the public interest by resolving viewer reception challenges and significantly improving the Station's over-the-air service to the viewers in its existing service area. Petitioner includes with its Petition a number of viewer complaints highlighting current reception problems. Petitioner states that the Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels. An engineering statement provided by the Petitioner confirms that the proposed channel \*34 contour would provide full principal community coverage to Des Moines. The proposed move from channel \*11 to channel \*34 is also predicted not to create a loss of service to any viewers, and will increase the area covered while serving the population with higher signal levels, according to the engineering statement. Petitioner acknowledges that the proposed channel substitution would not meet the distance separation requirements regarding the vacant channel \*34 allotment at Ames. As a result, Petitioner requests that simultaneously with the substitution of channel \*34 at Des Moines, we delete the vacant channel \*34 allotment at Ames and substitute it with the allotment of vacant channel \*21 to Ames. As stated in its supplemental engineering statement, the proposed channel \*21 is described as meeting the distance criteria found in § 73.623(d) of the rules, and an analysis using the Commission's *TVStudy* software is provided showing no interference to any other station or allotment.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 23–296; RM–11964; DA 23–1030, adopted November 1, 2023, and released November 1, 2023. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible

formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Final Rule**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of TV Allotments, under “Iowa,” by revising the entries for “Ames” and “Des Moines” to read as follows:

**§ 73.622 Digital television table of allotments.**

Community	Channel No.
Ames	5, *21, 23
Des Moines	8, 13, 16, 19, *34

[FR Doc. 2023–24652 Filed 11–7–23; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 385**

[Docket No. FMCSA–2023–0122]

**RIN 2126–AC61**

**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 Permit (HMSP) 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, 2022, edition of the handbook. Through this rule, FMCSA incorporates by reference the April 1, 2023, edition.

**DATES:** Effective December 8, 2023. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of December 8, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mr. José Cestero, Vehicle and Roadside Operations Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–5541, [jose.cestero@dot.gov](mailto:jose.cestero@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:** FMCSA organizes this final rule as follows:  
 I. Availability of Rulemaking Documents  
 II. Executive Summary  
 III. Abbreviations  
 IV. Legal Basis for the Rulemaking  
 V. Background  
 VI. Discussion of Proposed Rulemaking and Comments  
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- A. 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
- B. Congressional Review Act
- C. Regulatory Flexibility Act (Small Entities)
- D. Assistance for Small Entities
- E. Unfunded Mandates Reform Act of 1995
- F. Paperwork Reduction Act
- G. E.O. 13132 (Federalism)
- H. Privacy
- I. E.O. 13175 (Indian Tribal Governments)
- J. National Environmental Policy Act of 1969

### I. Availability of Rulemaking Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2023-0122/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 CFR 385.4(b)(1) and referenced at § 385.415(b). The provision at § 385.4(b)(1) currently references the April 1, 2022, 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, Compliance Division) at (202) 366–1812. The document may be

purchased from the Commercial Vehicle Safety Alliance, 6303 Ivy Lane, Suite 310, Greenbelt, MD 20770, (301) 830–6143, [www.cvsa.org](http://www.cvsa.org).

Nine updates distinguish the April 1, 2023, handbook edition from the 2022 edition. The updates are all described in detail in the July 24, 2023, notice of proposed rulemaking (NPRM) for this rule (88 FR 47437). The incorporation by reference of the 2023 edition does not impose new regulatory requirements.

### III. Abbreviations

CDL	Commercial Driver’s License
CFR	Code of Federal Regulations
CVSA	Commercial Vehicle Safety Alliance
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
HMSP	Hazardous Materials Safety Permit
HRCQs	Highway route-controlled quantities
MCMIS	Motor Carrier Management Information System
OOS	Out-of-Service
OOSC	Out-of-Service Criteria
RAM	Radioactive material
RFA	Regulatory Flexibility Act
UMRA	The Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

### IV. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits (hereinafter “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 Code of Federal Regulations (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.

### V. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service (OOS) conditions and/or criteria, an inspection decal, and a

training and certification program for inspectors to conduct inspections on shipments of transuranic waste and HRCQs of RAM. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.” As of January 1, 2005, all vehicles and carriers transporting HRCQs of RAM are regulated by the U.S. Department of Transportation. All HRCQs of RAM must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the United States. All highway route-controlled quantities of RAM shipments entering the United States must also pass the North American Standard Level VI Inspection either at the shipment’s point of origin or when the shipment enters the United States.

Operational requirements for motor carriers transporting hazardous materials for which a HMSP is required are prescribed by § 385.415. Section 385.415(b) requires that motor carriers ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a HRCQ of a Class 7 (radioactive) material, in accordance with the requirements of CVSA’s handbook titled “North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.”

According to 2019 through 2022 data from FMCSA’s Motor Carrier Management Information System (MCMIS), approximately 3 million Level I through Level VI inspections were performed annually. Nearly 96.3 percent

of these were Level I,<sup>1</sup> Level II,<sup>2</sup> and Level III<sup>3</sup> inspections. During the same period, an average of 756 Level VI inspections were performed annually, comprising only 0.03 percent of all inspections. On average, OOS violations were cited in only 6 Level VI inspections annually (0.8 percent), whereas on average, OOS violations were cited in 233,259 Level I inspections (26 percent), 264,926 Level II inspections (26 percent), and 57,990 Level III inspections (6 percent) annually. As these statistics demonstrate, OOS violations are cited in a far lower percentage of Level VI inspections than Level I, II, and III inspections, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

The changes to the 2023 edition of the CVSA handbook are intended to ensure clarity in the presentation of the OOS conditions and are generally editorial or ministerial. As discussed below, FMCSA does not expect the changes made in the 2023 edition of the CVSA handbook to affect the number of OOS violations cited during Level VI inspections.

## VI. Discussion of Proposed Rulemaking and Comments

### A. Proposed Rulemaking

FMCSA published an NPRM on July 24, 2023 (88 FR 47437). Because the incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b) references the outdated April 1, 2022, 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, 2023, edition. Nine updates distinguish the April 1, 2023, edition from the 2022 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

<sup>1</sup> Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

<sup>2</sup> Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

<sup>3</sup> Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

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 2023 edition does not change what constitutes a violation of FMCSA regulations.

### B. Comments to the NPRM

FMCSA solicited comments concerning the NPRM for 30 days ending August 23, 2023. By that date, two comments were received: one from a private citizen supporting the NPRM, and one from CVSA, which commended FMCSA for publishing the NPRM and encouraged the Agency to finalize the rule and update the incorporation by reference.

## VII. Severability

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 2023 edition of the CVSA handbook outlining the OOSC and inspection procedures for commercial highway vehicles transporting RAM. 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 are severable and able to operate functionally if one or more provisions were rendered null or otherwise eliminated. The remaining provision or provisions within the handbook will continue to operate functionally if any one or more provisions were invalidated and any other provision(s) remained. In the event a court were to invalidate one or more of the CVSA handbook's unique provisions, the remaining provisions should stand, thus allowing this congressionally mandated program to continue to operate.

## VIII. Section-by-Section Analysis

### Section 385.4 Matter Incorporated by Reference

Section 385.4(b)(1), as amended on December 22, 2022, references the April 1, 2022, edition of the CVSA handbook. This final rule replaces the reference to

the April 1, 2022, edition date with a reference to the new edition date of April 1, 2023.

## X. 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.

The final rule updates an incorporation by reference from the April 1, 2022, edition to 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." FMCSA reviewed its MCMIS data on inspections performed from 2019 to 2022 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 would be 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).<sup>4</sup>

<sup>4</sup> 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)).

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>5</sup> requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. 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 2023 edition impose new requirements or make substantive changes to the FMCSRs.

When an Agency issues a final rule, the RFA requires the Agency to “prepare a final regulatory flexibility analysis” that will describe the impact of the final rule on small entities (5 U.S.C. 604(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. This rule updates an incorporation by reference found at § 385.4(b)(1) and referenced at § 385.415(b), and incorporates by reference the April 1, 2023, edition of the CVSA handbook. The changes to the 2023 edition of the CVSA handbook from the 2022 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 2023 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 this 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 rulemaking so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule affects 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 \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. Though this rulemaking 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 rulemaking contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.”

FMCSA has determined that this rulemaking does not have substantial direct costs on or for States, nor does it limit the policymaking discretion of

States. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

### H. Privacy

The Consolidated Appropriations Act, 2005,<sup>6</sup> requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This rulemaking does not require the collection of personally identifiable information.

### I. 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 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 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 requirements in this rulemaking 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,

<sup>6</sup>Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

<sup>5</sup>Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

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, 2023; incorporation by reference approved for § 385.415(b).

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.87.

**Robin Hutcheson,**

*Administrator.*

[FR Doc. 2023–24448 Filed 11–7–23; 8:45 am]

**BILLING CODE 4910–EX–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS–R6–ES–2022–0100; FXES1113060000–223–FF06E00000]

RIN 1018–BG79

**Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Gray Wolf in Colorado**

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under the Endangered Species Act of 1973, as amended (Act). The State of Colorado (Colorado Parks and Wildlife or CPW) requested that the Service establish an NEP in conjunction with their State-led gray wolf reintroduction effort. Establishment of this NEP provides for allowable, legal, purposeful, and incidental taking of the gray wolf within a defined NEP area while concurrently providing for the conservation of the species. The geographic boundary of the NEP is the entire State of Colorado. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and

will promote the conservation of the species.

**DATES:** This rule is effective December 8, 2023.

**ADDRESSES:** This final rule, public comments on our February 17, 2023, proposed rule, a final environmental impact statement, and the record of decision, are available on the internet at <https://www.regulations.gov> at Docket No. FWS–R6–ES–2022–0100.

**Information Collection Requirements:** Written comments and suggestions on the information collection requirements may be submitted at any time to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or [Info\\_Coll@fws.gov](mailto:Info_Coll@fws.gov) (email). Please reference “OMB Control Number 1018–BG79” in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** Liisa Niva, Acting Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 134 Union Boulevard, Suite 670, Lakewood, CO 80228; telephone 303–236–4773.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The Service is establishing a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in the State of Colorado, under section 10(j) of the Act.

**Previous Federal Actions**

Please refer to the proposed section 10(j) rule for the gray wolf in Colorado published on February 17, 2023 (88 FR 10258), for a detailed description of previous Federal actions concerning this species.

**Peer Review**

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review, we solicited independent scientific review of the proposed rule. We invited seven independent peer reviewers and received four responses. The peer reviews can be found at <https://www.regulations.gov> and <https://fws.gov/library/categories/peer-review-plans>. In preparing this final rule, we incorporated the results of these

reviews, as appropriate, into this final rule. A summary of the peer review comments, and our responses can be found in the *Summary of Comments and Recommendations* below.

**Summary of Changes From the Proposed Rule**

As a result of comments, additional data received during the comment period, and additional analysis, several changes were made to the rule we proposed on February 17, 2023 (88 FR 10258). In this final rule, we:

- Improved consistency with the State of Colorado’s Wolf Restoration and Management Plan (State Plan) (CPW 2023b, entire) by clarifying that take of gray wolves attacking pets is not excepted but take of gray wolves that are attacking “working dogs,” or dogs that guard or herd livestock, is excepted.
- Recognized the sovereignty of Tribal nations by adding a provision to allow take of gray wolves that are significantly impacting ungulate populations on Tribal reservation lands of the Ute Mountain Ute and Southern Ute Tribes in the State of Colorado.
- Changed several terms: In regard to justification for written take authorization, “shoot-on-sight” is now “depredation”; we have changed references in the proposed rule from “problem wolves” to “depredating” wolves; and “sport hunting” is now “recreational harvest.”
- Clarified that a “designated agent” is an employee of a Federal, State, or Tribal agency who is authorized or directed by the Service to conduct management activities for the gray wolf.
- Removed the term “relocate” from the definition of “remove.”
- Removed the term “substantial income” from the definition of “livestock producer.”
- Clarified that take would not be excepted if there is any evidence of baiting of gray wolves, including the use of unusual attractants, artificial feeding, or intentional feeding.

**Summary of Comments and Recommendations**

In the proposed rule published on February 17, 2023 (88 FR 10258), we requested that all interested parties submit written comments on the proposal by April 18, 2023. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We held public information meetings to present information and obtain feedback on March 14, 15, 16, 22, and 28, 2023. We issued news releases and posted them