

final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 15, 2002.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960, Phone number: (404) 562-8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 205 Butler Street, Suite 1154, East, Atlanta Georgia 30334-4910, Phone number: 404-656-7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562-8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this *Federal Register*.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.
[FR Doc. 02-17694 Filed 7-15-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 177

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. FMCSA-02-11650 (HM-232A)]

RIN 2137-AD70, 2126-AA71

Security Requirements for Motor Carriers Transporting Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Research and Special Programs Administration and the Federal Motor Carrier Safety Administration are examining the need for enhanced security requirements for the motor carrier transportation of hazardous materials. The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures being considered include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to state and local authorities.

DATES: Submit comments by October 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW, Washington, DC 20590-0001. Comments should identify Docket Number FMCSA-02-11650 (HM-232A). If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at "<http://dms.dot.gov/>" and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except

Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at "<http://dms.dot.gov/>."

FOR FURTHER INFORMATION CONTACT:

Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366-6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Over 800,000 shipments of hazardous materials occur each day in the United States. The overwhelming majority of these shipments—approximately 95 percent—are made by highway. Many of the hazardous materials transported by motor carriers potentially may be used as weapons of mass destruction or in the manufacture of such weapons. Since September 11, 2001, on several occasions, Federal law enforcement officials provided information indicating that terrorist organizations may be planning to use motor vehicles transporting certain hazardous materials for additional terrorist attacks on facilities in the United States.

Prior to 1975, the Secretary of Transportation regulated the transportation of hazardous materials by highway under the authority of the Motor Carrier Safety Act (MCSA). The authority to issue regulations under the MCSA is currently delegated to the Federal Motor Carrier Safety Administration (FMCSA). 49 CFR 1.73(g). In 1974, Congress passed the Hazardous Materials Transportation Act (HMTA). The HMTA gave the Secretary the authority to issue "regulations for the safe transportation in commerce of hazardous materials" applicable to "any person who transports, or causes to be transported or shipped, a hazardous material. * * * Public Law 93-633; 88 Stat. 2156 (Jan. 3, 1975). The Secretary has delegated this rulemaking authority to the Research and Special Programs Administration (RSPA). 49 CFR 1.53(b).

Motor carriers that transport hazardous materials in commerce must comply with both the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), administered by RSPA, and the Federal Motor Carrier Safety Regulations (FMCSR; 49 CFR Parts 390-397), administered by FMCSA. As a result of a 1984 amendment to the MCSA and a 1990 amendment to the HMTA, RSPA is authorized to eliminate or amend regulations (other than highway routing regulations) that appear in Part 397 of the FMCSR and that apply solely to the maintenance, equipment, loading,

or operation of motor vehicles carrying hazardous materials. Therefore, we are issuing this ANPRM as a joint RSPA-FMCSA action.

The HMR focus on the safe transportation of hazardous materials by all modes. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation. Part 177 of the HMR specifies operational requirements for motor carriers that transport hazardous materials, such as driver training, loading and unloading requirements for specific hazardous materials, and segregation and separation requirements on loaded vehicles. The FMCSR address motor vehicle and driver safety, including: driver qualifications and licensing; hours of service; vehicle parts and accessories; and vehicle inspection, repair, and maintenance. Part 397 of the FMCSR prescribes certain additional requirements related to attendance and surveillance, parking, and routing of motor vehicles that transport placarded quantities of hazardous materials. Except for certain shipments of Class 7 (radioactive) materials, neither the HMR nor the FMCSR specifically address security threats to highway shipments of hazardous materials.

On May 2, 2002, RSPA proposed several new requirements to enhance the security of hazardous materials transported in commerce by all modes (67 FR 22028). The notice of proposed rulemaking (NPRM) included proposals to revise shipping documentation requirements to make it easier for law enforcement personnel to identify unusual or unauthorized activities involving transportation vehicles or operators. The NPRM also proposed to require hazardous materials shippers and carriers to assure that hazmat employee training includes a security component. In addition, RSPA proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans.

II. Purpose of this ANPRM

RSPA and FMCSA are seeking information on the feasibility of imposing specific security requirements, in addition to those proposed in the May 2 NPRM, on motor carriers that transport hazardous materials in commerce. Certain government

agencies, including the Department of Defense (DoD), the Department of Energy (DOE), and the Nuclear Regulatory Commission, as well as some private companies, employ rigorous security measures to protect sensitive shipments. Some of these security measures may also be appropriate for broader application to commercial motor carrier shipments of hazardous materials. In addition, there are many technological solutions for tracking shipments, communicating with drivers, or securing shipments within trailers that can protect shipments from hijacking or provide an early indication of a potential security problem.

Pre-notification. Though not required by Federal regulations, DoD and DOE sometimes notify state and/or local authorities prior to the transportation of certain materials through their jurisdictions. Such pre-notification may include the route planned for the shipment and the time of day during which the shipment will occur. Pre-notification enables emergency responders in jurisdictions through which such shipments take place to prepare in advance for a potential emergency or accident. It also enables state or local authorities to restrict traffic or take other precautions along the affected route.

Escorts. Certain hazardous materials shipments may be accompanied by armed escorts, either on the vehicle or in an accompanying vehicle. The presence of armed escorts is one measure designed to prevent or defeat an attempted hijacking or attack against a shipment.

Vehicle tracking. Satellite tracking, direct short-range communications, and cell phone technologies enable motor carriers to monitor a shipment while en route to its destination and to identify and communicate deviations from prescribed routes or time frames. Relatively sophisticated systems are currently available and are already used by many motor carriers to deter theft. Increasing numbers of motor carriers utilize vehicle tracking systems to enhance shipment security.

Anti-theft devices. There are a number of anti-theft devices that can help to reduce the risk of vehicle hijacking or cargo theft. Devices such as remote vehicle shut-offs, electronic ignition locks, and driver verification systems utilizing security codes or fingerprints assure that unauthorized persons cannot operate a motor vehicle. Tamper-resistant or tamper-evident seals and locks on cargo compartment openings protect sensitive cargoes and limit access to authorized personnel.

Operational measures. To reduce or eliminate the necessity for lengthy en route stops, some motor carriers are employing two drivers or using driver relays to avoid en route stops on long trips. These and other adjustments to routine operating procedures are relatively simple and cost-effective ways to enhance hazardous materials transportation security.

Safe havens. Under § 397.5 of the FMCSR, a motor vehicle containing Division 1.1, 1.2, or 1.3 explosives must be attended by the driver, or qualified representative of the motor carrier, at all times. Division 1.1, 1.2, and 1.3 explosives are excepted from the "attendance" requirements if three conditions are met. One of these conditions occurs when the vehicle is parked in a "safe haven." A "safe haven" is defined in the regulations as an area specifically approved in writing by Federal, State, or local government authorities for the parking of *unattended* vehicles containing Division 1.1, 1.2, and 1.3 explosive materials. The decision as to what constitutes a safe haven is generally made by the competent local authority having jurisdiction over the area.

There are no DOT regulations for construction and security of a safe haven other than the requirements contained in § 397.7 dealing with parking of vehicles containing Division 1.1, 1.2, and 1.3 explosives. The National Fire Protection Association (NFPA) has published standards for safe havens under NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives*. DoD has published standards for non-government safe havens used for the commercial shipments of DoD munitions under Military Traffic Management Command (MTMC) Freight Traffic Rules Publication No.1B.

The use of a safe haven may, in fact, increase the possibility of cargo theft or hijacking, because the driver, or qualified representative, is relieved from the attendance requirements of the regulations when using a safe haven. On the other hand, temporary storage of high risk cargoes in a safe haven that utilizes state-of-the-art measures to limit access and exercise 24-hour surveillance could increase the overall transportation security of certain high risk cargoes.

III. Comments

The measures discussed above have the potential to significantly enhance the security of hazardous materials shipments transported by motor vehicle. In addition, at least some of the security measures discussed in this ANPRM could also be applied more broadly to

hazardous materials shipments transported by air, rail, or vessel. Further, application of some or all of these security measures could have implications for the transportation choices made by hazardous materials shippers and for intermodal shipments of hazardous materials. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking that would apply more generally to shippers and carriers of certain high-risk hazardous materials, such as explosives, poison-by-inhalation (PIH) materials, and bulk shipments of flammable liquids and gases. The cost of requiring additional security measures may be significant. We urge commenters to consider these issues as they develop responses to this ANPRM.

We invite commenters to submit data and information on:

- (1) The state of information and communications technology development and the current level of adoption of state-of-the-art systems by the transportation industry, including those described above and others that commenters believe may warrant consideration;
- (2) The effectiveness of different types of physical security measures;
- (3) The overall security of safe havens for temporary storage during transportation, including suggestions for improving security at safe havens or alternatives to the use of safe havens;
- (4) The costs involved with implementing specific security measures;
- (5) Related safety or productivity benefits that would help offset costs;
- (6) Measures or incentives that may be appropriate to consider in promoting technology development and adoption in conjunction with or separate from general regulatory requirements; and
- (7) Whether specific physical security measures should be limited to certain highly hazardous materials and, if so, which highly hazardous materials might warrant specific security measures.

We are particularly interested in hearing from shippers and carriers that are utilizing some of the technologies and procedures discussed above—information on the benefits realized, the costs incurred, any technical or practical difficulties encountered, and other real-world experience would be especially helpful.

Because this ANPRM addresses measures to enhance the security of hazardous materials in transportation, we urge commenters to carefully consider the information they submit in response to the questions listed above. As with any rulemaking proceeding, we

reserve the right to reject comments that are beyond the scope of the issues discussed herein. For this ANPRM, comments that include information that may compromise transportation security will be disqualified as beyond the scope of this rulemaking.

There are a number of additional issues that we must address in assessing the feasibility and effectiveness of various measures to enhance hazardous materials transportation security. These include the analyses required under the following statutes and executive orders:

1. *Executive Order 12866: Regulatory Planning and Review*. E.O. 12866 requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with adoption of specific security requirements for motor carriers that transport hazardous materials in commerce.

2. *Executive Order 13132: Federalism*. E.O. 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect 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. We invite state and local governments with an interest in this rulemaking to comment on the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on state or local safety or environmental protection programs.

3. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*. E.O. 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that “significantly or uniquely affect” Indian communities and that impose “substantial and direct compliance costs” on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of specific security requirements for motor carriers that transport hazardous materials in commerce may have on Indian communities.

4. *Regulatory Flexibility Act*. Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider

whether a proposed rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific security requirements for motor carriers that transport hazardous materials in commerce could have a significant economic impact on your operations, please submit a comment to explain how and to what your business or organization could be affected.

IV. Regulatory Notices—Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rulemaking is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Issued in Washington, DC, on July 10, 2002, under authority delegated in 49 CFR part 106.

Robert A McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Brian McLaughlin,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

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BILLING CODE 4910–60–P; 4910–EY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 397

[Docket No. RSPA–02–12773 (HM–232B)]

RIN 2137–AD69

Revision to Periodic Tire Check Requirement for Motor Carriers Transporting Hazardous Materials

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Motor Carrier Safety Administration is proposing to eliminate an outdated requirement for certain motor vehicle operators to stop periodically to check their tires.