

**3052.212–70 Contract terms and conditions applicable to DHS acquisition of commercial items.**

**Contract Terms And Conditions Applicable To Dhs Acquisition Of Commercial Items (Date)**

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(b) \* \* \*

3052.239–7X Information Technology Security Awareness Training

■ 7. Amend part 3052 by adding section 3052.239–7X to read as follows:

**3052.239–7X Information technology security awareness training.**

As prescribed in (HSAR) 48 CFR 3039.7004 contract clause, insert the following clause:

**Information Technology Security Awareness Training (Date)**

(a) *Information Technology Security Awareness Training.* The Contractor shall ensure that all employees and subcontractor employees complete information technology (IT) security awareness training before access is provided to DHS information systems and information resources. The Contractor shall also ensure that employees and subcontractor employees complete IT security awareness training before a contractor-owned and/or operated information system or information resource can be used to collect, process, store or transmit controlled unclassified information (CUI). Training shall be completed within thirty (30) days of contract award and be completed on an annual basis thereafter not later than October 31st of each year. Any new Contractor employees and subcontractor employees assigned to the contract shall complete the training before accessing DHS information systems and information resources or contractor-owned and/or operated information systems and information resources capable of collecting, processing, storing or transmitting CUI under the contract. IT security awareness training is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. The Contractor shall maintain copies of training certificates for all Contractor and subcontractor employees as a record of compliance. Initial training certificates for each Contractor and subcontractor employee shall be provided to the Contracting Officer and/or Contracting Officer's Representative (COR) not later than thirty (30) days after contract award or assignment to the contract. Subsequent training certificates to satisfy the annual IT security awareness training requirement shall be submitted to the Contracting Officer and/or COR via email notification not later than October 31st of each year. The Contractor shall attach training certificates to the email notification and the email notification shall list all Contractor and subcontractor employees required to take the training and state the required IT security awareness training has been completed for all Contractor and subcontractor employees.

(b) *Rules of Behavior.* The Contractor shall ensure that all employees and subcontractor

employees sign the DHS Rules of Behavior (RoB) before access is provided to DHS information systems and information resources. The Contractor shall also ensure that employees and subcontractor employees sign the DHS RoB before a contractor-owned and/or operated information system or information resource can be used to collect, process, store or transmit CUI and before access to the contractor-owned and/or operated information system or information resource is provided to the employee. The RoB shall be signed within thirty (30) days of contract award. Any new Contractor employees and subcontractor employees assigned to the contract shall also sign the DHS RoB before accessing DHS information systems and information resources or contractor-owned and/or operated information systems and information resources capable of collecting, processing, storing or transmitting CUI. The DHS RoB is accessible at <http://www.dhs.gov/dhs-security-and-training-requirements-contractors>. The Contractor shall maintain signed copies of the DHS RoB for all Contractor and subcontractor employees as a record of compliance. Signed copies of the RoB shall be provided to the Contracting Officer and/or COR not later than thirty (30) days after contract award or assignment to the contract. The DHS RoB will be reviewed annually and the COR will provide notification when a review is required.

(c) *Subcontracts.* The Contractor shall insert this clause in all subcontracts and require subcontractors to include this clause in all lower-tier subcontracts.

(End of clause)

**Soraya Correa,**

*Chief Procurement Officer, Department of Homeland Security.*

[FR Doc. 2017–00754 Filed 1–18–17; 8:45 am]

**BILLING CODE 9110–9B–P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Part 174**

[Docket No. PHMSA–2016–0015 (HM–263)]

**RIN 2137–AF21**

**Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information by Rail**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** PHMSA requests comment on certain provisions of the Fixing America's Surface Transportation (FAST) Act of 2015. The FAST Act directs the Secretary of Transportation to require Class I railroads that transport

hazardous materials to generate accurate, real-time, and electronic train consist information. Further, the FAST Act includes provisions for the railroads to provide fusion centers with electronic train consist information to share with State and local first responders, emergency response officials, and law enforcement personnel during an accident, incident, or emergency. In support of developing regulations to implement the FAST Act mandates, PHMSA specifically requests comments and information on baseline changes, affected entities, and costs and benefits related to fusion centers collecting train consist information from railroads and disseminating this information in the event of an emergency.

**DATES:** Comments must be received by April 19, 2017.

**ADDRESSES:** You may submit comments identified by Docket No. PHMSA–2016–0015 (HM–263) by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number for this ANPRM at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS), including any personal information.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

*Privacy Act:* Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** (See 65 FR 19477, April 11, 2000), or you may visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Dirk Der Kinderen, (202) 366-4460, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

#### Abbreviations and Terms

ANPRM Advance Notice of Proposed Rulemaking  
 CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 DOJ Department of Justice  
 DOT Department of Transportation  
 EOC Emergency Operations Center  
 FAST Act Fixing America's Surface Transportation Act of 2015  
 FDMS Federal Docket Management System  
 FR Federal Register  
 Fusion Center State and Major Urban Area Fusion Center  
 HHFT High-Hazard Flammable Liquid Train  
 HMR Hazardous Materials Regulations  
 IT Information Technology  
 MOU Memorandum of Understanding  
 NPRM Notice of Proposed Rulemaking  
 O&M Operations and Management  
 PHMSA Pipeline and Hazardous Materials Safety Administration  
 RIA Regulatory Impact Analysis  
 RIN Regulation Identifier Number  
 SAR Suspicious Activity Reporting  
 SERC State Emergency Response Commission  
 U.S.C. United States Code

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#### I. Background

##### A. FAST Act

On December 4, 2015, President Barack Obama signed legislation titled, "Fixing America's Surface Transportation Act of 2015," or the "FAST Act." (See Pub. L. 114-94.) The FAST Act includes the "Hazardous Materials Transportation Safety Improvement Act of 2015" (sections 7001 through 7311), which instructs the Secretary of Transportation ("Secretary") to make specific regulatory amendments to the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). The FAST Act requires Class I railroads to generate accurate, real-time, and electronic train consist information that can be provided "to State and local first responders,

emergency response officials, and law enforcement personnel that are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials" and request such electronic train consist information. Section 7302 of the FAST Act is structured as follows:

- Section 7302(a)(1), (2), (5), and (7) apply to the sharing of the accurate, real-time, and electronic train consist information covering all hazardous materials with fusion centers.
- Section 7302(a)(3) and (4) apply to sharing advance notification and information on high-hazard flammable trains (HHFTs) with State Emergency Response Commissions (SERCs) in accordance with Emergency Order DOT-OST-2014-0067.
- Section 7302(a)(6) establishes security and confidentiality protections to prevent the public release of security-sensitive electronic train consist information or the advance notification of HHFT movements to unauthorized persons.

PHMSA intends to publish a notice of proposed rulemaking (NPRM) that will propose regulations to address §§ 7302(a)(1), (2), (5), (6) and (7) of the FAST Act. PHMSA is addressing the SERC notification portion of the FAST Act (§§ 7302(a)(3), (4) and (6)) in a separate rulemaking titled "Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains" (RIN: 2137-AF08).<sup>1</sup> Sections 7302(a)(1), (2), (5), (6), and (7) of the FAST Act are discussed in greater detail as follows.

Section 7302(a)(1)(A) directs the Secretary to issue regulations requiring Class I railroads transporting hazardous materials to generate accurate, real-time, and electronic train consist information, including:

- The identity, quantity, and location of hazardous materials on a train;
- The point of origin and destination of the train;
- Any emergency response information or resources required by the Secretary; and
- An emergency response point of contact designated by the Class I railroad.

Subparagraph (a)(1)(B) further directs the Secretary to issue regulations requiring Class I railroads to enter into a memorandum of understanding (MOU) with each applicable fusion center to provide the fusion center with secure and confidential access to the

electronic train consist information for each train transporting hazardous materials in the jurisdiction of the fusion center.

Section 7302(a)(2) directs the Secretary to issue regulations requiring each applicable fusion center to provide the electronic train consist information to State and local first responders, emergency response officials, and law enforcement personnel who are involved in the response to or investigation of an accident, incident, or public health or safety emergency involving the rail transportation of hazardous materials and request such electronic train consist information.

Section 7302(a)(5) directs the Secretary to issue regulations prohibiting any Class I railroad, employee, or agent from withholding, or causing to be withheld, the train consist information from first responders, emergency response officials, and law enforcement personnel described in § 7302(a)(2) in the event of an incident, accident, or public health or safety emergency involving the rail transportation of hazardous materials.

Section 7302(a)(6) directs the Secretary to issue regulations establishing security and confidentiality protections, including protections from the public release of proprietary information or security-sensitive information, to prevent the release of real-time train consist information to unauthorized persons.

Section 7302(a)(7) instructs the Secretary to issue regulations allowing each Class I railroad to enter into an MOU with any Class II railroad or Class III railroad that operates trains over the Class I railroad's line to incorporate the Class II railroad or Class III railroad's (*i.e.*, regional and short line railroads) train consist information within the existing framework described in § 7302(a)(1).<sup>2</sup>

##### B. Fusion Centers

The FAST Act requires the Secretary to issue regulations requiring fusion centers to participate in the gathering and dissemination of electronic train consist information. Section 7302(b)(4) of the FAST Act indicates that the term "fusion center" means a collaborative effort of two or more Federal, State, local, or Tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and

<sup>1</sup> On July 29, 2016, PHMSA published a Notice of Proposed Rulemaking, <https://www.regulations.gov/document?D=PHMSA-2014-0105-0240>.

<sup>2</sup> Classification of carriers (railroads) is based on annual operating revenues. A breakout of Class I, II and III railroads can be reviewed at 49 CFR part 1201—Railroad Companies under the General Instructions at 1-1(a).

respond to criminal or terrorist activity (6 U.S.C. 124(j)(1)). Since 2003, the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) have published guidance to support the development and implementation of fusion centers as centralized entities to improve the sharing of threat-related information related to criminal or terrorist activity. Located in states and major urban areas throughout the country, fusion centers are owned, operated, and staffed by State and local agencies with support from Federal partners. The federal support consists of deployed personnel, training, technical assistance, exercise support, security clearances, and connectivity to federal systems, technology, and grant funding to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity.<sup>3</sup> Specifically, grants from Federal agencies, including DHS and DOJ, are leveraged by states to support fusion center operations in executing their respective missions.

Fusion centers (1) are owned and operated by State and local entities and designated by their respective governor;<sup>4</sup> (2) serve as primary focal points within the state and local environment for the receipt, analysis, gathering, and sharing of criminal or terrorist threat-related information among Federal, State, local, Tribal,<sup>5</sup> and territorial partners; and (3) contribute to the Information Sharing Environment through their role in receiving threat information from the Federal government; analyzing that information in the context of their local environment; disseminating that information to local agencies; and gathering tips, leads, and suspicious activity reporting (SAR) from local agencies and the public. Fusion centers receive information from a variety of sources, including SAR from stakeholders within their jurisdictions, as well as federal information and intelligence. They analyze the information, reports and threat to disseminate to their customers (e.g., law enforcement and homeland security officials), thereby assisting homeland security partners at all levels of government to identify and address immediate and emerging threats. The mission and scope of a fusion center's operation is guided by the State or local agency that oversees its operations.

Some fusion centers only process terrorism information, while others also address criminal-related information. This focus is directed by the respective State and/or local agency.

The intelligence and information collected, analyzed, and shared may be strategic, as well as tactical. Information gathering and dissemination occur on an ongoing basis. Fusion centers are in a unique position to empower front-line law enforcement, public safety, fire service,<sup>6</sup> emergency response,<sup>7</sup> public health,<sup>8</sup> critical infrastructure protection,<sup>9</sup> and private sector security personnel to gather lawfully and share threat-related information, in accordance with the fusion centers' missions and authorities. They provide interdisciplinary expertise and situational awareness to inform decision-making at all levels of government. Fusion centers conduct analyses and facilitate information sharing, assisting law enforcement and homeland security partners in preventing, protecting against, and responding to crime and terrorism.

A fusion center differs from an emergency operations center (EOC). Fusion centers and EOCs serve distinct, but complementary roles in supporting the country's homeland security efforts. Fusion centers empower homeland security partners through the lawful gathering, analysis, and sharing of threat-related information, while EOCs primarily provide information and support to incident management and response/recovery coordination activities.<sup>10</sup>

## II. Request for Public Comment

With respect to the FAST Act mandate to develop regulations applicable to fusion centers, PHMSA is requesting comment and information specific to the impact on State and local government fusion center operations and first responders, emergency response officials, law enforcement personnel, railroads, and any other entity that is impacted by this mandate. The purpose of this ANPRM is to inform the Regulatory Impact Analysis (RIA) of this rulemaking.

The request for comment, including information and data are focused on the baseline changes, implementation, and

costs and benefits affecting entities—fusion centers, railroads, and first responders—that would be impacted by a rulemaking outlining regulations to prepare, gather, share, and acquire train consist information. While most of these questions are focused on fusion center operations, we welcome comments from all stakeholders on any of these questions.

### A. Affected Entities Questions

1. How many fusion centers are located in your State, including those associated with major urban areas?

2. How many fusion centers in your State, including those associated with major urban areas, would be affected by the provisions of § 7302 of the FAST Act? How many would be required to collect and disseminate information? Would it be possible to designate one fusion center within your State to collect and disseminate train consist data?

3. How many Class II and III railroads would be affected by § 7302(a)(7) of the FAST Act? This section of the FAST Act allows Class I railroads to enter into an MOU with any Class II or Class III railroad that operates trains over the Class I railroad's line to incorporate the Class II or Class III railroads' train consist information within the existing framework described in § 7302(a)(1). How many Class I railroads would enter into an MOU?

### B. Baseline Questions

4. Are fusion centers in your State 24/7 operations? If not, describe the coverage of operations on a daily/weekly basis?

5. Per the DHS Web site description of fusion center activities referenced in the subsection titles "Fusion Centers," how frequently do fusion centers in your State receive, analyze, gather, and share threat-related information? Do fusion centers in your State currently perform these activities for hazardous materials on trains? Does performance of the activities occur based on a shipment or is it more routine and constant (i.e., a 24/7 operation)?

6. Describe the current level of information technology (IT) and data collection and information management system capabilities of your State's fusion centers. Do they have the ability to receive and disseminate real-time train consist information?

7. How many employees work at your State's fusion centers? How many fusion center employees are employees of your State, employees of localities, and other types of employees?

8. How does your State fund fusion center operations? How are grants used?

<sup>3</sup> See <https://www.dhs.gov/national-network-fusion-centers-fact-sheet>.

<sup>4</sup> See <https://www.dhs.gov/fusion-center-locations-and-contact-information>.

<sup>5</sup> See <http://www.it.ojp.gov/documents/TribalParticipationinFusionCenters.pdf>.

<sup>6</sup> See <http://it.ojp.gov/docdownloader.aspx?ddid=1280>.

<sup>7</sup> See <https://www.dhs.gov/fusion-centers-and-emergency-operations-centers>.

<sup>8</sup> See <http://www.it.ojp.gov/docdownloader.aspx?ddid=1450>.

<sup>9</sup> See <http://www.it.ojp.gov/docdownloader.aspx?ddid=1136>.

<sup>10</sup> See <https://www.dhs.gov/fusion-centers-and-emergency-operations-centers>.

Please provide any data on the current cost and budget of your State's fusion center operations. What are the break-out costs by labor and IT?

9. How do first responders currently receive information, or train consist information, for hazardous materials in your State?

10. How do railroads transmit train consist information for hazardous materials incidents? Do railroads currently send information on hazardous materials train consists to fusion centers? If so, is this information sent electronically, such as by the AskRail app, or by some other means? <sup>11</sup> Do railroads send this information to both state and large urban area fusion centers?

11. Do railroad employees use electronic devices to update train consist information? Are these devices proprietary rail-specific devices, or off-the-shelf tablets or smartphones with apps that enable train consists to be updated and that information relayed to Railinc or some other railroad database? <sup>12</sup>

12. PHMSA is also aware of handheld readers.<sup>13</sup> Are these readers capable of tracking changes to train consists and interfacing with rail databases such as Railinc to update train consist information in real-time by cellular or wifi connections? If such devices are not currently capable of performing this task, is development of this capability in process? How much do these devices cost, what is their read range, and what are the ongoing service costs for these devices?

13. Have all Class I railroads developed means by which changes to hazardous material train consists can be updated in real-time and relayed electronically to the railroads or other entities?

14. Are there electronic systems that operate on a 24/7 basis to relay changes to train consists in real-time at all hours and locations throughout the day?

### C. Implementation Questions

The following questions relate to how stakeholders would implement § 7302 of the FAST Act.

15. Would your State identify a particular fusion center to collect and disseminate information for your entire State, including major urban areas? If not, what other implementation alternatives would your State consider?

16. What type of IT solutions would you consider or require for your State's

fusion center operations to receive, route, and disseminate real-time train consist information? Are there any IT or network solutions that would provide automated collection and routing to first responders on a 24/7 basis?

17. Would your State's fusion centers use the same employees to conduct criminal, terrorism, and hazardous material information collection and dissemination activities? Would employees require specialization in these areas?

18. How many and what types of additional employees would be required to implement the provisions of § 7302 of the FAST Act?

19. How many real-time train consist notifications would be received and disseminated by your State's fusion center operations? How long would it take to process, analyze, and disseminate notifications?

20. How would railroads transmit this information to fusion centers? If no system to relay this information to fusion centers exists, what resources and investments would be necessary to develop such a system (e.g., IT development, IT hardware to record changes to train consists in real-time, etc.)?

21. If further IT development or other implementation resources are required, what is a reasonable time frame for railroads to develop these resources? What barriers might prevent the timely development and deployment of these resources?

22. How would first responders receive real-time train consist information? Would first responders need any additional communication and technology equipment or enhancements?

### D. Costs Questions

23. What is the additional cost to your State's fusion center operations to implement the provisions of § 7302 of the FAST Act? What are the initial startup planning and capital investment costs and how long would initial startup take in terms of months? What are the recurring operations and management (O&M) costs? What are the costs and frequencies of any upgrades beyond initial startup and O&M costs? What are the initial and recurring training costs? Please provide quantitative data if possible.

24. What is the cost to collect, maintain, and disseminate real-time train consist notification?

25. What are the costs associated with electronic devices to record and relay changes to train consists in real-time?

26. What are the costs to establish security and confidentiality protections,

including protections from the public release of proprietary information or security-sensitive information, to prevent the release of real-time train consist information to unauthorized persons?

27. What are the costs for Class I railroads to enter into an MOU with any Class II railroad or Class III railroad that operates trains over the Class I railroad's line to incorporate the Class II railroad's or Class III railroad's train consist information within the existing framework described in § 7302(a)(1)?

28. What are the costs for Class I railroads to enter into an MOU with each applicable fusion center to provide the fusion center with secure and confidential access to the electronic train consist information for each train transporting hazardous materials in the jurisdiction of the fusion center?

29. What are the costs to first responders to receive information disseminated from fusion centers?

30. How and where would State fusion centers recover costs to implement the provisions of § 7302 of the FAST Act? Would implementation require grant funding? If so, from where or whom?

### E. Benefits Questions

31. As a result of implementing § 7302 of the FAST Act, would there be a reduction in the response time and incident-related costs and damages? Would there be a reduction in the duration of evacuations? Please provide quantitative data if possible.

32. What kind of avoided consequences and benefits to communities will be realized as a result of implementing the provisions of § 7302 of the FAST Act? Avoided consequences may include reduced risks of harm to the public and environment in terms of fatalities, injuries and hospitalizations, property loss, and damages associated with release of hazardous materials into the environment.

33. Would railroads experience any business benefits from having accurate electronic records of train consists in real-time (e.g., better ability to update customers on shipment location or delivery times/dates, more efficient utilization of railroad resources, etc.)? If so, please quantify to the extent possible.

## III. Regulatory Analysis

### A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This ANPRM has not been designated a "significant regulatory action" under

<sup>11</sup> For more information on the AskRail App, see <https://askrail.us/>.

<sup>12</sup> For more information on Railinc, see <https://www.railinc.com/rportal/web/guest/home>.

<sup>13</sup> See <http://www.aettag.com/>.

section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993). Accordingly, this ANPRM has not been reviewed by the Office of Management and Budget (OMB) and is not considered to be a significant regulatory action under the DOT Regulatory Policies and Procedures of February 26, 1979. See 44 FR 11034.

Executive Order 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (Jan. 21, 2011), supplements and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866. Together, Executive Orders 12866 and 13563 require 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."

Additionally, Executive Orders 12866 and 13563 require agencies to provide a meaningful opportunity for public participation. Therefore, PHMSA solicits comment on the questions raised in this ANPRM.

#### *B. Executive Order 13132*

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have "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." We invite State and local governments with an interest in this rulemaking to comment on any effect that revisions to the HMR relative to the FAST Act mandate may cause.

#### *C. Executive Order 13175*

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (Nov. 9, 2000), 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 impose "substantial and direct compliance costs" on such communities. We invite Indian tribal governments to provide comment(s) on any potential impacts of a rulemaking to implement the FAST Act mandate.

#### *D. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider whether a rulemaking 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.

As such, PHMSA solicits input from small entities on the questions presented in this ANPRM. If you believe the FAST Act mandate would have a significant economic impact on a substantial number of small entities, please submit a comment to PHMSA. In your comment, explain the extent of the impact, and whether there may be alternative approaches to consider that would minimize any significant impact on small business while still meeting the agency's statutory safety objectives.

Any future proposed rule would be developed in accordance with Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (Aug. 16, 2002), as well as DOT's procedures and policies, so as to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities of a regulatory action are properly considered.

#### *E. Paperwork Reduction Act*

Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. It is possible that new or revised information collection requirements could occur as a result of any future rulemaking action. We invite comment on the need for any collection of information and paperwork burdens that may apply as result of a future rulemaking.

#### *F. National Environmental Policy Act*

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375, requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) regulations require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the

proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. See 40 CFR 1508.9(b). PHMSA welcomes any data or information related to environmental impacts that may result from this rulemaking.

#### *G. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477 (April 11, 2000), or you may visit <http://www.dot.gov/privacy.html>.

#### *H. Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609, "Promoting International Regulatory Cooperation," 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary, or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are, or would be, adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979, Public Law 96–39, as amended by the Uruguay Round Agreements Act, Public Law 103–465, prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the

American public, and we have assessed the effects of this ANPRM to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

#### *I. Statutory/Legal Authority for This Rulemaking*

Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. The Secretary has delegated this authorization to the Administrator for PHMSA. See 49 CFR 1.97. PHMSA is issuing this ANPRM to gather necessary information in development of the regulatory impact analysis in support of this rulemaking.

#### *J. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, on January 13, 2017, under authority delegated in 49 CFR part 1.97.

**William Schoonover,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

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**BILLING CODE 4910-60-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 217

[Docket No. 160809705-6705-01]

RIN 0648-BG25

#### **Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Space Vehicle and Missile Launch Operations at Pacific Spaceport Complex Alaska, Kodiak Island, Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS has received an application, pursuant to the Marine Mammal Protection Act (MMPA), from the Alaska Aerospace Corporation (AAC) for authorization to take small numbers of marine mammals incidental to launching space launch vehicles and other smaller missile systems at the Pacific Spaceport Complex Alaska (PSCA) for the period of March 15, 2017, through March 14, 2022. NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations.

**DATES:** Comments and information must be received no later than February 21, 2017.

**ADDRESSES:** You may submit comments on this document by any of the following methods:

- **Electronic submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov), enter 2017-0002 in the "Search" box, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

**Instructions:** NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the end of the comment period. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. To help NMFS process and review comments more efficiently, please use only one method to submit comments. All comments received are a part of the public record and will generally be posted on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Stephanie Egger, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

#### Availability

A copy of AAC's application and any supporting documents, as well as a list of the references cited in this document, may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm). In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

#### Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the MMPA, would establish a framework for authorizing the take of marine mammals incidental to launching space vehicles, target missiles, and other smaller missile systems at the PSCA. We received an application from AAC requesting 5-year regulations and authorization to take one species of marine mammals. Take would occur by Level B harassment only, incidental to the space vehicle launches (also referred to as rocket launches). The regulations would be valid from March 15, 2017, to March 14, 2022. Please see *Background* below for definitions of harassment.

#### Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing 5-year regulations, and for any subsequent Letters of Authorization (LOA). As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

#### Summary of Major Provisions Within the Proposed Rule

The following provides a summary of some of the major provisions within the proposed rulemaking for AAC's rocket launch activities. We have preliminarily determined that AAC's adherence to the proposed mitigation, monitoring, and reporting measures listed below would achieve the least adverse impact practicable on the affected marine mammals. They include: