

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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## 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.

Eliminating this requirement will enhance the security of hazardous materials shipments.

**DATES:** Submit comments by August 15, 2002, but, to the extent possible, we will consider late-filed comments as we develop a final rule.

**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 RSPA-02-12773 (HM-232B). 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:** William Quade, (202) 366-6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

After the terrorist attacks of September 11, 2001, the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Special Programs Administration (RSPA), reviewed government and industry hazardous materials transportation safety and security programs with a view towards identifying areas where security should be enhanced. 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 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 delegated this rulemaking authority to 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 NPRM as a joint RSPA-FMCSA rulemaking.

Section 397.17 of the FMCSR requires periodic tire inspections for certain vehicles transporting hazardous materials. Drivers of vehicles with dual tires must stop every two hours or 100 miles to inspect the tires. When originally promulgated, this requirement was intended to prevent possible fires caused by overheated tube-type tires. With advancements in tire technology, fires caused by tire overheating occur much less frequently.

To require a vehicle transporting a hazardous material to stop at frequent regular intervals increases the security risk associated with such transportation. Any stop provides an opportunity for potential highjacking or theft of the vehicle and its cargo. Eliminating the tire check stop reduces this potential security risk. Therefore, in this NPRM, we are proposing to remove the requirement to periodically stop and check dual tires from § 397.17 of Part 397. Operators of motor vehicles transporting hazardous materials must still check each vehicle's tires at the

beginning of each trip and each time the vehicle is parked.

##### II. Regulatory Notices

###### A. 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). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

The proposal to eliminate the periodic tire check requirement for motor vehicles transporting hazardous materials will not result in increased compliance costs on the industry. Indeed, eliminating periodic stops to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

###### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We determined that the requirements proposed in this NPRM will not have a significant economic impact on a substantial number of small entities. Eliminating the current requirement for operators of motor vehicles transporting hazardous materials to stop periodically to check tires will decrease costs for the industry by reducing en route shipment delays and, thus, improving overall delivery times.

###### C. Executive Order 13132

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM does not propose any regulation with substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

###### D. Executive Order 13175

This NPRM was analyzed in accordance with the principles and criteria contained in Executive Order

13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

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

This NPRM does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector. This rule is the least burdensome alternative to achieve the objective of the rule.

#### *F. Paperwork Reduction Act*

This NPRM does not impose new information collection requirements.

#### *G. 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.

#### *H. Environmental Assessment*

There are no significant environmental impacts associated with this NPRM.

#### **List of Subjects in 49 CFR Part 397**

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, we propose to amend Title 49, Chapter III, Subchapter B of the Code of Federal Regulations, as follows:

#### **PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES**

1. The authority citation for part 397 would be revised to read as follows:

**Authority:** 49 U.S.C. 322; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

2. In § 397.17, paragraph (a) would be revised to read as follows:

#### **§ 397.17 Tires.**

(a) A driver must examine a motor vehicle's tires at the beginning of each trip and each time the vehicle is parked.

\* \* \* \* \*

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

**Brian McLaughlin,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

**Robert A McGuire,**

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

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**BILLING CODE 4910-EX-P**

### **DEPARTMENT OF THE INTERIOR**

#### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018-AH10**

#### **Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for Plant Species From the Island of Lanai, HI**

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

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis for the proposed designations of critical habitat for plant species from the island of Lanai, Hawaii. We are also providing notice of the reopening of the comment period for the proposal to determine prudence and to designate critical habitat for these plants to allow peer reviewers and all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopened comment period and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until August 15, 2002.

**ADDRESSES:** Written comments and information should be submitted to Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850-0001. For further instructions on commenting, refer to Public Comments Solicited section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Field Supervisor, Pacific Islands Office, at the above address (telephone: 808/541-3441; facsimile: 808/541-3470).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

A total of 37 plant species historically found on Lanai were listed as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Seven of these species are endemic to the islands of Lanai, while 30 species are reported from one or more other islands, as well as Lanai.

In other published proposals we proposed that critical habitat was prudent for 35 of the 37 species (*Abutilon eremitopetalum*, *Adenophorus periens*, *Bidens micrantha* ssp. *kalealaha*, *Bonamia menziesii*, *Brighamia rockii*, *Cenchrus agrimonoides*, *Centarium sebaeoides*, *Clermontia oblongifolia* ssp. *mauiensis*, *Ctenitis squamigera*, *Cyanea grimesiana* ssp. *grimesiana*, *Cyanea lobata*, *Cyanea macrostegia* ssp. *gibsonii*, *Cyperus trachysanthos*, *Cyrtandra munroi*, *Diellia erecta*, *Diplazium molokaiense*, *Gahnia lanaiensis*, *Hedyotis mannii*, *Hedyotis schlechtendahlana* var. *remyi*, *Hesperomannia arborescens*, *Hibiscus brackenridgei*, *Isodendron pyriforme*, *Labordia tinifolia* var. *lanaiensis*, *Mariscus faurei*, *Melicope munroi*, *Neraudia sericea*, *Portulaca sclerocarpa*, *Sesbania tomentosa*, *Silene lanceolata*, *Solanum incompletum*, *Spermolepis hawaiiensis*, *Tetramolopium remyi*, *Vigna o-wahuensis*, and *Viola lanaiensis*, *Zanthoxylum hawaiiense* from the island of Lanai (64 FR 48307, 65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, and 67 FR 3940). No change was made to these prudence determinations in the March 4, 2002 (67 FR 9805) revised proposal. In addition, on December 27, 2000, we proposed that critical habitat for *Phyllostegia glabra* var. *lanaiensis*, was not prudent because it has not been seen recently in the wild, and no viable genetic material of this species is known (65 FR 82086). No change was made in the March 4, 2002, revised proposal to the not prudent determination for *Phyllostegia glabra* var. *lanaiensis*. In the March 4, 2002, revised proposal, we proposed that critical habitat is prudent for one other species, *Tetramolopium lepidotum* ssp. *lepidotum*, for which a prudence determination had not been made previously, and that no longer occurs on Lanai but is reported from one other island (Oahu) (67 FR 9805).

In the March 4, 2002, revised prudence and critical habitat proposal,