

could be reclaimed by the Commission, as well as how a reconfigured and enlarged A Block should be licensed, in the event the Commission adopts the Optimization Plan.

43. Further, because the Optimization Plan does not specifically disclaim or supercede the preceding White Paper band plan proposals, the Commission seeks comment on the White Paper proposals as well. As in the case of the Optimization Plan, the White Paper's three proposals entail some shift in the position of the commercial spectrum blocks in the Upper 700 MHz Band. The White Paper's three band plan proposals would increase the existing allocation of one megahertz for the A Block up to one-and-a-half or two megahertz. In order to facilitate broadband within an enlarged A Block, the White Paper proposals involve either eliminating the B Block while adding bandwidth to the A Block and the public safety block, or reducing the B Block while adding bandwidth to the A Block. The *NPRM* seeks comment on whether the Commission should adopt any of the various White Paper proposals and also requests comment on the same transition issues raised by consideration of the Optimization Plan. The *NPRM* seeks comment on similar transition issues, including cost, timing and equitable compensation considerations, for each of the other alternative proposals as well.

#### Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

44. None.

#### Ordering Clauses

45. Pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336 and 337, this *Notice of Proposed Rulemaking* is hereby adopted.

46. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, and 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 45 days after publication in the **Federal Register**.

47. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking*,

including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Communications common carriers.

##### 47 CFR Part 27

Communications equipment, Radio.

##### 47 CFR Part 90

Radio, Reporting and recordkeeping requirements.

Federal Communication Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 06-7912 Filed 9-20-06; 8:45 am]

**BILLING CODE 6712-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Part 172

[Docket No. PHMSA-06-25885 (HM-232F)]

RIN 2137-AE22

#### Hazardous Material: Revision of Requirements for Security Plans

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM) and announcement of public meeting.

**SUMMARY:** PHMSA is considering revisions to the list of hazardous materials that require development and implementation of a security plan to address security risks during transportation in commerce. This effort is being coordinated with other Department of Transportation modal administrations (Federal Aviation Administration, Federal Motor Carrier Safety Administration, and Federal Railroad Administration) and the Transportation Security Administration of the Department of Homeland Security. The revisions would address outstanding petitions requesting that certain materials be excepted from the security plan requirements. PHMSA will hold a public meeting on November 30, 2006 to obtain stakeholder comments on security plan requirements. This ANPRM and the public meeting provide an opportunity for the public to comment on this issue and make recommendations on the

applicability of the security plan requirements.

**DATES:** *Public meeting:* The meeting will be held on November 30, 2006. The meeting will begin at 9 a.m.

*Written comments:* Comments must be received by December 20, 2006.

**ADDRESSES:** *Public meeting:* The meeting will be held at the U.S. Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590-0001. Requests for special accommodations should be addressed to the Pipeline and Hazardous Material Safety Administration, PHH-10, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone (202) 366-8553. *Written comments:* You may submit comments identified by the docket number (PHMSA-06-25885) by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Web site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- FAX: 1-202-493-2251.
- Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-402, Washington, DC 20590-0001.
- Hand Delivery: PL-402 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 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 or Regulation Identification Number (RIN) for this notice. Internet users may access comments received by DOT at <http://dms.dot.gov>. Note that comments received may be posted without change to <http://dms.dot.gov> including any personal information provided.

While all comments should be sent to DOT's Docket Management System (DMS), comments or those portions of comments PHMSA determines to include trade secrets, confidential commercial information, or sensitive security information (SSI) will not be placed in the public docket and will be handled separately. If you believe your comments contain trade secrets, confidential commercial information, or SSI, those comments or the relevant portions of those comments should be appropriately marked so that DOT may make a determination. PHMSA procedures in 49 CFR part 105 establish a mechanism by which commenters may request confidentiality.

In accordance with 49 CFR 105.30, you may ask PHMSA to keep

information confidential using the following procedures: (1) Mark "confidential" on each page of the original document you would like to keep confidential; (2) send DMS both the original document and a second copy of the original document with the confidential information redacted; and (3) explain why the information is confidential (as a trade secret, confidential commercial information, or SSI). In your explanation, you should provide enough information to enable PHMSA to determine whether the information provided is protected by law and must be handled separately.

In addition, for comments or portions of comments that you believe contain SSI as defined in 49 CFR 15.7, you should comply with Federal regulations governing the handling of SSI. See 49 CFR 1520.9 and 49 CFR 15.9, Restrictions on the disclosure of sensitive security information. Those regulations restrict the disclosure of SSI to those with a need to know and set forth specific requirements for marking, packaging, and disposing of documents containing SSI. Note when mailing in or using a special delivery service to send comments containing SSI, comments should be wrapped in a manner to prevent the information from being read. PHMSA may perform concurrent reviews on requests for designations as SSI.

After reviewing your request for confidentiality and the information provided, PHMSA will determine whether the information should be treated as confidential under applicable laws and regulations. PHMSA will notify you of the decision to grant or deny confidential treatment. If PHMSA denies your request, you will be provided an opportunity to request reconsideration before the information is publicly disclosed. PHMSA will reconsider its decision to deny confidentiality based on your response.

To further guard against disclosure of SSI, PHMSA will review all submissions, whether or not they are identified as confidential, prior to their posting on the public docket. PHMSA will notify you if we determine that information in your submission should not be disclosed to the public. If you have any questions concerning the procedures for determining confidentiality or security sensitivity, you may call one of the individuals listed below.

**FOR FURTHER INFORMATION CONTACT:**  
Susan Gorsky or Ben Supko, Office of Hazardous Materials Standards, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S.

Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Current DOT Security Requirements*

On March 25, 2003, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (Docket HM-232; 57 FR 14510) amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to establish requirements to enhance the security of hazardous materials transported in commerce. The final rule required shippers and carriers of certain hazardous materials to develop and implement security plans. The security plan requirements in subpart I of part 172 of the HMR apply to persons who offer for transportation or transport:

(1) A highway-route controlled quantity of a Class 7 (radioactive) material;

(2) More than 25 kg (55 lbs.) of a Division 1.1, 1.2, or 1.3 (explosive) material;

(3) More than 1 L (1.06 qt.) per package of a material poisonous by inhalation in Hazard Zone A;

(4) A shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 lbs.) gross weight or more of one class of hazardous materials for which placarding is required;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73 and, by April 1, 2007, a select agent or toxin regulated by the U.S. Department of Agriculture under 9 CFR part 121; or

(7) A shipment that requires placarding under subpart F of part 172 of the HMR.

The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures implemented as part of the plan may vary with the level of threat at a particular time. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. For personnel security, the plan must include measures to confirm information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. For

unauthorized access, the plan must include measures to address the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. For en route security, the plan must include measures to address security risks during transportation, including the security of shipments stored temporarily en route to their destinations.

As indicated above, the HMR set forth general requirements for a security plan's components rather than a prescriptive list of specific items that must be included. The HMR set a performance standard providing offerors and carriers with the flexibility necessary to develop security plans addressing their individual circumstances and operational environments. Accordingly, each security plan will differ because it will be based on an offeror's or a carrier's individualized assessment of the security risks associated with the specific hazardous materials it ships or transports and its unique circumstances and operational environment.

In developing the HM-232 final rule, we assessed the security risks associated with the transportation of different classes and quantities of hazardous materials. We concluded that the most significant security risks involve the transportation of certain radioactive materials; certain explosives; materials that are poisonous by inhalation, certain infectious and toxic substances; and bulk shipments of materials such as flammable and compressed gases, flammable liquids, flammable solids, and corrosives. Based on this security risk assessment, the HM-232 final rule currently in effect requires persons who offer for transportation or transport a hazardous material in an amount that requires placarding or select agents to develop and implement security plans. Using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. It also provides regulatory consistency, thereby minimizing confusion and facilitating compliance by the regulated community. We note as well that the current security plan requirements provide shippers and carriers with the flexibility to develop and implement a security plan that is appropriate to the individual circumstances, the types and quantities of hazardous materials shipped or transported and the modes of transportation utilized. A shipper or

carrier must assess the security risks for the types and quantities of hazardous materials to be transported and implement appropriate measures to address those risks. The risk assessment could well conclude that, for materials such as paint or flavoring extracts, the transportation security risk is not significant and extensive security measures are not warranted.

The Federal Motor Carrier Safety Administration (FMCSA), in 49 CFR part 385, prohibits a motor carrier from transporting certain hazardous materials unless the motor carrier holds a safety permit. A safety permit is required for the following hazardous materials in the quantities indicated:

- (1) A highway-route controlled quantity of a Class 7 (radioactive) material;
- (2) More than 25 kg (55 lbs.) of a Division 1.2, 1.2, or 1.3 (explosive) material;
- (3) More than 1 L (1.08 qt.) per package of a material poisonous by inhalation in Hazard Zone A;
- (4) A bulk packaging (capacity greater than 450 L (119 gallons)) of a material poisonous by inhalation in Hazard Zone B;
- (5) A packaging with a capacity equal to or greater than 13,248 L (3,500 gallons) of a material poisonous by inhalation in Hazard Zone C or D; or
- (6) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

#### *B. International Transportation Security Standards*

The United Nations Model Regulations on the Transport of Dangerous Goods (UN Recommendations) identify high consequence dangerous goods for which enhanced security measures are recommended. The recommended security measures include security plans and are similar to the requirements in subpart I of part 172 of the HMR. The UN Recommendations define high consequence dangerous goods as materials with the "potential for mis-use in a terrorist incident and which may, as a result, produce serious consequences such as mass casualties or mass destruction." The UN Recommendations list the following materials as high consequence dangerous goods:

- (1) Division 1.1 explosives;
- (2) Division 1.2 explosives;
- (3) Division 1.3 compatibility group C explosives;

- (4) Division 1.5 explosives;
- (5) Bulk shipments of Division 2.1 flammable gases;
- (6) Division 2.3 toxic gases (excluding aerosols);
- (7) Bulk shipments of Class 3 flammable liquids in PG I or II;
- (8) Class 3 and Division 4.1 desensitized explosives;
- (9) Bulk shipments of Division 4.2 PG I materials;
- (10) Bulk shipments of Division 4.3 PG I materials;
- (11) Bulk shipments of Division 5.1 PG I oxidizing liquids;
- (12) Bulk shipments of Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers;
- (13) Division 6.1 PG I toxic materials;
- (14) Division 6.2 infectious substances of Category A (UN2814 and 2900);
- (15) Class 7 radioactive materials in quantities greater than 3000 A<sub>1</sub> (special form) or 3000 A<sub>2</sub>, as applicable, in Type B(U) or Type B(M) or Type (C) packages; and
- (16) Bulk shipments of Class 8 PG I materials.

For purposes of the security provisions, the UN defines "in bulk" to mean quantities greater than 3,000 kg (6,614 lbs.) or 3,000 liters (660 gallons) in portable tanks or bulk containers.

#### **II. Purpose of This ANPRM**

PHMSA has received two petitions for rulemaking requesting a review and reevaluation of the current HMR security plan requirements. The Council on Safe Transportation of Hazardous Articles (COSTHA) petitioned PHMSA (P-1447) to reevaluate the security requirements in subpart I of part 172 of the HMR to "enhance international harmonization and to better utilize available resources in enhancing hazardous materials transportation security." COSTHA notes that the list of hazardous materials in the HMR that are subject to the security plan requirements differs from the list of high consequence dangerous goods in the UN Recommendations. COSTHA cites several examples of hazardous materials (e.g., automobile batteries, inks, paint, flavoring extracts) that, based on hazard class and quantity, require placarding under the HMR, and, therefore, are subject to the security plan requirements. COSTHA suggests it is highly unlikely a terrorist would use these materials to cause loss of lives, destruction of property, or damage to the environment. The petition requests that PHMSA adopt the same criteria as the UN Recommendations for materials that are subject to the security plan requirements, or, as an alternative, eliminate the security plan requirement

for quantities of hazardous materials for which placarding under the provisions of subpart F of part 172 is required.

Similarly, the American Trucking Associations (ATA) petitioned PHMSA (P-1466) to create a new subset of hazardous materials that are "security sensitive hazardous materials." The ATA supports the materials and quantities that are subject to the FMCSA Hazardous Materials Safety Permit requirements as the starting point for determining security sensitive hazardous materials. In addition to those materials, ATA suggests that PHMSA add the following materials from the UN high consequence dangerous goods list: (1) Bulk shipments of Division 2.1; (2) bulk shipments of Class 3, PG I and II; (3) Class 3 and Division 4.1 desensitized explosives (quantity to be determined); (4) bulk shipments of Division 4.2, PG I; (5) bulk shipments of Division 4.3, PG I; (6) bulk shipments of Division 5.1, PG I; (7) bulk shipments Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers; (8) Division 6.2 infectious substances of Category A (quantity to be determined); (9) any quantity of select agents; and (10) bulk shipments of Class 8, PG I. The ATA uses quantities greater than 3,500 gallons or 5,000 pounds to define "bulk" for purposes of security planning.

We agree with COSTHA and ATA that the list of materials for which a security plan is required should be re-assessed. The philosophy underlying PHMSA's earlier approach to security plans was that the security plans represented a baseline requirement. We considered the company preparing the security plan to be in the best position to assess security risks based on its operational circumstances. If security risks were determined to be insignificant, this would be reflected in a simple security plan with minimal content. Increased coverage would be required when security risks are more substantial. The security plan requirements went into effect September 25, 2003; both the industry and the government have had three years of experience evaluating security risks associated with specific hazardous materials and transportation environments and identifying appropriate measures to address those risks. Accordingly, we are initiating this rulemaking, in coordination with other DOT modal administrations (Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), and FMCSA) and the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS), to consider modifications to the

list of hazardous materials for which security plans are required. We ask commenters to address the following questions:

(1) What is the best basic approach to security plans? Is the current approach correct or should security plans be required only for hazardous materials in threshold quantities that are known to pose significant security risks?

(2) Are there ways to lessen the burdens of security plan requirements on companies with minimal security risks?

(3) Should baseline security requirements or guidelines be established when security plans are not required?

(4) What factors should be considered in determining whether security risks of a specific hazardous material or class of hazardous materials are significant enough to require preparation of a security plan?

(5) What role should Packing Groups play in determining the need for security plans?

(6) How should the quantities of hazardous materials transported be considered when determining whether a security plan is required?

(7) Does easy availability of a hazardous material in specific quantities outside of transportation play a role in determining whether a security plan should be required?

(8) Should uniform security plan requirements apply across all modes of transportation or should the triggering criteria (hazardous class and quantity) be mode-specific?

(9) What factors should be considered when determining whether specific hazardous materials, classes or quantities thereof, should be exempted from security plan requirements?

(10) How should the determination of transportation security risk account for specific hazardous materials or classes of materials that by themselves do not pose a security risk, but that could present a security risk in combination with other materials?

(11) What compliance or enforcement issues should be considered as we re-assess current security plan requirements?

(12) Should company size or geographic location (e.g., specific region of the country or urban or rural) play a role in determining whether a security plan is required?

(13) Does the Government need to provide more information on the specific security concerns that cause the

need for preparation of a security plan for certain hazardous materials to assist in security plan preparation?

(14) Should the Government maintain an evolving list of hazardous materials for which security plans are required based on changing threats and scenarios?

There are a number of additional issues that PHMSA will consider in assessing the list of hazardous materials for which a security plan is required. These include the analyses required under the following statutes and executive orders in the event we determine that rulemaking is appropriate:

*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 revisions to the list of hazardous materials for which security plans are required. A rule that is considered significant under E.O. 12866 must be reviewed and cleared by the Office of Management and Budget before it can be issued.

*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 revisions to the list of materials for which security plans are required may have on state or local safety or security programs.

*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 revisions to the list of materials for which security plans are required may have on Indian communities.

*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 you believe that revisions to the list of materials for which security plans are required could have a significant economic impact on small entities, please provide information on such impacts.

### III. Announcement of Public Meeting

PHMSA is conducting a public meeting to discuss the security plan requirements and receive comments and recommendations concerning the list of hazardous materials that trigger the requirement for a security plan. Other DOT modal administrations and DHS are participating in the meeting. See **ADDRESSES** and **DATES** for meeting details.

All interested persons are encouraged to participate. Prior notification to PHMSA is not required. Due to the heightened security measures, participants are encouraged to arrive early to allow time for security checks necessary to gain access to the building.

### 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 September 18, 2006 under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

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