

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Part 177**

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

RIN 2137-AD70

Security Requirements for Motor Carriers Transporting Hazardous Materials**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM); withdrawal.

SUMMARY: This withdrawal advises the public that the Transportation Security Administration (TSA) of the Department of Homeland Security (DHS) has assumed the lead role from the Pipeline and Hazardous Materials Safety Administration (PHMSA) for rulemaking addressing the security of motor carrier shipments of hazardous materials under this docket. Accordingly, PHMSA is withdrawing the ANPRM issued under this docket and closing its rulemaking proceeding. This action is consistent with and supportive of the respective transportation security roles and responsibilities of the Department of Transportation and DHS as delineated in a Memorandum of Understanding (MOU) signed September 28, 2004, and of TSA and PHMSA as outlined in an Annex to that MOU signed August 7, 2006. PHMSA will continue to consider alternatives for enhancing the safety of explosives stored during transportation under another rulemaking docket. PHMSA will consult and coordinate with TSA on hazardous materials transportation security issues in accordance with the PHMSA-TSA Annex.

DATES: The ANPRM published at 67 FR 46622, July 16, 2002, is withdrawn as of June 27, 2007.

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

SUPPLEMENTARY INFORMATION:**I. Background***A. Joint PHMSA-FMCSA ANPRM*

On July 16, 2002 (67 FR 46622), the Research and Special Programs Administration (predecessor to the Pipeline and Hazardous Materials Safety

Administration (PHMSA)) and the Federal Motor Carrier Safety Administration (FMCSA) jointly published an advance notice of proposed rulemaking (ANPRM) seeking comments on the feasibility, costs, and benefits of requiring motor carriers that transport hazardous materials to employ certain enhanced security measures. Specific measures discussed in the ANPRM included escorts, vehicle tracking and monitoring systems, emergency warning systems, remote ignition shut-offs, direct short-range communications, notification to state and local authorities, and safe havens for the temporary storage of explosives during transportation. We received over 80 sets of comments in response to the ANPRM. Commenters encouraged DOT to apply enhanced security measures only to those materials presenting a significant security risk and expressed various views on the merits of particular security measures, as summarized in the following section. As a result of PHMSA's expanded authority to regulate hazardous materials transportation security, granted to PHMSA under section 1711 of the Homeland Security Act, FMCSA issued a notice on March 19, 2003 (68 FR 13250) that transferred any future action on Docket HM-232A to PHMSA.

B. Summary of Comments on Issues Discussed in ANPRM

Escorts. Most commenters oppose armed escorts, whether on the vehicle itself or accompanying the vehicle. Many commenters suggest armed escorts could actually increase the vulnerability of a shipment by drawing attention to the vehicle and because of the increased number of stops a support vehicle would be required to make. Most commenters also express concern that the use of escorts would be cost prohibitive and could result in carriers refusing shipments for which escorts would be required. Commenters also expressed concern about logistical problems and higher insurance premiums (related to liability issues associated with armed escorts). Finally, commenters suggest "mixing" firearms and hazardous materials in transportation could increase safety problems because firearms are a potential source of ignition for explosives and certain other types of hazardous materials.

Pre-notification. Most commenters oppose pre-notification of state and/or local governments of planned shipments of hazardous materials. Commenters suggest a pre-notification requirement would overload emergency responders with information and likely detract from

their ability to respond promptly and efficiently to an incident or accident. Commenters note it is unlikely emergency response organizations have the personnel or resources necessary to manage the volume of information that would be received. Commenters also express concern that a pre-notification requirement could actually compromise security by making shipment information more widely available than would otherwise be the case. Shippers and carriers would be required to provide load-specific information (e.g., product name and hazard, routing, timing), which would then be disseminated to a variety of individuals and organizations. The opportunity for disclosure, whether deliberate or inadvertent, would be high. Commenters note volunteer emergency response organizations conduct virtually no security background checks. Finally, commenters outline a number of operational concerns, including handling road detours and route changes, related to increasing transportation times and adverse affects on supply chains for a host of industries that rely on "just-in-time" deliveries to manage inventories.

Safe Havens. A "safe haven" is 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 (49 CFR 397.5(d)(3)). The competent local authority having jurisdiction over the area generally makes the decision as to what constitutes a safe haven. There are no Federal standards for safe havens. Commenters support the continued use of safe havens, but recommend DOT develop Federal standards to provide details on the construction, maintenance, availability, and use of safe havens. Without clearly defined standards to follow, commenters state any future reliance on safe havens may actually make the hazardous materials stored there more susceptible to safety and security threats than if they were stored at other locations.

Due to the complexity of the safe haven issue and commenter response, PHMSA and FMCSA decided to split the safe havens issue from the other enhanced security measures proposed in the ANPRM by placing it in a separate docket (HM-238). On November 16, 2005, PHMSA published an ANPRM (70 FR 69493) to solicit additional comments on the safety and security issues associated with the storage of explosives during transportation and the need for additional regulatory requirements. The ANPRM includes summaries of current

government and industry standards applicable to such storage. We are currently evaluating the comments received in response to this ANRPM to determine whether additional rulemaking is warranted.

Vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, and direct short range communications. In December 2004, FMCSA completed a two-year national field operational test of existing technologies that could offer solutions to enhance the security of motor carrier shipments of hazardous materials. The test evaluated the costs, benefits, and operational processes required for wireless communications systems, including GPS tracking and digital telephones; in-vehicle technologies, such as on-board computers, panic buttons, and electronic cargo seals; personal identification systems, including biometrics and a user name/password system; and vehicle tracking, including geofencing and trailer tracking systems. The tested technologies performed well under operational conditions and showed promise for significantly reducing security vulnerabilities.

II. DOT/PHMSA and DHS/TSA Transportation Security Responsibilities

The Federal hazardous materials transportation law (Federal hazmat law, 49 U.S.C. 5101 et seq., as amended by § 1711 of the Homeland Security Act of 2002, Pub. L. 107–296 and Title VII of the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU)) authorizes the Secretary of the Department of Transportation to “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” The Secretary has delegated this authority to PHMSA. The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) promulgated by PHMSA under the mandate in section 5103(b), govern safety aspects, including security, of the transportation of hazardous materials.

Under the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597 (November 19, 2001), and delegated authority from the Secretary of Homeland Security (DHS), the Assistant Secretary of DHS for TSA has broad responsibility and authority for “security in all modes of transportation” (49 U.S.C. 114(d)). ATSA authorizes TSA to take immediate action to protect against threats to transportation security.

TSA’s authority over the security of transportation stems from several provisions of 49 U.S.C. 114. In executing its responsibilities and duties, TSA is specifically empowered to develop policies, strategies and plans for dealing with threats to transportation (49 U.S.C. 114(f)(3)). As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats (49 U.S.C. 114(f)(1)–(5), (h)(1)–(4)). TSA is also mandated to enforce security-related regulations and requirements (49 U.S.C. 114(f)(7)); ensure the adequacy of security measures for the transportation of cargo (49 U.S.C. 114(f)(10)); oversee the implementation and ensure the adequacy of security measures at transportation facilities (49 U.S.C. 114(f)(11)); and carry out other appropriate duties relating to transportation security (49 U.S.C. 114(f)(15)). TSA serves as the primary liaison for transportation security to the intelligence and law enforcement communities (49 U.S.C. 114(f)(1) and (5)).

In sum, TSA’s authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, security directives, security plans, and other requirements. Accordingly, under this authority, TSA may identify a security threat to any mode of transportation, develop a measure for dealing with that threat, and enforce compliance with that measure.

As is evident from the above discussion, DHS and DOT share responsibility for hazardous materials transportation security. The two departments consult and coordinate on security-related hazardous materials transportation requirements to ensure they are consistent with the overall security policy goals and objectives established by DHS and that the regulated industry is not confronted with inconsistent security guidance or requirements promulgated by multiple agencies. On September 28, 2004, DOT and DHS signed a Memorandum of Understanding (MOU) on Roles and Responsibilities. The purpose of the MOU is to facilitate the development and deployment of transportation security measures that promote safety, security, and efficiency in the movement of people and goods. The MOU recognizes that DHS has primary responsibility for security in all modes

of transportation. In this regard, DHS will establish national security performance goals, and, to the extent practicable, develop appropriate transportation security measures to achieve an integrated national transportation security system.

On August 7, 2006, PHMSA and TSA signed an annex to the September 28, 2004 DOT–DHS MOU. The Annex acknowledges TSA’s lead role in transportation security and that each agency brings core competencies, legal authority, resources, and expertise to their shared mission. The Annex reflects the agencies’ commitment to a system risk-based approach and to the development of practical solutions through work teams focused on key program elements, including research and development and the review and development of security standards. In entering into the Annex, PHMSA and TSA pledged to build on and not duplicate the various security initiatives and efforts already underway.

III. TSA Hazardous Materials Truck Security Pilot

In August 2005, TSA initiated the “TSA Hazardous Materials Truck Security Pilot.” This congressionally mandated pilot program is designed to test the functionality and capabilities of a centralized truck tracking system. The pilot utilizes specific protocols capable of interfacing with existing truck tracking systems, government intelligence centers, and first responders. The goal is to provide TSA with a tested and established truck tracking center that will allow TSA to “continually” track truck locations and specific hazardous materials load types in all 50 states. The tracking system will also allow for automatic or manual notification of exception based events. The TSA Hazardous Materials Truck Security Pilot including the prototype Truck Tracking Center is currently scheduled to operate through Fiscal Year 2007.

IV. Withdrawal of PHMSA–FMCSA ANRPM

Based on comments to the ANPRM and the results of the FMCSA Field Operational Test, two of the security measures addressed in the ANPRM—use of vehicle tracking and communications systems and anti-theft technologies—appear promising as means of enhancing the security of motor carrier transportation of certain classes and quantities of hazardous materials. In accordance with the DHS–DOT MOU and the PHMSA–TSA Annex, however, PHMSA, FMCSA, and TSA have determined action to address

motor carrier security tracking should not be taken prior to the completion of TSA's pilot, and, in any event, be carried out under TSA's legal authority, rather than primarily as an amendment to the HMR. By contrast, the proposals to require use of escorts or a pre-notification system do not appear worthy of further consideration. As mentioned above, PHMSA will continue to address safe havens and other issues related to the storage of explosives during transportation in Docket HM-238. In the meantime, PHMSA will consult and coordinate with TSA on hazardous materials transportation security issues in accordance with the PHMSA-TSA Annex.

Accordingly, PHMSA is withdrawing the July 16, 2002 ANPRM and terminating this rulemaking proceeding.

Issued in Washington, DC, on June 1, 2007, under authority delegated in 49 CFR Part 1.

Theodore L. Willke,

Acting Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070611120-7120-01; I.D. 032607A]

RIN 0648-AU77

Fisheries Off West Coast States; Highly Migratory Species Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement daily bag limits for sport-caught albacore tuna (*Thunnus alalunga*) and bluefin tuna (*Thunnus orientalis*) in the Exclusive Economic Zone (EEZ) off California under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). This proposed rule would be implemented as a conservation measure as part of the 2007-2009 biennial management cycle as established in the HMS FMP Framework provisions for changes to routine management measures.

DATES: Comments must be received by July 27, 2007.

ADDRESSES: You may submit comments on this notice, identified by I.D. 032607A, by any of the following methods:

- E-mail: 0648-AU77.SWR@noaa.gov. Include the I.D. number in the subject line of the message.

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

- Fax: (562) 980-4047.

FOR FURTHER INFORMATION CONTACT:

Craig Heberer, Sustainable Fisheries Division, NMFS, 760-431-9440, ext. 303.

SUPPLEMENTARY INFORMATION: On April 7, 2004, NMFS published a final rule to implement the HMS FMP (69 FR 18444) that included annual specification guidelines at 50 CFR 660.709. These guidelines establish a process for the Pacific Fishery Management Council (Council) to take final action at its regularly-scheduled November meeting on any necessary harvest guideline, quota, or other management measure and recommend any such action to NMFS. At their November 12-17, 2006, meeting, the Council adopted a recommendation to establish daily bag limits for sport caught albacore and bluefin tuna harvested in the EEZ off of California as a routine management measure for the 2007-2009 biennial management cycle. NMFS is initiating rulemaking for this action pursuant to procedures established at 50 CFR 660.709(a)(4) of the implementing regulations for the HMS FMP.

This proposed rule would establish a daily bag limit of 10 albacore tuna harvested in the U.S. EEZ south of Point Conception (34° 27' N. latitude) to the U.S.-Mexico border and a daily bag limit of 25 albacore tuna harvested in the U.S. EEZ north of Point Conception to the California-Oregon border. This proposed rule would also establish a daily bag limit of 10 bluefin tuna in the U.S. EEZ off the entire California coast. The two bag limits for albacore tuna are intended to accommodate differences in fishing opportunity in the two regions south and north of Point Conception. The 25 fish albacore tuna bag limit north of Point Conception is consistent with the current albacore tuna bag limit established by the State of Oregon for recreational fisheries in its waters and recognizes the more frequent weather-related loss of fishing opportunity in these waters compared to waters south of Pt. Conception.

California State regulations allow, by special permit, the retention of up to three daily bag limits for a trip occurring over multiple, consecutive days.

California State regulations also allow for two or more persons angling for finfish aboard a vessel in ocean waters off California to continue fishing until boat limits are reached. NMFS and the Council would consider these additional state restrictions to be consistent with Federal regulations implementing the HMS FMP, including this proposed rule if implemented. If approved, this regulation will stay in effect until such time as the Council and/or NMFS proposes further modifications as part of the HMS FMP biennial management cycle process. The State of California has informed NMFS that it intends to implement companion regulations to impose daily albacore and bluefin bag limits applicable to recreational angling and possession of fish in state waters (0-3 nm).

Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Approximately 165 HMS recreational charter vessels based in California were permitted under the HMS FMP to operate in the HMS recreational fishery off the U.S. West Coast in 2006. The California HMS recreational charter vessels are considered small business entities. The HMS recreational charter fleet based in Oregon does not fish off the coast of California and would therefore not be impacted by this proposed rule. A review of historic recreational fisheries data in ocean waters adjacent to California by recreational anglers, in all marine areas, and all boat-based fishing modes from 1997 through 2005 shows that approximately 98 percent of sampled catches that contained albacore landed less than 10 fish per day. For the 2 percent of trips that would be impacted by this proposed rule, the estimated economic impact equates to a potential expenditure loss of 0.08 percent to 1.0 percent. The data for bluefin tuna catches shows that 100 percent of the 1997 through 2005 sampled catches that landed bluefin contained less than six fish per day therefore potential expenditure loss under this proposed rule would be zero. In addition, the