

**FOR FURTHER INFORMATION CONTACT:**

Rolanda F. Smith, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket Nos. 02-321, adopted January 15, 2003, and released January 17, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Channel 289A at Oak Grove.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-2838 Filed 2-5-03; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF TRANSPORTATION****Transportation Security Administration****49 CFR Parts 1570 and 1572**

[Docket No. TSA-2003-14421]

RIN 2110-AA18

**Transportation of Explosives From Canada to the United States Via Commercial Motor Vehicle and Railroad Carrier**

**AGENCY:** Transportation Security Administration (TSA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule addresses security issues regarding transportation of explosives by commercial motor vehicles and railroads. It establishes temporary requirements that all motor carriers, motor private carriers, and railroad carriers not using United States citizens or lawful permanent resident aliens as drivers or railroad crews to transport explosives to the United States must meet during the period while DOT develops the standards that will apply on a more permanent basis.

**DATES:** Effective on February 3, 2003. Submit comments by March 10, 2003.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number TSA-2003-14421 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Klein, Office of the Chief Counsel, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590-0001; telephone 202-385-1262; e-mail: [Benjamin.Klein@tsa.dot.gov](mailto:Benjamin.Klein@tsa.dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This final rule is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this amendment. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. See **ADDRESSES** above for information on how to submit comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these rules in light of the comments we receive.

**Electronic Access**

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office's web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html); or

(3) Visiting the TSA's Laws and Regulations web page at <http://www.tsa.dot.gov/public/index.jsp>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT**.

**Background**

The Safe Explosives Act, Public Law 107-296 (116 Stat. 2280, 11/25/2002), sections 1121-1123, amended section 842(i) of Title 18, United States Code (U.S.C.) by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in interstate or foreign commerce" or "receive or possess any explosive which

has been shipped or transported in interstate or foreign commerce.” The Act added three new categories to the list of prohibited persons: aliens, persons dishonorably discharged from the armed forces, and former citizens of the United States who have renounced their citizenship. Under the Act, “alien” does not include lawful permanent resident aliens of the United States as defined in 8 U.S.C. 1101(a)(2). See 18 U.S.C. 845(a).

Section 845(a)(1) of Title 18, United States Code, provides in part that any aspect of the transportation of explosive materials that is regulated by DOT and that pertains to safety is exempt from § 842(i). Therefore, to the extent that DOT rules address matters in § 842(i) (such as by addressing the security risk posed by aliens), § 842(i) does not apply.

The Department of Transportation has statutory responsibility for the safe and secure transportation of hazardous materials, including explosives, in commerce. See 49 U.S.C. 5101 *et seq.* The Secretary of Transportation has delegated to RSPA, an agency within DOT, the authority to issue regulations governing the safe, including secure, transportation of hazardous materials (including explosives) in commerce. TSA has responsibility for security in all modes of transportation regulated under DOT, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States government, and ensuring the adequacy of security measures for the transportation of cargo. 49 U.S.C. 114(d), (f)(4), (f)(10). Because this rule addresses the secure transportation of explosives in commerce, TSA has coordinated this rule with RSPA.

In addition, DOT works closely with other U.S. Government agencies to facilitate efficient international commerce, especially across our borders. Since the passage of the Safe Explosives Act, we have had extensive consultations with the Bureau of Alcohol, Tobacco and Firearms, the United States Customs Service, other interested U.S. Government agencies, and representatives of the Government of Canada.

DOT has evaluated the risk to security posed by aliens who transport commercial shipments of explosives into the United States from Canada and has determined that the requirements adopted in this Interim Final Rule are sufficient to mitigate that risk at this time. The focus of this rule is solely on the addition of aliens to the list of prohibited persons. This rulemaking only addresses the narrow issue

regarding transportation of explosives by commercial motor vehicle carriers and railroad carriers and their drivers and train crew members in commerce crossing the border from Canada into the United States. It is intended as a temporary measure until the completion of consultations with Canada and other U.S. Government agencies, and issuance of more comprehensive regulations requiring background checks of persons transporting hazardous materials in commerce.

DOT is consulting with the Government of Mexico regarding a comparable regulatory regime for the transportation of explosives from Mexico to the United States.

#### **USA PATRIOT Act and Related Rulemakings**

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (115 Stat. 272, 10/26/2001), provides that the States must submit to the Department of Justice (DOJ) for a background records check (including a check of criminal, Immigration and Naturalization Service (INS), and intelligence databases) the names of all commercial motor vehicle drivers applying for a hazardous materials endorsement to a commercial drivers license (CDL). DOJ is directed to report the results of the background check to the Department of Transportation, which will decide whether the driver poses “a security risk warranting denial of the license.” DOT plans to issue regulations in the near future to implement these provisions. The long-term solution will involve background checks of all persons transporting hazardous materials in commerce to help ensure that they do not pose a security risk to the American public.

DOT is considering a number of other regulatory actions to address the issue of security in the transportation of hazardous materials. For example, the Research and Special Programs Administration (RSPA) published a notice of proposed rulemaking (NPRM) on May 2, 2002, under Docket HM–232, to enhance the security of hazardous materials in transportation (67 FR 22028). The NPRM proposed to require shippers and carriers of hazardous material shipments that require placarding (which includes explosives) to adopt and implement security plans that would include measures to address personnel security, unauthorized access, and en route security vulnerabilities. As part of its security plan, a company would have to implement measures to

confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials. The NPRM is expected to be the first step in what will likely be a series of rulemakings that will examine the necessity for imposing more stringent security requirements on certain materials or classes of materials deemed to be significant security threats. RSPA expects to publish a final rule under Docket HM–232 in the very near future.

#### **The Interim Final Rule**

TSA is establishing temporary requirements applicable to motor carriers, motor private carriers, and railroad carriers transporting explosives in commerce from Canada to the United States using drivers and train crew members who are not United States Citizens or lawful permanent resident aliens. These interim rules will be effective only during the period while DOT develops the standards that will apply on a more permanent basis.

This rule creates a new subchapter in TSA regulations, Subchapter D, which will eventually contain a number of rules covering maritime and land transportation security. This rule also creates new part 1572, which will contain rules related to credentialing and background checks for maritime and land transportation security.

#### *Section 1572.9 Transportation of Explosives From Canada to the United States via Commercial Motor Vehicle*

New § 1572.9 covers transportation of explosives from Canada to the United States via commercial motor vehicle. This section provides procedures to ensure that the carrier, offeror of explosives, and driver of the motor vehicle are properly checked.

Under this section carriers must ensure that they are known carriers, and that their offeror of explosives and their driver are known before crossing the border into the United States. They will become known by submitting specified information to Transport Canada in advance. Transport Canada is an agency within the Government of Canada with responsibility to oversee safety and security of transportation. Transport Canada will conduct checks to ensure that the carrier and the shipper are legitimate entities and authorized to do business in Canada. Transport Canada will also check the drivers to ensure there are no known security concerns. Transport Canada will forward to TSA the information on the carriers, offerors, and drivers that it has determined to be known. TSA will make independent additional checks with such other U.S.

government agencies as may be appropriate and will forward the list of acceptable carriers, offerors, drivers, and train crew members to the United States Customs Service. TSA will not include on the list of known carriers, offerors, drivers, or train crew members any whose background check indicates that they are not truly known (such as they are not truly authorized to conduct business in Canada) or may present a security risk.

The United States Customs Service will conduct a number of checks at the border. It will check the driver's commercial driver's license, as well as shipping papers and other required documentation. The Customs Service will determine whether the carrier, offeror, driver, and train crew member are on the list of known persons. If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and take other appropriate action. The Customs Service may allow the driver or train crew member to return to Canada, hold the shipment until the carrier has corrected the problem (such as by providing a driver or train crew member who is on the list), or take whatever action the Customs Service deems appropriate under other laws that may apply.

If a person violates TSA regulations, including those adopted here, TSA may take civil enforcement action if appropriate, including seeking a civil penalty of up to \$10,000 for each violation. See 49 U.S.C. 46301(a). TSA's enforcement procedures are in 49 CFR part 1503. In appropriate cases violations will be referred for criminal investigation and prosecution.

It should be noted that some U.S. citizens and lawful permanent resident aliens have Canadian commercial driver's licenses or are train crew members on operations subject to this rulemaking. Because such persons are not required to comply with this rule, they may not appear on the list of known drivers or train crew members provided by Transport Canada. To show to the Customs Service that they are eligible to serve as drivers, they may provide a valid U.S. passport or other U.S. Federal or State identification acceptable to the Customs Service.

Once a carrier, offeror, or driver is on the known list, they do not need to be submit their names again under this rule. Transport Canada and TSA will conduct additional checks on these persons as appropriate and will remove names from the list as necessary.

#### *Section 1572.11 Transportation of Explosives From Canada to the United States via Railroad Carrier*

New section 1572.11 covers transportation of explosives from Canada to the United States via railroad carrier. It closely parallels § 1572.9, with changes to reflect that crews rather than individual drivers operate trains and that the Customs Service sometimes directs trains to inspection points that are not precisely at the border.

#### *Transportation by Maritime and Aviation*

This rule does not cover transportation by maritime or aviation. The Coast Guard has extensive regulations relating to the security of transportation of explosives by aliens designed to discover and prevent entry to ports and places in the United States of those who present a threat to the United States on ships carrying explosives. See 33 CFR 160.T208 and 33 CFR part 6, and 33 CFR 160.111(a). DOT has determined that there is no need at this time to add further requirements. Similarly, TSA has extensive security requirements covering the security of flight crew and cargo on both foreign and U.S. air carriers. See 49 CFR parts 1544 and 1546. These requirements include criminal history checks and checks against other Federal databases of the flight crewmembers to ensure that they do not pose a security threat. DOT has determined that there is no need to add further requirements at this time. DOT has assessed the security risk posed by aliens transporting explosives by water and air and has determined that existing regulations are sufficient to mitigate the risk. Accordingly, these regulations exempt aliens transporting explosives in the United States by water and by air from liability for transportation offenses under 18 U.S.C. 845(a)(1).

#### **Good Cause for Immediate Adoption**

This action is being taken without providing the opportunity for notice and comment, and it provides for immediate effectiveness upon adoption. Under the Administrative Procedure Act (APA) an agency may forgo notice and comment rulemaking when "the agency for good cause finds \* \* \* that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). TSA finds good cause under 5 U.S.C. 553 that notice and comment are impracticable and contrary to the public interest. This rule is designed to address an unanticipated impact of the Safe Explosives Act on the routine

transportation of explosives in commerce across the U.S.-Canadian border. This rule has been developed after consultation with representatives of the Canadian government and the trucking and railroad industry.

Further, TSA has determined that this action is necessary to minimize security threats and potential security vulnerabilities. TSA and other federal security organizations have been concerned about the potential use of explosives to carry out terrorist acts in the United States since September 11, 2001. This rule provides additional assurance that explosives being carried into this country will be carried by authorized persons.

Further, the Under Secretary finds that good cause exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. Without an immediate effective date, there is a potential for a serious disruption of trans-border transportation.

#### **Economic Analyses**

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was reviewed under Executive Order 12866. It is significant within the meaning of the DOT's Regulatory Policies and Procedures. No regulatory analysis or evaluation accompanies this rule. When a rulemaking action does not include publication of a notice of proposed rulemaking, as is the case in this proceeding, economic assessments are not required for the final rule.

TSA recognizes that this rule will impose costs on affected carriers in Canada. These costs will stem from ensuring that the carrier, offeror, drivers, and train crew members are known to Transport Canada and to TSA. However, given the Act and the current security threat, TSA believes it is necessary to require these enhanced security measures, to avoid the potential of a serious disruption of trans-border transportation and to provide additional assurance that persons who transport explosives are authorized to do so. TSA will assess the costs and benefits of the rule as soon as possible and include the analysis in the docket of this rulemaking.

#### *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a

rule will not have a significant economic impact on a substantial number of small entities.

TSA recognizes that this rule will impose costs on affected foreign carriers, offerors, drivers, and train crew members, and that some of these carriers are small businesses. However, given the Act and the current security threat, TSA believes it is necessary to require these enhanced security measures. In any event, when a rulemaking action does not include publication of a notice of proposed rulemaking, as is the case in this proceeding, economic assessments are not required for the final rule.

#### *Unfunded Mandates Determination*

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the TSA consider the impact of paperwork and other information collection burdens imposed on the public. A person is not required to respond to a collection of information unless it displays a current valid Office of Management and Budget (OMB) control number.

Under this rule, the Canadian Government will gather information from their carriers and railroads and share it with TSA as a part of Government-to-Government consultation and coordination. Persons operating from Canada transporting explosives across the border pursuant to this rule will not be subject to additional paperwork burdens. The information that they will present to Customs is already required under other international, statutory, and regulatory provisions. We note that this rule is an interim measure that must be issued quickly to prevent disruption of commerce. We are working closely with

OMB to obtain expedited clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) for the Government-to-Government paperwork collection.

#### **International Trade Impact Statement**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. DOT has assessed the potential effect of this rulemaking in consultation with the Government of Canada, and has determined that it will not have a significant impact on foreign commerce and, therefore, has no effect on any trade-sensitive activity.

#### **Executive Order 13132, Federalism**

TSA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

#### **Environmental Analysis**

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

#### **Energy Impact**

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

#### **List of Subjects in 49 CFR Part 1572**

Motor carriers, Motor vehicle carriers, Railroads, Security measures.

#### **The Interim Final Rule**

In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, by adding a new subchapter D to read as follows:

**SUBCHAPTER D—MARITIME AND LAND  
TRANSPORTATION SECURITY**

**PART 1570—[Reserved]**

**PART 1572—CREDENTIALING AND  
BACKGROUND CHECKS FOR  
MARITIME AND LAND  
TRANSPORTATION SECURITY**

Sec.

1572.1 Applicability.

1572.9 Transportation of explosives from Canada to the United States via commercial motor vehicle.

1572.11 Transportation of explosives from Canada to the United States via railroad carrier.

**Authority:** 49 U.S.C. 114, 40113, 46105.

**§ 1572.1 Applicability.**

This part prescribes regulations for credentialing and background checks in specified uses for maritime and land security.

**§ 1572.9 Transportation of explosives from Canada to the United States via commercial motor vehicle.**

(a) *Applicability.* This section applies to carriers that carry explosives from Canada to the United States using a driver who is not a United States citizen or lawful permanent resident alien of the United States.

(b) *Terms used in this section.* For purposes of this section:

*Carrier* means any “motor carrier” or “motor private carrier” as defined in 49 U.S.C. 13102(12) and (13), respectively.

*Customs Service* means the United States Customs Service.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known carrier* means a person that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known driver* means a driver of a motor vehicle who has been determined by the Governments of Canada and the United States to present no known security concern.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the carrier for transportation from Canada to the United States, and may also be known as the “consignor” in Canada.

(c) *Prior approval of carrier, offeror, and driver.* (1) No carrier may transport in commerce any explosive into the United States from Canada via motor vehicle if the driver of the vehicle is a not a United States citizen or lawful permanent resident alien unless the carrier, offeror, and driver are identified on a TSA list as a known carrier, known offeror, and known driver, respectively.

(2) The carrier must ensure that it, its offeror, and its driver have been determined to be a known carrier, known offeror, and known driver, respectively. If any has not been so determined, the carrier must submit the following information to Transport Canada:

(i) The carrier must provide its:

- (A) Official name;
- (B) Business number;
- (C) Any trade names; and
- (D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

- (A) Official name;
- (B) Business number; and
- (C) Address.

(iii) The following information about any driver the carrier may use to transport explosives into the United States from Canada who is neither a United States citizen nor lawful permanent resident alien of the United States:

- (A) Full name;
- (B) Canada Commercial Driver’s License number; and
- (C) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the carrier and offeror are legitimately doing business in Canada and will also determine that the drivers are properly licensed and present no known problems for purposes of this section. Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known carriers, offerors, and drivers and their identifying information.

(4) TSA will update and maintain the list of known carriers, offerors, and drivers and forward the list to the Customs Service.

(5) Once included on the list, the carriers, offerors, and drivers need not obtain prior approval for future transport of explosives under this section.

(d) TSA checks. TSA may periodically check the data on the carriers, offerors and drivers to confirm their continued eligibility and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border—*(1) *Driver who is not a United States citizen or lawful permanent resident alien.* Upon arrival at the border, and prior to entry into the United States, the driver must provide a valid Canadian commercial driver’s license to the Customs Service.

(2) *Driver who is a United States citizen or lawful permanent resident alien.* If the Customs Service cannot verify that the driver is on the list, and if the driver is a United States citizen or lawful permanent resident alien, the driver may be cleared by the Customs Service upon providing:

- (i) A valid United States passport; or
- (ii) One or more other document(s) including a form of United States federal or state government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

**§ 1572.11 Transportation of explosives from Canada to the United States via railroad carrier.**

(a) *Applicability.* This section applies to railroad carriers that carry explosives from Canada to the United States using a train crew member who is not a United States citizen or lawful permanent resident alien of the United States.

(b) *Terms under this section.* For purposes of this section:

*Customs Service* means the United States Customs Service.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known railroad carrier* means a person that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all

applicable laws and regulations governing the transportation of explosives.

*Known train crew member* means an individual used to transport explosives from Canada to the United States who has been determined by the Governments of Canada and the United States to present no known security concern.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the railroad carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.

*Railroad carrier* means "railroad carrier" as defined in 49 U.S.C. 20102.

(c) *Prior approval of railroad carrier, offeror, and train crew member.* (1) No railroad carrier may transport in commerce any explosive into the United States from Canada via a train operated by a crew member who is not a United States citizen or lawful permanent resident alien unless the railroad carrier, offeror, and train crew member are identified on a TSA list as a known railroad carrier, known offeror, and known train crew member, respectively.

(2) The railroad carrier must ensure that it, its offeror, and each of its crew members have been determined to be a known railroad carrier, known offeror, and known train crew member, respectively. If any has not been so determined, the railroad carrier must submit the following information to Transport Canada:

(i) The railroad carrier must provide its:

- (A) Official name;
- (B) Business number;
- (C) Any trade names; and
- (D) Address.

(ii) The following information about any offeror of explosives whose shipments it will carry:

- (A) Official name;
- (B) Business number; and
- (C) Address.

(iii) The following information about any train crew member the railroad carrier may use to transport explosives into the United States from Canada who is neither a United States citizen nor lawful permanent resident alien:

- (A) Full name; and
- (B) Both current and most recent prior residential addresses.

(3) Transport Canada will determine that the railroad carrier and offeror are legitimately doing business in Canada and will also determine that the train crew members present no known problems for purposes of this section.

Transport Canada will notify TSA of these determinations by forwarding to TSA lists of known railroad carriers, offerors, and train crew members and their identifying information.

(4) TSA will update and maintain the list of known railroad carriers, offerors, and train crew members and forward the list to the Customs Service.

(5) Once included on the list, the railroad carriers, offerors, and train crew members need not obtain prior approval for future transport of explosives under this section.

(d) *TSA checks.* TSA may periodically check the data on the railroad carriers, offerors, and train crew members to confirm their continued eligibility and may remove from the list any that TSA determines is not known or is a threat to security.

(e) *At the border*—(1) *Train crew members who are not United States citizens or lawful permanent resident aliens.* Upon arrival at a point designated by the Customs Service for inspection of trains crossing into the United States, the train crew members of a train transporting explosives must provide sufficient identification to the Customs Service to enable that agency to determine if each crew member is on the list of known train crew members maintained by TSA.

(2) *Train crew members who are United States citizens or lawful permanent resident aliens.* If the Customs Service cannot verify that the crew member is on the list and the crew member is a United States citizen or lawful permanent resident alien, the crew member may be cleared by the Customs Service upon providing:

- (i) A valid United States passport; or
- (ii) One or more other document(s) including a form of United States federal or state government-issued identification with photograph, acceptable to the Customs Service.

(3) *Compliance.* If a carrier attempts to enter the United States without having complied with this section, the Customs Service will deny entry of the explosives and may take other appropriate action.

Issued in Washington, DC, on February 3, 2003.

**Stephen J. McHale,**  
*Deputy Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 021101264-3016-02; I.D. 101802D]

RIN 0648-AQ33

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery

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

**ACTION:** Final rule, 2003 specifications.

**SUMMARY:** NMFS announces final specifications for the 2003 Atlantic herring fishery. There are two changes from the 2002 specifications approved by NMFS for the 2003 fishery: A transfer of 10,000 mt from Area 2 total allowable catch (TAC) reserve to the Area 3 TAC resulting in an Area 3 TAC of 60,000 mt and an Area 2 TAC reserve of 70,000 mt; and a restriction on U.S. at-sea processing (USAP) vessels to fish in Areas 2 and 3, only. The intent of this final rule is to promote the development and conservation of the Atlantic herring resource.

**DATES:** Effective February 6, 2003, through December 31, 2003.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Stock Assessment and Fishery Evaluation (SAFE) Report for the 2001 Atlantic Herring Fishing Year are available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA/SAFE are accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978-281-9273, fax 978-281-9135, e-mail [paul.h.jones@noaa.gov](mailto:paul.h.jones@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Atlantic Herring Fishery Management Plan (FMP) require the New England Fishery Management Council's (Council) Atlantic Herring Plan Development Team (PDT) to meet at least annually, no later than July each year, with the Atlantic States Marine Fisheries Commission's (Commission) Atlantic Herring Plan Review Team (PRT) to develop and recommend the following