

Federal Communications Commission.

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 107, 171, 172, and 177

[Docket No. RSPA-02-12064 (HM-232)]

RIN 2137-AD66

#### Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials

**AGENCY:** Research and Special Programs  
Administration (RSPA), DOT.

**ACTION:** Notice of proposed rulemaking  
(NPRM).

**SUMMARY:** The Research and Special Programs Administration is proposing new requirements to enhance the security of hazardous materials transported in commerce. Proposals include a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. We further propose to require shipping papers to include the name and address of the consignor and consignee and the shipper's DOT Hazmat Registration number, if applicable. In addition, we propose to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. We also propose to require hazardous materials shippers and carriers to assure that their employee training includes a security component.

**DATES:** Submit comments by June 3, 2002. 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-02-12064 (HM-232) and be submitted in two copies. 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:

Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Hazardous materials are essential to the economy of the United States and the well-being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. Millions of tons of explosive, poisonous, corrosive, flammable, and radioactive materials are transported every day. Hazardous materials move by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

RSPA's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The hazardous materials regulations (HMR; 49 CFR Parts 171-180) are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation.

In the wrong hands, hazardous materials can pose a significant security threat. Hazardous materials in transportation are particularly vulnerable to sabotage or misuse. Security of hazardous materials in the transportation environment poses unique challenges as compared to security at fixed facilities. Hazardous materials are frequently transported in substantial quantities. Such materials are already mobile and are frequently transported in proximity to large population centers. Further, hazardous materials in transportation are often clearly identified to ensure safe and appropriate handling during transportation and to facilitate effective emergency response in the event of an accidental release. While the HMR provide for a high degree of safety with respect to avoiding and mitigating unintentional releases of hazardous materials during transportation, the HMR do not specifically address security threats.

As a result of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, the Research and Special Programs Administration (RSPA, we) has undertaken a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, we established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues in the wake of the September 11 attacks and continuing terrorist threats. In addition, we created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from the Federal Motor Carrier Safety Administration, Federal Railroad Administration, Federal Aviation Administration, U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, we published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addresses personnel, facility, and en route security issues and includes contact points for obtaining additional, more detailed information.

In addition, we identified a number of regulatory measures that, when implemented, will improve the security of hazardous materials in transportation. In this NPRM, we are proposing to revise requirements in the HMR applicable to registration certificates, shipping documentation, and training. We also propose to establish a new requirement for certain hazardous materials shippers and carriers to have plans in place to assure the security of shipments during transportation.

Many of these proposed requirements already are being implemented voluntarily by the hazardous materials industry, particularly by shippers and carriers of certain highly hazardous materials. If adopted, the measures proposed in this NPRM will facilitate monitoring and tracking of hazardous materials shipments by shippers, carriers, and enforcement authorities; reduce the potential for certain hazardous materials to be targets for terrorists or saboteurs; and increase security awareness for hazardous materials employees. Specific provisions of this NPRM are discussed below.

#### *A. Registration Certificates*

Currently, each motor carrier transporting placarded quantities of certain classes or divisions of hazardous materials is required to file with RSPA a registration statement and pay an annual fee (49 CFR Part 107). A Certificate of Registration (certificate), which includes a U.S. DOT Hazmat Registration Number, is then issued by RSPA to the carrier. A carrier must display its registration number on a document carried on each motor vehicle, but need not maintain a copy of the certificate itself on each vehicle.

The registration certificate can substantially assist state and local law enforcement personnel in determining whether a carrier is a legitimate transporter of hazardous materials. Therefore, in this NPRM, we propose to revise 49 CFR 107.620(b) and Part 177 of the HMR to require each motor carrier registered with RSPA to maintain a copy of its current certificate on each motor vehicle used to transport hazardous materials.

#### *B. Shipping Papers*

Many hazardous materials transported in commerce potentially may be used as weapons of mass destruction or weapons of convenience. It is critical to assuring the safety and security of these shipments that transportation of a hazardous material by an unauthorized carrier or vehicle operator is readily apparent to Federal, state, and local

regulatory and law enforcement agencies. Shipping papers are an important tool for assisting law enforcement personnel to identify unusual or unauthorized activities involving drivers or vehicles.

Currently, the HMR generally require each person who offers a hazardous material for transportation to describe the material on a shipping paper. However, there is no requirement for a shipping paper to include the name and address of the person offering the shipment or the person to whom the shipment will be delivered. Further, there is no requirement for a shipping paper to include the U.S. DOT Hazmat Registration Number of the person offering the hazardous material for transportation. A requirement to include this information on a shipping paper will assist law enforcement personnel to promptly ascertain the legitimacy of hazardous materials shipments during routine or random roadside inspections and to identify suspicious or questionable situations where additional investigation may be necessary.

Therefore, in this NPRM, we propose to amend § 172.201 of the HMR to require each shipping paper to include the name of the shipment consignor and the address from which the shipment originates and the name and address of each person to whom the shipment will be delivered. In addition, we propose to require each shipping paper to include the U.S. DOT Hazmat Registration Number, if applicable, of the person offering the shipment for transportation. The names and addresses of the consignor and each consignee may be included in an attachment to the shipping paper. If contained in an attachment, the attachment would not be subject to the one-year retention requirement of 49 U.S.C. 5110(e). Note that the proposal requires a shipping paper to include the actual street address from which a shipment originates and the actual street address(es) to which a shipment will be delivered. A billing address, corporate headquarters address, or post office box number would not be acceptable. Moreover, each person who prepares a shipping paper for a given shipment must indicate the location from which the hazardous material will be transported and the destination to which the hazardous material will be delivered under that shipping paper. As an example, a shipment originates in New York City and is transported to a freight forwarder located in Baltimore to be consolidated with other materials and transported to Atlanta. In this case, the original shipper will complete a

shipping paper that includes the origin address in New York City and the destination address in Baltimore. The freight forwarder will complete a new shipping paper for the consolidated shipment that includes the origin address in Baltimore and the destination address in Atlanta.

In this NPRM, we propose to except certain shipments from the requirement to include consignor/consignee names and addresses and U.S. DOT Registration Numbers on shipping papers. The exceptions would apply to limited quantities of hazardous materials and to materials described as: Battery powered equipment; Battery powered vehicle; Carbon dioxide, solid; Castor bean; Castor flake; Castor meal; Castor pomace; Consumer commodity; Dry ice; Engines, internal combustion; Fish meal, stabilized; Fish scrap, stabilized; Refrigerating machine; Vehicle, flammable gas powered; Vehicle, flammable liquid powered; and Wheelchair, electric. The proposed exceptions are identical to current exceptions from the requirement in Subpart G of Part 172 for emergency response information to accompany hazardous materials shipments. The listed materials do not pose a security risk in transportation.

#### *C. Security Plans*

Hazardous materials in transit are uniquely vulnerable to theft or attack. To assure public safety, shippers and carriers must take reasonable measures to plan for and implement procedures to prevent unauthorized persons from taking control of or attacking hazardous materials shipments. Therefore, in this NPRM, we propose a new Subpart I in Part 172 to require persons subject to the registration requirements in Subpart G of Part 107 and persons who offer or transport infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR Part 72 to develop and implement written plans to assure the security of hazardous materials shipments. Those persons required to register under Subpart G of Part 107 include 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 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; and (5) a shipment that requires placarding. Select agents are infectious

substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately.

The requirements for a transportation security plan are in a new Subpart I of Part 172. In Subpart I, we propose to establish a general requirement for persons who offer hazardous materials for transportation and persons who transport hazardous materials in commerce to have written security plans. At a minimum, a security plan should use a risk management model to assess security risks and develop appropriate measures to reduce or eliminate risk. To assist shippers and carriers to perform appropriate risk assessments, we made a Risk Management Self-Evaluation Framework available on our website (<http://hazmat.dot.gov>). A number of industry associations have also developed guidelines for performing security risk assessments. See our February 14, 2002 advisory notice for a list of Federal agencies and industry associations and organizations that may be of help.

For hazardous materials transportation, a security plan should focus not only on the potential threats posed by the material, but on personnel, facility, and en route security issues, as well. This NPRM does not include a laundry list of actions that must be included in a security plan. Rather, a company should implement a plan that is appropriate to its individual circumstances, considering the types and amounts of hazardous materials shipped or transported and the modes used for transportation.

It is our understanding that the USCG and the International Maritime Organization (IMO) are considering broad, comprehensive security-related requirements for vessels and port facilities. The requirements under consideration would address all vessel and port facility operations, not merely those involving hazardous materials. In addition, the Environmental Protection Agency (EPA) is considering security requirements for fixed facilities that handle hazardous materials. It is not our intention to require shippers or carriers to develop several different security plans in order to comply with regulations that may be issued by other Federal or international entities. Therefore, in this NPRM, we include language to specify that security plans that conform to requirements issued by other Federal or international agencies may be used to satisfy the requirement proposed for the HMR, provided the security plans address the components specified.

#### *D. Training*

The HMR currently require hazmat employees to be trained so they: (1) Are familiar with the general provisions of the HMR and can recognize and identify hazardous materials; (2) are knowledgeable about specific HMR requirements applicable to functions performed; and (3) are knowledgeable about emergency response information, self-protection measures, and accident prevention methods. A hazmat employee is one who directly affects hazardous materials transportation safety (§ 171.8). Hazmat employers must ensure that their hazmat employees are trained. For new employees, training must be completed within 90 days after employment or a change in job function. All hazmat employees must receive recurrent training every three years.

The safety training provided by hazmat employers may include the physical security of hazardous materials and ways to prevent vandalism and theft. However, such training may not be adequate to meet current threats. Because many hazardous materials transported in commerce may potentially be used as weapons of mass destruction or weapons of convenience, it is critical to the assurance of public safety that training for persons who offer and transport hazardous materials in commerce include a security component. Therefore, in this NPRM, we are proposing to add a provision to § 172.704 to require the training of each hazmat employee to include a security component. Under this proposal, hazmat employees of persons required to have a security plan under the provisions of this NPRM must be trained in the plan's specifics. All hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. As proposed in this NPRM, all hazmat employees would be required to be trained within three months of issuance of a final rule.

As discussed above under "Security Plans," we are aware that the USCG, IMO, and EPA are considering comprehensive security requirements for operations and facilities under their respective jurisdictions. To the extent that regulations promulgated by other agencies may include security training, such training may be used to satisfy the training requirements proposed in this NPRM, provided the training covers the components specified in this NPRM.

## **II. Comments on the NPRM**

The threat to this Nation's security posed by possible intentional misuse of hazardous materials in transportation in commerce is ongoing and significant. Those responsible for the September 11 attacks on the World Trade Center and the Pentagon are affiliated with an organization possessing a near-global terrorist network. The leaders of the groups constituting this organization have publicly stated that they will attack the United States for incarcerating their members. These groups are also vehemently opposed to U.S. foreign policy and presence in the Middle East. They appear to be willing to and may well be capable of conducting bombings, hijackings, and suicide attacks against domestic U.S. targets. Hazardous materials shippers and carriers must take action to enhance hazardous materials transportation security. Therefore, we are issuing this NPRM with a very short comment period. We encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We also invite comments concerning the costs and benefits that may result from the provisions of this NPRM and particularly the costs that may be incurred by small businesses. We will consider all comments received on or before the closing date for comments. We will consider late-filed comments to the extent practicable.

## **III. Regulatory Analyses and Notices**

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

This NPRM is not considered a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). The costs and benefits associated with the proposals in this NPRM are discussed below.

Although many hazardous materials shippers and carriers have already implemented many of the actions proposed in this NPRM, we recognize that the proposals may impose additional costs on them. Most compliance costs resulting from this NPRM will result from the new requirements for certain shippers and carriers to develop and implement security plans and for hazmat employee training to include a security component.

*Security plans.* The proposed security plan requirement applies to shippers

and carriers who are required to register with RSPA under Subpart G of 49 CFR part 107 or persons who offer or transport infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR part 72. Those persons required to register under Subpart G of Part 107 include 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 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; and (5) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately.

About 43,000 shippers and carriers are registered with DOT under the provisions of 49 CFR Part 107 (FY 2000, most recent year available). In addition, about 1,000 shippers apply to CDC each year for permission to transport select agents (OMB Control No. 0920-0199). We estimate that development of a security plan from the ground up would require about 40 hours for all persons (management and technical personnel) involved. However, many industry associations have developed guidance and model security plans for use by their members. As a result, most companies already have implemented many of the elements of a security plan either as part of their standard operating procedures or in response to the events of September 11. Further, to assist hazardous materials shippers and transporters in evaluating risks and implementing measures to reduce those risks, we designed a security template for the Risk Management Self-Evaluation Framework (RMSEF). RMSEF is a tool we developed through a public process to assist regulators, shippers, carriers, and emergency response personnel to examine their operations, and consider how they assess and manage risk. The security template illustrates how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The RMSEF security template is posted on our website at <http://hazmat.dot.gov/rmsef.htm>.

We estimate that most companies would require about 20 hours to develop and implement a security plan that conforms to the new regulatory requirements. Maintaining and updating the plan as necessary would require about 1 hour each year after the plan is implemented. Using Bureau of Labor Statistics information on employee compensation (March 2001), we estimate that the cost per hour of developing and updating a security plan is \$30.00. The industry would thus incur an estimated \$26,400,000 in first-year compliance costs, or about \$600 per entity (44,000 affected entities  $\times$  20 hrs  $\times$  \$30.00/hr = \$26,400,000). In subsequent years, we estimate that 200 new entrants would be subject to the security plan requirement, incurring compliance costs estimated at \$120,000. Companies required to update and maintain security plans would incur compliance costs of about \$1,320,000, or \$30 per entity.

*Security training.* The proposed requirement for security training applies to all hazmat employees, defined in § 171.8 of the HMR as persons employed by a company that offers or transports hazardous materials in commerce (hazmat employer) that directly affect hazardous materials safety. Based on information in the 1997 Economic Census, we estimate that firms involved with the transportation of hazardous materials employ a total of 6 million individuals. Of these, perhaps 5 percent are hazmat employees, as defined in the HMR. Thus, about 300,000 hazmat employees will be subject to the new requirement for security training.

The training requirements in the HMR can be met in a number of ways—classroom instruction, self-instruction, on-the-job training, etc. This flexibility helps to minimize the cost to hazmat employers and allows use of the most efficient, effective training methods to meet the basic requirements. To assist hazmat employers to meet any new security training requirements, we are developing a Hazardous Materials Transportation Security Awareness Training Module directed at law enforcement, industry, and the hazmat community. The training module will be web-based, posted on the HMS website, and presented at multimodal seminars.

We estimate that, on average, a hazmat employee would require one hour of security training to meet the new requirements. The costs of training would vary, depending on the method used. For example, the security training module we are developing will be provided free of charge. The current cost of CDROM hazmat training modules is

\$25 per module. Classroom training may cost as much as \$75 per hour. We estimate that the average training cost for one hour of security training will be \$15. Thus, the industry would incur costs of about \$4,500,000 in first-year compliance costs (300,000 hazmat employees  $\times$  one hour of training  $\times$  \$15/hour = \$4,500,000). Hazmat employees must be trained at least once every three years. Thus, in subsequent years the industry would incur about \$1,500,000 in recurrent training costs.

The benefits of the security programs proposed in this NPRM are difficult to quantify. However, the cost of one devastating terrorist attack caused by a crude bomb made from commonly available hazardous materials is illustrative. On April 19, 1995, Timothy McVeigh blew up the Murrah Federal Building in Oklahoma City with a bomb made from fertilizer and fuel oil. The bomb killed 168 people, including 19 children, injured 500 more people, and caused more than \$1 billion in property and economic damage. If the measures proposed in this NPRM prevent even one such terrorist act, the potential costs industry will incur will be more than offset by the benefits.

#### *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 have determined that, while the requirements in this NPRM apply to a substantial number of small entities, there will not be a significant economic impact on those small entities.

*Need for the NPRM.* RSPA's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR have provided a high degree of safety with respect to incidents that occur during transportation. However, in the wake of September 11, we face a heightened security environment. The risk of hazardous materials falling into the wrong hands poses a significant security challenge.

*Description of Actions.* In this NPRM, we propose to amend the HMR to:

- Require motor carriers registered with DOT to maintain a copy of their current registration certificate on each motor vehicle.
- Require shipping papers to include the name and address of the shipment consignor and consignee and the

shipper's DOT Hazmat Registration Number, if applicable.

- Require shippers and carriers of certain highly hazardous materials to develop and implement security plans.
- Require hazardous materials shippers and carriers to assure that employee training includes a security component.

*Identification of potentially affected small entities.* Businesses likely to be affected by the proposals in this NPRM are persons who offer and transport hazardous materials in commerce. We estimate there are approximately 400,000 persons who offer or transport hazardous materials in commerce subject to requirements in the HMR who will be affected by the proposals involving shipping documentation and security training. Approximately 44,000 entities will be subject to the proposed requirement for security plans.

Unless alternative definitions have been established by the agency in consultation with the Small Business Administration (SBA), the definition of "small business" has the same meaning as under the Small Business Act. Since no such special definition has been established, we employ the thresholds published by SBA for industries subject to the HMR. Based on data for 1997 compiled by the U.S. Census Bureau, it appears that upwards of 95 percent of firms subject to the requirements proposed in this NPRM are small businesses.

*Reporting and recordkeeping requirements.* This NPRM proposes several new or modified recordkeeping requirements. These are detailed in the section of this preamble entitled "Paperwork Reduction Act." We have built flexibility into the proposed requirements, so that entities can choose the method by which they comply with the proposals. For example, there is no prescribed form for shipping papers. Shippers are permitted to use waybills, bills of lading, and other types of shipping documents provided they include the information required in the HMR. Similarly, there is no form prescribed for security plans. Entities can assess their own situations and tailor the requirements to fit them.

*Related Federal rules and regulations.* With respect to the security of hazardous materials transported in commerce, there are no related rules or regulations issued by other departments or agencies of the Federal government. However, it is our understanding that certain Federal agencies (such as the USCG and EPA) and international standards-setting organizations (such as IMO) are considering comprehensive security requirements for the entities

under their jurisdiction. This NPRM includes language to permit programs implemented in conformance with other Federal or international requirements to be used to comply with the requirements in this NPRM, provided the specific components in this NPRM are covered.

*Alternate proposals for small businesses.* The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of the security of hazardous materials transported in commerce, it is not possible to establish exceptions or differing standards and still accomplish the objectives of Federal hazmat law.

We developed this NPRM under the assumption that small businesses make up the overwhelming majority of entities that will be subject to its provisions. Thus, we considered how to minimize expected compliance costs as we developed this NPRM.

*Conclusion.* Based on the discussion of the potential costs of this NPRM in the section of this preamble entitled "Executive Order 12866 and DOT Regulatory Policies and Procedures," we conclude that, while this NPRM applies to a substantial number of small entities, there will not be a significant economic impact on those small entities. We estimate the cost of developing and implementing a security plan to be about \$600 per company. Updating and maintaining a security plan would cost about \$30 per entity. The costs incurred for providing security training to hazmat employees would be about \$15 per employee.

#### C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This NPRM preempts state, local, and Indian tribe requirements but 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.

Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This NPRM addresses covered subject item 3 above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard. This NPRM is necessary to assure the security of hazardous materials transported in commerce.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of a final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 90 days from publication of a final rule in the **Federal Register**.

We invite comments on whether, and to what extent, state or local governments or Indian tribes should be permitted to impose similar additional requirements to those proposed in this rulemaking. For example, should a state be allowed to require all shippers and carriers of hazardous materials to have security plans?

#### D. Executive Order 13175

This NPRM has been 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*

We submitted the information collection and recordkeeping requirements contained in this NPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

RSPA currently has an approved information collection under OMB Control No. 2137-0034, "Hazardous Materials Shipping Papers & Emergency Response Information" with 6,500,000 burden hours and \$6,500,000 cost. There will be an increase in the burden for OMB Control No. 2137-0034 due to additional information this NPRM requires to be included on shipping papers. In addition, there will be a new information collection burden for a new requirement for a security plan. This new information collection, "Hazardous Materials Security Plans", will be assigned an OMB control number after review and approval by OMB.

We estimate that the new total information collection and recordkeeping burden resulting from the additional information required on shipping papers and for the development and maintenance of security plans under this rule are as follows.

**Hazardous Materials Shipping Papers & Emergency Response Information**

[OMB No. 2137-0034]

*Total Annual Number of Respondents:* 250,000.

*Total Annual Responses:* 260,000,000.

*Total Annual Burden Hours:* 6,861,111.

*Total Annual Burden Cost:* \$6,929,722.11.

**Hazardous Materials Security Plans**

[OMB No. 2137-xxxx]

*First Year Annual Burden:*

*Total Annual Number of*

*Respondents:* 44,000.

*Total Annual Responses:* 44,000.

*Total Annual Burden Hours:* 880,000.

*Total Annual Burden Cost:*

\$26,400,000.00.

*Subsequent Year Burden:*

*Total Annual Number of*

*Respondents:* 44,200.

*Total Annual Responses:* 44,200.

*Total Annual Burden Hours:* 48,000.

*Total Annual Burden Cost:*

\$1,440,000.00.

Requests for a copy of this information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590-0001. Telephone (202) 366-8553. Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We will publish a notice advising interested parties of the OMB control number for this information collection when assigned by OMB.

*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***49 CFR Part 107*

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

*49 CFR Part 171*

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

*49 CFR Part 172*

Hazardous materials transportation, Hazardous waste, Labeling, Packaging

and containers, Reporting and recordkeeping requirements.

*49 CFR Part 177*

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend Title 49, Chapter I, Subchapters A and C, of the Code of Federal Regulations, as follows:

**PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 would continue to read as follows:

**Authority:** 49 U.S.C. 5101-5127, 44701; Sec. 212-213, Pub. L. 104-121, 110 Stat. 857; 49 CFR 1.45, 1.53.

2. In § 107.620, paragraph (b) would be revised to read as follows:

**§ 107.620 Recordkeeping requirements.**

\* \* \* \* \*

(b) Each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration must immediately be made available, upon request, to enforcement personnel.

\* \* \* \* \*

**PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

3. The authority citation for part 171 would continue to read as follows:

**Authority:** 49 U.S.C. 5101-5127; 49 CFR part 1.

4. In § 171.11, paragraph (d)(18) would be added to read as follows:

**§ 171.11 Use of ICAO Technical Instructions.**

\* \* \* \* \*

(d) \* \* \*

(18) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as "U.S. DOT Hazmat Reg. No." in accordance with § 172.201(f) of this subchapter. The

requirements of this paragraph (d)(18) do not apply to shipments excepted under § 172.201(g) of this subchapter.

5. In § 171.12, paragraph (b)(21) would be added to read as follows:

**§ 171.12 Import and export shipments.**

\* \* \* \* \*

(b) \* \* \*

(21) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as "U.S. DOT Hazmat Reg. No." in accordance with § 172.201(f) of this subchapter. The requirements of this paragraph (b)(21) do not apply to shipments excepted under § 172.201(g) of this subchapter.

\* \* \* \* \*

6. In § 171.12a, paragraph (b)(19) would be added to read as follows:

**§ 171.12a Canadian shipments and packagings.**

\* \* \* \* \*

(b) \* \* \*

(19) The shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee), in accordance with § 172.201(e) of this subchapter. If the person offering the hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as "U.S. DOT Hazmat Reg. No." in accordance with § 172.201(f) of this subchapter. The requirements of this paragraph (b)(19) do not apply to shipments excepted under § 172.201(g) of this subchapter.

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

7. The authority citation for part 172 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. In § 172.201, paragraphs (e), (f), and (g) would be added to read as follows:

**§ 172.201 General entries.**

\* \* \* \* \*

(e) *Consignor and consignee name and address.* After [date 20 days after effective date of final rule], a shipping paper must include the name of the consignor and the complete address from which the shipment originates, and the name and complete address of each person to whom the hazardous material will be delivered (consignee). The names and addresses may be included on an attachment to the shipping paper.

(f) *Registration number.* After [date 20 days after effective date of final rule], if the person offering a hazardous material for transportation is subject to the requirements of subpart G of 49 CFR part 107, the shipping paper must include the person's current registration number, identified as "U.S. DOT Hazmat Reg. No."

(g) *Exceptions.* The requirements of paragraphs (e) and (f) of this section do not apply to—

(1) Hazardous materials that are offered for transportation under the provisions of this subchapter applicable to limited quantities; and

(2) Materials properly described under the following shipping names:

Battery powered equipment  
Battery powered vehicle  
Carbon dioxide, solid  
Castor bean  
Castor flake  
Castor meal  
Castor pomace  
Consumer commodity  
Dry ice  
Engines, internal combustion  
Fish meal, stabilized  
Fish scrap, stabilized  
Refrigerating machine  
Vehicle, flammable gas powered  
Vehicle, flammable liquid powered  
Wheelchair, electric

**§ 172.203 [Amended]**

9. In § 172.203, paragraph (i)(4) would be removed, and paragraphs (i)(5) and (i)(6) would be redesignated as paragraphs (i)(4) and (i)(5), respectively.

10. In § 172.704, paragraph (a) introductory text would be revised and paragraph (a)(4) would be added, and paragraph (b) would be revised to read as follows:

**§ 172.704 Training requirements.**

(a) Hazmat employee training must include the following:

\* \* \* \* \*

(4) *Security training.* By [date three months after effective date of final rule], each hazmat employee must receive training on how to assure the security of hazardous materials that are transported in commerce.

(i) For each hazmat employee, security training must provide an awareness of the security issues associated with hazardous materials transportation and methods designed to assure transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

(ii) Each hazmat employee of a person required to have a security plan that conforms to § 173.14 of this subchapter must be familiar with the security plan and its implementation. Security training must include company security objectives, specific security procedures, employee responsibilities, actions to take in the event of a security breach, and the organizational security structure.

(b) *OSHA, EPA, and other training.* Training conducted by employers to comply with the hazard communication programs required by the Occupational Safety and Health Administration of the Department of Labor (29 CFR 1910.120 or 1910.1200) or the Environmental Protection Agency (40 CFR 311.1), or training conducted by employers to comply with security training programs required by other Federal or international agencies, may be used to satisfy the training requirements in paragraph (a) of this section to the extent that such training addresses the training components specified in paragraph (a) of this section.

\* \* \* \* \*

11. Subpart I would be added to read as follows:

**Subpart I—Security Plans**

Sec.

172.800 Purpose and applicability.

172.802 Components of a security plan.

172.804 Relationship to other Federal requirements.

**§ 172.800 Purpose and applicability.**

(a) *Purpose.* This subpart prescribes requirements for shippers and carriers to develop and implement plans to assure the security of hazardous materials transported in commerce.

(b) *Applicability.* Each person subject to the registration requirements of subpart G of 49 CFR part 107 and each person who offers for transportation or transports in commerce a Division 6.2 material, other than a diagnostic specimen, listed as a select agent in 42 CFR part 72 must develop and adhere to a security plan that conforms to the requirements of this subpart.

**§ 172.802 Components of a security plan.**

A security plan must be written, and must be retained for as long as it remains in effect. Copies of the security



plan must be available to the employees who are responsible for implementing it. When the security plan is updated or revised, all copies of the plan must be maintained as of the date of the most recent revision. The security plan must include an assessment of possible transportation security risks and appropriate measures to reduce or eliminate the risks. Specific operational details of the security plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must include the following elements:

(a) *Personnel security.* A process to verify the information provided by job applicants on application forms or resumes.

(b) *Unauthorized access.* A process to assure that unauthorized personnel do not have access to hazardous materials or transport conveyances being prepared for transportation of hazardous materials.

(c) *En route security.* A process to assure the security of hazardous materials shipments en route from origin to destination, including shipments stored incidental to movement. This process may include one or more of the following elements, as appropriate:

(1) An assessment of the transportation modes or combinations of modes available for transporting specific materials and selection of the most appropriate method of transportation to assure efficient and secure movement of product.

(2) A system for verifying that the carriers used to transport hazardous materials have an on-going transportation security program.

(3) For highway shipments, a system to verify the identity of the carrier and driver prior to releasing a hazardous material for transportation in commerce.

(4) Identification of preferred and alternative routing, including acceptable deviations. Routes should minimize product exposures to populated areas and avoid tunnels and bridges, where possible. Transportation of a shipment to its destination should be accomplished without unnecessary delays or layovers.

(5) A system for communicating with a transport vehicle or its operator.

(6) A system for a customer to alert the shipper if a hazardous material is not received when expected.

#### **§ 172.804 Relationship to other Federal requirements.**

To avoid unnecessary duplication of security requirements, security plans that conform to regulations issued by other Federal or international agencies

may be used to satisfy the requirements in this subpart, provided such security plans address the requirements specified in this subpart.

#### **PART 177—CARRIAGE BY PUBLIC HIGHWAY**

12. The authority citation for part 177 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

13. In § 177.817, paragraph (e) introductory text would be revised to read as follows:

#### **§ 177.817 Shipping papers.**

\* \* \* \* \*

(e) *Shipping paper accessibility—accident or inspection.* A driver of a motor vehicle containing a hazardous material, and each carrier using such a vehicle, must ensure that the shipping paper required by this section, including an attachment prepared in accordance with § 172.201(e) of this subchapter, is readily available to, and recognizable by, authorities in the event of accident or inspection. Specifically, the driver and carrier must:

\* \* \* \* \*

14. In subpart A, § 177.820 would be added to read as follows:

#### **§ 177.820 Certificates of registration.**

Each motor carrier subject to the requirements of subpart G of part 107 of this chapter must carry a copy of its current Certificate of Registration issued by RSPA on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subchapter. The Certificate of Registration must immediately be made available, upon request, to enforcement personnel.

Issued in Washington, DC on April 23, 2002 under authority delegated in 49 CFR part 106.

**Frits Wybenga,**

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

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[I.D. 042402C]

#### **New England Fishery Management Council; Public Meeting**

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

**ACTION:** Public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a one-day Council meeting on May 16, 2002, to consider actions affecting New England fisheries in the U.S. exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Thursday, May 16, 2002. The meeting will begin at 9 a.m.

**ADDRESSES:** The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

#### **SUPPLEMENTARY INFORMATION:**

#### **Thursday, May 16, 2002**

Following introductions, the Council will receive a briefing from NOAA General Counsel and NMFS about litigation concerning Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan (FMP). Following this report, the Council will provide time on the agenda for public comments on any issues that are relevant to fisheries management and Council business. The Council's Groundfish Committee then will review progress to date on the development of Amendment 13 to the FMP. This will include a discussion of the timeline for amendment development, identification of a range of potential management programs, review and approval of, for purposes of analysis, the delineation of discrete management areas and preliminary biological objectives for the areas, and a report on the recently held recreational and area management meetings. Finally, the Council also may develop and approve area management measures, for purposes of analysis and