

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 172****[Docket No. RSPA-02-12064 (HM-232)]****RIN 2137-AD67****Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Final rule.

SUMMARY: The Research and Special Programs Administration is establishing new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must assure that their employee training includes a security component.

EFFECTIVE DATE: This final rule is effective March 25, 2003.

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SUPPLEMENTARY INFORMATION:**I. Background**

On May 2, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) to enhance the security of hazardous materials in transportation (67 FR 22028). Proposals for amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) included a requirement for motor carriers registered with the agency to maintain a copy of their current registration certificate on each motor vehicle. We further proposed 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 proposed to require shippers and carriers of certain highly hazardous materials to develop and implement security plans. We also proposed to require hazardous materials shippers and carriers to assure that their employee training includes a security component. The NPRM provided a 30-day comment period.

On May 23, 2002, in response to a number of requests, we extended the comment period for the NPRM an

additional 30 days (67 FR 36138). The comment period closed July 3, 2002.

In addition, on July 16, 2002, RSPA and the Federal Motor Carrier Safety Administration (FMCSA) published an advance notice of proposed rulemaking (ANPRM) to examine the need for enhanced security requirements for hazardous materials transported by motor carriers (67 FR 46622). The two agencies are seeking comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures addressed in the ANPRM include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, notification to State and local authorities, and operational measures. The comment period for the ANPRM was extended until November 15, 2002. Late-filed comments will be considered to the extent feasible.

In this final rule, we are adopting the following revisions to the HMR to enhance the security of hazardous materials transported in commerce:

- Shippers and carriers subject to the registration requirements in 49 CFR part 107 or who offer or transport select agents and toxins regulated by the Centers for Disease Control and Prevention (CDC) must develop and implement security plans.
- Hazmat employers must provide security training to their hazmat employees. Hazmat employees of companies required to have a security plan under this final rule 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.

When conducting inspections at shipper and other facilities, DOT inspectors will be looking for security plans and training records related to security. If violations are found, appropriate penalty action will be initiated. Baseline penalties for these violations will be provided in a civil penalty rulemaking that we expect to issue in the near future.

II. Analysis of Comments

We received over 270 comments on the May 3, 2002, NPRM from hazardous materials shippers, carriers, industry associations, and State and local government agencies. Commenters

unanimously support the NPRM's goal of enhancing the secure transportation of hazardous materials. However, most commenters have significant concerns about some or all of the specific proposals in the NPRM. For example, some commenters suggest that the NPRM proposals do not provide an appropriate balance between security and economic goals. In addition, some commenters oppose some or all of the proposed security requirements because they would not have prevented the September 11, 2001, terrorist attacks. Several commenters also suggest that we should defer to the Transportation Security Administration (TSA) or the proposed Department of Homeland Security on security issues. Further, many commenters express reservations about the scope of the NPRM and the applicability of some of its provisions to most shipments of hazardous materials. As well, a significant proportion of commenters oppose some or all of the proposals concerning registration numbers and certificates, shipping documentation requirements, security plans, and security training. Finally, many commenters suggest that we seriously underestimated the potential cost impacts of the proposals in the NPRM. These comments are discussed in detail below.

A. Security Versus Economic Efficiency

Several commenters express concern that the NPRM proposals in the aggregate will result in unacceptable economic burdens on the industry and will adversely affect the efficiency with which hazardous materials are routinely transported. "We also are concerned that the proposed measures will be expensive to implement and will introduce inefficiencies to the manner in which hazardous materials are transported. In responding to the events of September 11th, we must not compromise our ability to move large amounts of hazardous materials in an efficient, cost-effective manner. Introducing inefficiencies to our freight transportation system helps further the terrorists' goals of disrupting the American way of life." (American Trucking Associations)

As we stated in the NPRM, hazardous materials are essential to the economy of the United States and the well-being of its people. Our goal in this rulemaking is to implement security requirements that will be effective in preventing hazardous materials from being used as tools of destruction and terror while permitting continued transportation of these essential products. We applaud those in the industry who have recognized their responsibility for