

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 177

#### Federal Motor Carrier Safety Administration

#### 49 CFR Part 397

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

RIN 2137-AD70, 2126-AA71

#### Security Requirements for Motor Carriers Transporting Hazardous Materials

**AGENCY:** Research and Special Programs Administration (RSPA), and Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Supplemental advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Research and Special Programs Administration (RSPA) and the Federal Motor Carrier Safety Administration (FMCSA) published a July 16, 2002 Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on the feasibility of implementing security enhancement requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. After receiving a request from an industry association to put a procedure in place to protect potentially security-sensitive comments, we are informing commenters of the procedures currently set forth in RSPA's regulations for requesting confidential treatment. Thus, we are removing the sentence in the ANPRM indicating that "comments that include information that may compromise transportation security will be disqualified as beyond the scope of the rulemaking." We will consider all comments received. All comments will be placed in the rulemaking docket unless they, or a portion thereof, are determined to be confidential and thereby protected from disclosure under the law. In this supplement to the ANPRM, we are also extending the comment period for an additional 31 days to November 15, 2002.

**DATES:** Submit comments on or before November 15, 2002. To the extent possible, we will consider late-filed comments as we consider further action.

**FOR FURTHER INFORMATION CONTACT:**

Donna O'Berry, (202) 366-4400, Office of the Chief Counsel, Research and Special Programs Administration; Susan Gorsky, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration; or William Quade, (202) 366-6121, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration.

**SUPPLEMENTARY INFORMATION:** RSPA and FMCSA published a July 16, 2002 ANPRM entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." See 67 FR 46622. In that rulemaking document, RSPA and FMCSA are examining the feasibility of implementing specific enhanced security requirements for motor carriers transporting hazardous materials, and the potential costs and benefits of deploying such enhancements. In the July 16 ANPRM, we set out seven questions and invited commenters to submit data and information in response to those questions.

Because the ANPRM addressed measures to enhance the security of hazardous materials in transportation, we urged commenters to carefully consider the information they submitted in response to the questions posed. After the ANPRM was published, we received an industry association letter indicating that it planned to file comments and stating "however, we are concerned that the public dissemination of these comments could compromise our national security by providing information that could later be exploited by terrorists with access to such information." The association requested that we establish a procedure to safeguard those comments.

After reviewing this request, we have decided to supplement the ANPRM to inform the public of the procedures currently in RSPA's regulations for requesting confidentiality. (These procedural regulations were recently rewritten in plain language and published on June 25, 2002 [67 FR 42948].) Under 49 CFR 105.30, if you submit information to us, you may ask us to keep the information confidential. This section explains the steps you should follow: (1) Mark "confidential" on each page of the original document you would like to keep confidential, (2) send us, along with the original document, a second copy of the original document with the confidential information

deleted, and (3) explain why the information is confidential (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act (FOIA) [5 U.S.C. 552] because it is confidential commercial information). See 67 FR 42953.

In your explanation, you should provide enough information to enable us to make a determination as to the confidentiality of the information provided. In addition, if you believe that certain laws or FOIA exemptions might apply to protect the information, you should reference those legal citations.

The FOIA requires that we release any nonexempt (not protected under FOIA) portions of information that can be reasonably segregated. Therefore, we ask that you identify the particular portions of information within your documents that you believe are confidential. If the non-confidential information is so intertwined with the confidential information that disclosing it would leave only meaningless words and phrases, the entire page or document may be withheld.

After reviewing your request for confidentiality and the information provided, we will analyze all applicable laws to decide whether or not to treat the information as confidential. We will notify you of our decision to grant or deny confidentiality at least five days before the information is publicly disclosed, and give you an opportunity to respond. See 105.30(b).

If, prior to submitting your request, you have any questions regarding RSPA's procedures for determining confidentiality, you may call one of the contact individuals above for more information.

The July 16 ANPRM included a statement that we would disqualify information received in comments that could compromise transportation security as beyond the scope of the rulemaking. In light of the fact that RSPA's regulations provide a process for requesting confidentiality, all comments will be part of the docket, unless comments or portions of comments are determined to be confidential and protected from disclosure under law. Information determined to be confidential will be redacted and the unredacted portions will be placed in the docket.

The ANPRM provided an October 15, 2002 deadline for filing comments. In conjunction with informing the public of our procedures for requesting confidentiality, we are also extending the comment period deadline to November 15, 2002 to provide commenters with an additional 30 days

to file comments. We will consider late-filed comments to the extent possible.

Issued in Washington, DC on October 1, 2002, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

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

**Julie A. Cirillo,**

*Assistant Administrator, Federal Motor Carrier Safety Administration.*

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