

### *E. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), HHS will report the promulgation of this rule to Congress prior to its effective date.

### *F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector “other than to the extent that such regulations incorporate requirements specifically set forth in law.” For purposes of the Unfunded Mandates Reform Act, this proposed rule does not include any Federal mandate that may result in increased annual expenditures in excess of \$100 million by State, local or Tribal governments in the aggregate, or by the private sector.

### *G. Executive Order 12988 (Civil Justice Reform)*

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

### *H. Executive Order 13132 (Federalism)*

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have “federalism implications.” The rule does not “have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

### *I. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this proposed rule on children. HHS has determined that the rule would have no environmental health and safety effect on children.

### *J. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this proposed rule on energy supply,

distribution or use, and has determined that the rule will not have a significant adverse effect.

### *K. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal government administers or enforces. HHS has attempted to use plain language in promulgating the proposed rule consistent with the Federal Plain Writing Act guidelines.

### **List of Subjects in 42 CFR Part 84**

Mine safety and health, Occupational safety and health, Personal protective equipment, Respirators.

### **Proposed Rule**

For the reasons discussed in the preamble, the Department of Health and Human Services proposes to amend 42 CFR 84.310 as follows:

### **PART 84—APPROVAL OF RESPIRATORY PROTECTIVE DEVICES**

- 1. The authority citation for part 84 continues to read as follows:

**Authority:** 29 U.S.C. 651 *et seq.*; 30 U.S.C. 3, 5, 7, 811, 842(h), 844.

- 2. Amend § 84.310 by removing paragraph (d), redesignating paragraphs (e)–(g) as (d)–(f), and revising paragraph (c) to read as follows:

#### **§ 84.310 Post-approval testing.**

\* \* \* \* \*

(c) NIOSH will conduct such testing pursuant to the methods specified in §§ 84.303 through 84.305, except as provided under paragraphs (a)(1) and (a)(2) of this section.

(1) Post-approval tests may exclude human subject testing and environmental conditioning at the discretion of NIOSH.

(2) The numbers of units in an approved CCER to be tested under this section may exceed the numbers of units specified for testing in §§ 84.304 and 84.305.

Dated: March 16, 2018.

**Alex M. Azar II,**

Secretary, Department of Health and Human Services.

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**BILLING CODE 4163–19–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 107, 171, 172, 173, 174, 177, 178, 179, and 180**

[Docket No. PHMSA–2018–0001; Notice No. 2018–01]

### **Request for Information on Regulatory Challenges to Safely Transporting Hazardous Materials by Surface Modes in an Automated Vehicle Environment**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Request for information.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration (PHMSA) requests information on matters related to the development and potential use of automated technologies for surface modes (*i.e.*, highway and rail) in hazardous materials transportation. In anticipation of the development, testing, and integration of Automated Driving Systems in surface transportation, PHMSA is issuing this request for information on the factors the Agency should consider to ensure continued safe transportation of hazardous materials without impeding emerging surface transportation technologies.

**DATES:** Interested persons are invited to submit comments on or before May 7, 2018. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by Docket Number PHMSA–2018–0001 via any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** All submissions must include the agency name and docket number for this notice. Internet users

may access comments received by DOT at: <http://www.regulations.gov>. Please note that comments received will be posted without change to: <http://www.regulations.gov> including any personal information provided.

**Privacy Act:** In accordance with 5 U.S.C. 553(c), the DOT solicits comments from the public. The DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

**FOR FURTHER INFORMATION CONTACT:** Matthew Nickels, Senior Regulations Officer (PHH-10), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590-0001, Telephone 202-366-0464, [Matthew.Nickels@dot.gov](mailto:Matthew.Nickels@dot.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Overview**

The transportation sector is undergoing a potentially revolutionary period, as tasks traditionally performed by humans only are increasingly being done, whether in testing or in actual integration, by automated technologies. Most prominently, “Automated Driving Systems” (ADS) have shown the capacity to drive and operate motor vehicles, including commercial motor vehicles, as safely and efficiently as humans, if not more so. Similar technological developments are also occurring in rail.

DOT, including PHMSA, strongly encourages the safe development, testing, and integration of these automated technologies, including the potential for these technologies to be used in hazardous materials transportation. Although an exciting and important innovation in transportation history, the emergence of surface automated vehicles and the technologies that support them may create unique and unforeseen challenges for hazardous materials transportation. The safe transportation of hazardous materials remains PHMSA’s top priority, and as the development, testing, and integration of surface automated vehicles into our transportation system continues, PHMSA must ensure the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) framework sufficiently takes into account these new technological innovations.

The purpose of this request for information is to obtain public comment

on how the development of automated technologies may impact the HMR, and on the information PHMSA should consider when determining how to best ensure the HMR adequately account for surface automated vehicles.<sup>1</sup> In anticipation of the role surface automated vehicles and the technologies that support them may play on transportation, the movement of freight, and commerce, PHMSA requests comments from the public and interested stakeholders—including entities engaged in the development, testing, and integration of these technologies—on the potential future incompatibilities between the hazardous materials transportation requirements in the HMR and a surface transportation system that incorporates automated vehicles.

##### **II. PHMSA’s Safety Mission and Regulatory Objectives**

PHMSA is an operating administration within DOT established in 2004 by the Norman Y. Mineta Research and Special Programs Improvement Act (Pub. L. 108–426). PHMSA’s mission is to protect people and the environment by advancing the safe transportation of energy and other hazardous materials that are essential to our daily lives. To achieve this mission, PHMSA establishes national policy, sets and enforces standards, educates, and conducts research to prevent hazardous materials incidents—often collaborating closely with other Federal agencies, operating administrations, and transportation modes.

Federal hazardous materials law authorizes the Secretary to “prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” 49 U.S.C. 5103(b)(1). The Secretary has delegated this authority to PHMSA in 49 CFR 1.97(b). The HMR are designed to achieve three primary goals: (1) Help ensure that hazardous materials are packaged and handled safely and securely during transportation; (2) provide effective communication to transportation workers and emergency responders of the hazards of the materials being transported; and (3) minimize the consequences of an accident or incident should one occur. The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying safety or security hazards

<sup>1</sup> In this notice, PHMSA is not seeking comment on how advances in aviation or maritime technology could affect the transportation of hazardous materials, though the Agency is considering future notices on those issues.

and reducing the probability and consequences of a hazardous material release.

Under the HMR, hazardous materials are categorized into hazard classes and packing groups based on analysis of and experience with the risks they present during transportation. The HMR: (1) Specify appropriate packaging and handling requirements for hazardous materials based on this classification and require a shipper to communicate the material’s hazards through the use of shipping papers, package marking and labeling, and vehicle placarding; (2) require shippers to provide emergency response information applicable to the specific hazard or hazards of the material being transported; and (3) mandate training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials in commerce. The HMR also include operational requirements applicable to each mode of transportation.

As such, PHMSA—in continued collaboration with the Federal Motor Carrier Safety Administration and the Federal Railroad Administration—seeks information regarding the design, development, and potential use of automated transportation systems to safely transport hazardous materials by surface mode in compliance with the HMR, and to identify requirements within the HMR which may impede the integration of this technology.

##### **III. Special Permit Program Allows Regulatory Flexibility To Foster Innovation**

PHMSA safely incorporates technological innovation through its special permit (SP) program. SPs set forth alternative requirements—or a variance—to the requirements in the HMR in a manner that achieves an equivalent level of safety to that required under the regulations, or if a required safety level does not exist, that is consistent with the public interest. PHMSA’s Approvals and Permits Division is responsible for the issuance of DOT SPs. Specifically, SPs are issued by PHMSA under 49 CFR part 107, subpart B.

The HMR often provide performance-based standards and, as such, provide the regulated community with some flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and covered under the regulations. The hazardous materials community is at the cutting edge of development of new materials, technologies, and innovative ways of moving hazardous materials. Innovation

strengthens our economy, and new technologies and operational techniques may enhance safety. Thus, SPs provide a mechanism for testing and using new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness without compromising safety. SPs enable the hazardous materials industry to safely, quickly, and effectively integrate new products and technologies into production and the transportation stream.

#### IV. Additional DOT Guidance

PHMSA requests information related to the development and potential use of surface automated vehicles and the technologies that support them in hazardous materials transportation by highway or rail. For additional background on ADS for motor vehicles, PHMSA notes that DOT and the National Highway Traffic Safety Administration (NHTSA) released guidance in the *Automated Driving Systems 2.0: A Vision for Safety*,<sup>2</sup> on September 12, 2017. Further, NHTSA issued a notice [September 15, 2017; 82 FR 43321] making the public aware of the guidance and seeking comment. This voluntary guidance, among other things, describes the levels of “Automated Driving Systems” for on-road motor vehicles developed by SAE International (see SAE J3016, September 2016) and adopted by DOT.

The SAE definitions divide vehicles into levels based on “who does what, when.” Generally:

- At SAE Level 0, the driver does everything.
- At SAE Level 1, an automated system on the vehicle can *sometimes assist* the driver conduct *some parts* of the driving task.
- At SAE Level 2, an automated system on the vehicle can *actually conduct* some parts of the driving task, while the driver continues to monitor the driving environment and performs the rest of the driving task.
- At SAE Level 3, an automated system can both actually conduct some parts of the driving task and monitor the driving environment *in some instances*, but the driver must be ready to take back control when the automated system requests.
- At SAE Level 4, an automated system can conduct the driving task and monitor the driving environment, and the driver need not take back control, but the automated system can operate only in certain environments and under certain conditions.

- At SAE Level 5, the automated system can perform all driving tasks, under all conditions that a driver could perform them.

#### V. Questions

PHMSA requests comments on the implications of the development, testing, and integration of automated technologies for surface modes (*i.e.*, highway and rail) on both the HMR and the general transport of hazardous materials.

Specifically, PHMSA asks:

1. What are the safety, regulatory, and policy implications of the design, testing, and integration of surface automated vehicles on the requirements in the HMR? Please include any potential solutions PHMSA should consider.
2. What are potential regulatory incompatibilities between the HMR and a future surface transportation system that incorporates automated vehicles? Specific HMR areas could include but are not limited to:
  - (a) Emergency response information and hazard communication
  - (b) Packaging and handling requirements, including pre-transportation functions
  - (c) Incident response and reporting
  - (d) Safety and security plans (*e.g.*, en route security)
  - (e) Modal requirements (*e.g.*, highway and rail)
3. Are there specific HMR requirements that would need modifications to become performance-based standards that can accommodate an automated vehicle operating in a surface transportation system?
4. What automated surface transportation technologies are under development that are expected to be relevant to the safe transport of hazardous materials, and how might they be used in a surface transportation system?
5. Under what circumstances do freight operators envision the transportation of hazardous materials in commerce using surface automated vehicles within the next 10 years?
  - (a) To what extent do the HMR restrict the use of surface automated vehicles in the transportation of hazardous materials in non-bulk packaging in parcel delivery and less-than-truckload freight shipments by commercial motor vehicles?
  - (b) To what extent do the HMR restrict the use of surface automated vehicles in the transportation of hazardous materials in bulk packaging by rail and commercial motor vehicles?
6. What issues do automated technologies raise in hazardous

materials surface transportation that are not present for human drivers or operators that PHMSA should address?

7. Do HMR requirements that relate to the operation of surface automated vehicles carrying hazardous materials present different challenges than those that relate to ancillary tasks, such as inspections and packaging requirements?

8. What solutions could PHMSA consider to address potential future regulatory incompatibilities between the HMR and surface automated vehicle technologies?

9. What should PHMSA consider when reviewing applications for special permits seeking regulatory flexibility to allow for the transport of hazardous materials using automated technologies for surface modes?

10. When considering long-term solutions to challenges the HMR may present to the development, testing, and integration of surface automated vehicles, what information and other factors should PHMSA consider?

11. What should PHMSA consider when developing future policy, guidance, and regulations for the safe transportation of hazardous materials in surface transportation systems?

Signed in Washington, DC, on March 16, 2018.

**Drue Pearce,**

*Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 180110022-8022-01]

RIN 0648-BH52

### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 57

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes approval of, and regulations to implement, Framework Adjustment 57 to the Northeast Multispecies Fishery Management Plan. This rule would set

<sup>2</sup> See [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0\\_090617\\_v9a\\_tag.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf)