

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 173, 174 and 179**

[Docket No. FRA-2006-25169]

RIN 2130-AB69

Hazardous Materials: Improving the Safety of Railroad Tank Car Transportation of Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: On April 1, 2008, PHMSA, in consultation with the Federal Railroad Administration (FRA), published a notice of proposed rulemaking (NPRM) proposing revisions to the Federal Hazardous Materials Regulations to improve the crashworthiness of railroad tank cars designed to transport poison inhalation hazard (PIH) materials. Specifically, the NPRM proposes enhanced tank car performance standards for head and shell impacts; operational restrictions for trains hauling tank cars containing PIH materials; interim operational restrictions for trains hauling tank cars containing PIH materials, but not meeting the enhanced performance standards; and an allowance to increase the gross weight of tank cars that meet the enhanced tank-head and shell puncture-resistance requirements. This notice announces that PHMSA and FRA will hold a series of public meetings (May 14, 15, 28, and 29, 2008 in Washington, DC) related to the NPRM. Information on the scope, topics, dates, and locations of these public meetings is provided in this notice.

DATES: *Public meetings:* May 14, 15, 28, and 29, 2008, starting at 9 a.m., in Washington, DC. Further information on the agenda and topics to be discussed at each meeting is provided in the **SUPPLEMENTARY INFORMATION** section below.

Written Comments: In accordance with the timeframe established by the NPRM, comments to this docket must be received no later than May 29, 2008.

ADDRESSES: *Public meetings:* The meetings will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Oral Presentations: Any person wishing to present an oral statement at any of the public meetings should notify Lucinda Henriksen, by e-mail or telephone, at least four business days before the date of the public meeting at

which the person wishes to speak. For information on facilities or services for persons with disabilities or to request special assistance at the meetings, contact Ms. Henriksen as soon as possible.

Written Comments: We invite interested parties who are unable to attend the meetings, or who otherwise desire to submit written comments or data to submit any relevant information, data, or comments to the docket of this proceeding (FRA-2006-25169) by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lucinda Henriksen, Office of Chief Counsel, Federal Railroad Administration (Lucinda.Henriksen@dot.gov or (202) 493-1345), or Bill Schoonover, Office of Safety Assurance and Compliance, Federal Railroad Administration (William.Schoonover@dot.gov or (202) 493-6229).

SUPPLEMENTARY INFORMATION: On April 1, 2008, PHMSA, in consultation with FRA, published an NPRM proposing revisions to the Federal Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to improve the crashworthiness of railroad tank cars designed to transport PIH materials. As explained in more detail in the NPRM, DOT's tank car research has shown that the rupture of tank cars and loss of lading are principally associated with the car-to-car impacts that occur as a result of derailments and train-to-train collisions. Conditions during an accident can be of such force that a coupler of one car impacts the head or the shell of a tank car. With sufficient speed, such impacts can lead to rupture and loss of lading. When a tank car is transporting PIH materials, the consequences of that loss of lading can be catastrophic. Based on the information currently available, DOT believes that a significant opportunity exists to enhance the safety of hazardous materials transportation, and in direct response to the Congressional directive of 49 U.S.C. 20155, in the NPRM we propose revisions to the HMR that would improve the accident

survivability of railroad tank cars used to transport PIH materials. Specifically, in the NPRM we propose to require:

- A maximum speed limit of 50 mph for all railroad tank cars used to transport PIH materials;
- A maximum speed limit of 30 mph in non-signalized (i.e., dark) territory for all railroad tank cars transporting PIH materials, unless the material is transported in a tank car meeting the enhanced tank-head and shell puncture-resistance systems performance standards proposed;
- As an alternative to the maximum speed limit of 30 mph in dark territory, submission for FRA approval of a complete risk assessment and risk mitigation strategy establishing that operating conditions over the subject track provide at least an equivalent level of safety as that provided by signaled track;
- Railroad tank cars used to transport PIH materials have a shell puncture-resistance system capable of withstanding impact at 25 mph and a tank-head puncture-resistance system capable of withstanding impact at 30 mph;

- The expedited replacement of tank cars used for the transportation of PIH materials manufactured before 1989 with non-normalized steel head or shell construction; and
- An allowance to increase the gross weight on rail for tank cars designed to meet the proposed enhanced tank-head and shell puncture-resistance systems performance standards.

The public meetings will be held on the dates specified in the **DATES** section of this document and at the location specified in the **ADDRESSES** section. Although all interested parties are invited to participate in any of the public meetings, to ensure adequate time is allotted to the diverse issues involved in the proposal, DOT plans to limit the scope of each proceeding as outlined below.

May 14 and 15, 2008 Public Meetings: The May 14 and 15, 2008 meetings will focus on the NPRM as it relates to the transportation by rail tank car of chlorine and anhydrous ammonia, the two PIH materials that constitute almost 80% of the total rail tank car PIH shipments each year. Specifically, we will focus on issues related to the transportation of chlorine on May 14th and issues related to the transportation of anhydrous ammonia on May 15th.

May 28, 2008 Public Meeting: The May 28, 2008 meeting will include two distinct segments. The morning session will focus on the NPRM as it relates to the transportation by railroad tank car of PIH materials other than chlorine and

anhydrous ammonia (e.g., ethylene oxide, anhydrous hydrogen fluoride, sulfur dioxide, hydrogen chloride, etc.). The afternoon session of the May 28th meeting will address railroad-specific issues related to the NPRM (e.g., the operational restrictions proposed, role of the Tank Car Committee, impact of heavier tank cars on railroad infrastructure, etc.). Accordingly, anyone wishing to comment on the proposed rule as it relates to railroad operations, infrastructure, and any other railroad-specific issues, should attend the afternoon session on May 28, 2008.

May 29, 2008 Public Meeting: The May 29, 2008 meeting is intended to provide an opportunity for all interested parties to present general comments related to the NPRM and/or any relevant concluding remarks.

Although we welcome any comments, information or data relevant to the NPRM as it relates to the transportation of PIH materials by railroad tank car, as noted in the NPRM and accompanying documents, we specifically request comment on the following issues and questions:

- Regarding the proposed performance standards for enhanced tank-head and shell protection, are there alternative strategies for enhancing the accident survivability of tank cars that may be as effective as, or more effective than, the proposed standards? Please include appropriate data and information demonstrating the effectiveness of such alternatives.

- Regarding the proposed eight-year implementation period for tank cars to be brought into compliance with the enhanced performance standards proposed, we request comment as to the feasibility and costs of this implementation schedule, as well as suggestions for any alternatives. We are particularly interested in data and information concerning current tank car manufacturing capacity and whether capacity limitations will affect the proposed implementation period.

- If the proposed rule is adopted, will it be necessary to maintain the requirement of 49 CFR 173.31(e)(2) that tank cars used to transport PIH materials be equipped with metal jackets?

- Regarding the proposed speed restriction of 50 mph for all tank cars transporting PIH materials:

- To what extent are tank cars containing PIH materials currently transported in accordance with the speed restrictions in AAR's Circular OT-55-I for "key trains"?

- To the extent that tank cars containing PIH materials are not currently transported in "key trains," but would be as a result of the proposed

speed restriction (assuming carriers would marshal PIH cars into key trains to avoid the speed restriction on other trains), to what extent, if any, would this "marshalling" cause a delay in the delivery of PIH materials (or other hazardous or non-hazardous materials) in the train? What would be the cost of the delay?

- Are there alternative approaches to the speed restrictions proposed that would reduce the consequences of a train derailment or accident involving PIH materials? If so, please provide supporting data demonstrating the effectiveness of the alternative approaches.

- Regarding the proposed speed restriction of 30 mph for tank cars not meeting the enhanced performance standards, but used to transport PIH materials through unsignaled territory, are there additional approaches to limit any burdens associated with this speed limitation (e.g., should exceptions be made to the speed restriction based on population densities and/or land use patterns of the area abutting the track)?

- Regarding the proposal to allow an increase to 286,000 pounds in the gross weight of tank cars:

- To what extent has track infrastructure already been modified to accommodate these heavier cars and what was the cost associated with such upgrades?

- What additional infrastructure modifications would be required to accommodate the heavier cars?

- Would the number of PIH shipments along certain rail lines be expected to increase because existing infrastructure could not accommodate heavier cars?

As noted in the Initial Regulatory Flexibility Assessment (IRFA) published in the NPRM (73 FR 17818, 17852 (Apr. 1, 2008)) we recognize that the proposals in the NPRM may impact certain small entities. However, at this time, we do not have enough information to determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. Accordingly, we encourage small entities potentially impacted by this proposal, particularly small agricultural operations which utilize anhydrous ammonia, to review the NPRM and accompanying Regulatory Impact Analysis (RIA) and provide any relevant comments, data, or information related to the potential economic impact to small entities that would result from adoption of the proposals in the NPRM. As noted in the IRFA, we specifically request comment on the following issues and questions:

- How many small shippers would be impacted by implementation of the proposed rule and what is the extent of such impact?

- How many governmental jurisdictions that meet the Small Business Administration's (SBA) definition of small entity own water treatment systems that utilize chlorine in their processing? What would be the expected impact of this proposed rule on such entities? Of small government jurisdictions currently utilizing chlorine in their water treatment systems, how many entities could feasibly substitute a non-dangerous or less lethal material (e.g., bleach) for chlorine?

- How many agricultural operations that meet the SBA definition of small entity utilize anhydrous ammonia in their operations? What would be the expected impact of this proposed rule on such entities? Of small agricultural operations currently utilizing anhydrous ammonia in their operations, how many entities could feasibly substitute less dangerous materials (e.g., urea, urea ammonium nitrate, or ammonium nitrate) for anhydrous ammonia?

- How many entities meeting the SBA definition of small entity own tank cars that would be subject to this rule? What would be the expected impact of this proposed rule on such entities?

We also specifically request comment on the estimates of costs and benefits of implementing the proposed rule as detailed in the RIA, as well as the underlying assumptions noted in the RIA.

PHMSA and FRA encourage all interested persons to participate in these proceedings. We encourage participants wishing to make oral statements to plan on attending the entire meeting for which they are scheduled, since DOT may not be able to accommodate competing demands to appear at specific times. We also encourage participants to focus their testimony at each meeting on the particular topics for that proceeding as outlined above.

Documents

A copy of the April 1, 2008 NPRM, the Regulatory Impact Analysis prepared in support of the NPRM, and any comments addressed to this docket are available through the DOT's docket system Web site at <http://www.regulations.gov> and/or Room W12-140 on the Plaza Level of the U.S. Department of Transportation Headquarters Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 8, 2008, under authority delegated in 49 CFR part 106.

Edward T. Mazzullo,

Acting Associate Administrator for Hazardous Materials Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 080310411-7566-01]

RIN 0648-AU14

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to amend the subsistence fishery rules for Pacific halibut in waters in and off Alaska. These regulations are necessary to address subsistence halibut management concerns in densely populated areas. This action is intended to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

DATES: Comments must be received no later than May 14, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-AU14" by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, Alaska.

All comments received are a part of the public record and will be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments must be in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats to be accepted.

Copies of the Categorical Exclusion (CE), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for this action, as well as the environmental assessment (EA) prepared for the original subsistence halibut action (68 FR 18145; April 15, 2003) may be obtained from the North Pacific Fishery Management Council (Council) at 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252, 907-271-2809; by mail from NMFS, Alaska Region, P. O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; or via the Internet at the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Becky Carls, 907-586-7228 or becky.carls@noaa.gov, or Peggy Murphy, 907-586-7228 or peggy.murphy@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Management of the Pacific halibut (hereafter halibut) fishery in and off Alaska is based on an international agreement between Canada and the United States. This agreement, entitled the "Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act).

The IPHC promulgates regulations pursuant to the Convention. The IPHC's regulations are subject to approval by the Secretary of State with concurrence from the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the

Federal Register as annual management measures pursuant to 50 CFR 300.62. NMFS published the IPHC's current annual management measures on March 7, 2008 (73 FR 12280).

The Halibut Act also authorizes the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the United States (Halibut Act, section 773(c)). Such an action by the Council is limited to only those regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations must be approved and implemented by the Secretary. Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. The Council used its authority under the Halibut Act to recommend a subsistence halibut program in October 2000 to recognize and manage the subsistence fishery for halibut.

The Secretary approved the Council's recommended subsistence halibut program and published implementing regulations on April 15, 2003 (68 FR 18145), and codified the program in 50 CFR part 300-subpart E, authorizing a subsistence fishery for halibut in Convention waters off Alaska. In April 2002, the Council proposed a suite of amendments to its original subsistence halibut program while postponing several proposed amendments to be included in a separate action. Regulations implementing the initial suite of amendments to the original subsistence halibut program were published on April 1, 2005 (70 FR 16742). These regulations (1) changed the boundaries of the Anchorage/Matsu/Kenai non-subsistence area; (2) eliminated gear restrictions in Areas 4C, 4D, and 4E; (3) increased gear and harvest restrictions in Area 2C; (4) allowed retention of legal-sized subsistence halibut with Community Development Quota halibut in Areas 4C, 4D, and 4E; (5) created a Community Harvest Permit (CHP) system to mitigate increased gear and harvest restrictions in affected areas; (6) created a Ceremonial and Educational Permit system to recognize customary and traditional tribal practices; and (7) included the subsistence halibut program in the federal appeals process at 50 CFR 679.43.

The Council revisited the postponed amendments in October 2004, and took final action on them in December 2004. This action proposes implementing regulations for the postponed amendments. Specifically, this action