

regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 2005.

#### Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

#### § 180.910 [Amended]

2. Section 180.910 is amended by removing from the table the entries for:

- a. Coumarone-indene resin, conforming to 21 CFR 172.215;
- b. Diacetyl tartaric acid esters of mono- and diglycerides of edible fatty acids;
- c. Methyl ester of rosin, partially hydrogenated (as defined in 21 CFR 172.615);
- d. Modified polyester resin derived from ethylene glycol, fumaric acid, and rosin;
- e. Montmorillonite-type clay treated with polytetrafluoroethylene (PTFE; CAS Reg. No. 9002–84–0);
- f. Pentaerythritol ester of modified resin;
- g. Pentaerythritol stearates mixture (CAS Reg. No. 85116–93–4) which include pentaerythritol monostearate (CAS Reg. No. 78–23–9), pentaerythritol distearate (CAS Reg. No. 13081–97–5), pentaerythritol tristearate (CAS Reg. No. 28188–24–1) and pentaerythritol tetrastearate (CAS Reg. No. 115–83–3);
- h. Sodium *N*-lauroyl-*N*-methyltaurine; and
- i. Sodium *N*-palmitoyl-*N*-methyltaurine
- j. Sodium oleyl sulfate;

#### § 180.920 [Amended]

3. Section 180.920 is amended by removing from the table the entries for:

- a. Ammonium thiocyanate;
- b. Animal waste material (produced by the thermophilic digestion of cattle and poultry manure);
- c. Condensation product of orthophenylphenol with 5 moles of ethylene oxide;
- d. Diacetone alcohol;
- e. Isoamyl acetate;
- f. Paraformaldehyde;
- g. Phenolic resins;
- h. Sodium salt of partially or completely saponified dark wood rosin (as defined in 21 CFR 178.3870(a)(4));
- i. Tannin;
- j. Toluene;
- k. Trimethylolpropane (CAS Reg. No. 77–66–9) (180.920); and
- l. Woolwax alcohol.

#### § 180.930 [Amended]

4. Section 180.930 is amended by removing from the table the entries for:

- a. Diacetyl tartaric acid esters of mono- and diglycerides of edible fatty acids;
- b. 2-[Methyl (perfluoroalkyl)alkyl(C2-C8)sulfonyl amino]alkyl(C2-C8) acrylate--alkyl (C2-C8)methacrylates-*N*-methylolacrylamide copolymer;
- c. Nitrile rubber modified acrylonitrile methylacrylate (CAS Reg. No. 27012–62–0) conforming to 21 CFR 177.1480;
- d. Paraformaldehyde; and
- e. Wood rosin acid, potassium salts, conforming to 21 CFR 178.3870.

#### §§ 180.1062, 180.1077, and 180.1133 [Removed]

5. Sections 180.1062, 180.1077, and 180.1133 are removed.

[FR Doc. 05–22614 Filed 11–15–05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 173 and 177

[Docket No. PHMSA–2005–22987 (HM–238)]

RIN 2137–AE06

### Hazardous Materials: Requirements for the Storage of Explosives and Other High-Hazard Materials During Transportation

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

**ACTION:** Advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** PHMSA is considering requirements to address the current

safety and security risks associated with the storage of explosives during transportation. In this notice, we are soliciting comments concerning measures to reduce the risks posed by the storage of explosives while they are in transportation and whether regulatory action is warranted. We also invite comments as to whether enhanced requirements for storage incidental to movement should apply to other hazardous materials (*e.g.*, materials toxic by inhalation).

**DATES:** Comments must be received by February 14, 2006.

**ADDRESSES:** *Comments.* You may submit comments identified by the docket number (PHMSA–2005–22987) by any of the following methods:

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

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–402, Washington, DC 20590–0001.

- Hand Delivery: To the Docket Management System; Room PL–402 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 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 or Regulatory Identification Number (RIN) for this notice. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION**.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to the Docket Management System (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Ben Supko, Office of Hazardous Materials Standards, telephone (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

On July 16, 2002, the Federal Motor Carrier Safety Administration (FMCSA) and the Research and Special Programs Administration (RSPA, the predecessor

agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we)) published an Advance Notice of Proposed Rulemaking (ANPRM) under Docket HM-232A (67 FR 46622) entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials." In the ANPRM, FMCSA and RSPA examined the need for enhanced security requirements for motor carrier transportation of hazardous materials. FMCSA and RSPA requested comments on a variety of security measures including: escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and notification to State and local authorities. The ANPRM also addressed the issue of explosives storage in safe havens. We received approximately 80 comments in response to the ANPRM.

On March 19, 2003, FMCSA published a further notice (68 FR 13250) that RSPA had assumed the lead role for this rulemaking proceeding. Due to the complexity of the issues raised in Docket HM-232A and the number of comments received on the ANPRM, RSPA decided to consider the storage of explosives in a separate rulemaking. RSPA indicated its intentions in the October 30, 2003 final rule published under Docket HM-223 (68 FR 61906) entitled "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage." In the final rule, which became effective on June 1, 2005 (*see* 69 FR 70902; December 8, 2004), RSPA clarified the applicability of the HMR to specific functions and activities related to the transportation of hazardous materials in commerce. In the preamble to the HM-223 final rule, RSPA identified issues related to the storage of hazardous materials during transportation that need to be addressed (68 FR 61906; 61931). RSPA noted that the current HMR requirements applicable to the storage of explosives during transportation need to be reevaluated to ensure that they adequately account for potential safety and security risks. For example, the agency has concerns regarding the lack of Federal standards for safe havens and inconsistent State requirements.

## II. Comments Received for HM-232A Rulemaking on Storage and Safe Havens

Twenty-one commenters on the HM-232A ANPRM provided specific information on safe havens. In general, commenters support the continued use of safe havens. However, commenters also suggest that the term "safe haven" lacks a cohesive definition among

Federal regulatory agencies, most notably the U.S. DOT and the Nuclear Regulatory Commission. The commenters indicate that the lack of a consistent definition for the term "safe haven" has led to confusion and questions regarding the level of protection provided at these locations. Commenters request that standards be developed to provide details on the construction, maintenance, availability, and use of safe havens. Without clearly defined standards to follow, commenters state that any future reliance on safe havens may actually make the hazardous materials stored there more susceptible to safety and security threats than if they were stored at other locations.

Commenters suggest that until an infrastructure of secure safe havens is developed across the country (*e.g.*, a system that includes federally regulated safe havens that are strategically located on major chemical and explosive shipping lanes at convenient 500 mile intervals) they should be able to use their own discretion to determine if a safe haven is sufficiently secure. In addition, commenters state that in many instances a driver's best defense against security threats is to blend in with other trucks on the road and at rest stops. Therefore, some commenters stated that a standard that allows shipments to be parked in secure areas that provide an adequate level of security may be more appropriate than a standard that only allows the use of designated safe havens. These secure areas may consist of well-lit private property that is protected by a fence and equipped with a controlled-access gate, monitored parking in an industrial area, or a truck stops that has been modified to meet "safe haven" standards.

One commenter notes that safe havens are often small and difficult to maneuver, a safety problem that will be compounded by any increase in the transportation industry's dependence on safe havens. The majority of commenters agree that safe havens and secured on-site areas are effective security measures for the temporary storage of explosives in transportation, provided those areas meet the National Fire Protection Association's document 498 Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives or an equivalent standard. Commenters recommend that we adopt NFPA 498 in the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180).

## III. Purpose of This ANPRM

As discussed in more detail below, the HMR require shipments stored

during transportation to conform to the same requirements that apply when the shipments are actually moving (*e.g.*, shipping papers, emergency response information, hazard communication, packaging, and segregation). The HMR also require facilities at which explosives and other high-hazard materials are offered or stored during transportation to have security plans. The security plan must be based on an assessment of possible security risks and must include measures to address those risks. Otherwise, the HMR do not include specific requirements for facilities at which explosives or other high-hazard materials are stored during transportation. The HMR do not establish specific standards for storage facilities nor do they limit the amount of material that may be stored in a single location.

We are concerned that current HMR requirements may not adequately address the safety and security risks associated with the storage during transportation of explosives and other high-hazard materials. Thus, we are seeking comments and information on the adequacy of existing regulatory requirements and the need for additional, more specific requirements.

This ANPRM is focused primarily on explosives storage; however, we invite commenters to address issues related to the storage of other types of high-hazard materials as well. We note in this regard that, in another proceeding (Docket HM-232E (69 FR 50988; August 16, 2004)), PHMSA and the Department of Homeland Security are examining the need for enhanced security requirements for the rail transportation of hazardous materials that pose a toxic inhalation hazard. Security measures being considered include improvements to security plans, modification of methods used to identify shipments, enhanced requirements for temporary storage, and implementation of tracking and communication systems.

Provided below is a list of government and industry standards for explosives storage that are based on a variety of factors, including but not limited to, the mode of transportation, the type of explosives, and whether the explosive is in transportation.

- Hazardous Materials Regulations (49 CFR parts 171-180).
- Federal Motor Carrier Safety Regulations (49 CFR parts 350-399).
- United States Coast Guard Requirements applicable to explosives storage (33 CFR parts 101-126).
- Bureau of Alcohol, Tobacco, Firearms, and Explosives Regulations for explosives in commerce (27 CFR part 555).

- National Fire Protection Association’s NFPA 498, “Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives”.
- Institute of Makers of Explosives Safety Library Publication No. 27, “Security in Manufacturing, Transportation, Storage and use of Commercial Explosives”.
- Surface Deployment and Distribution Command, “SDDC Freight Traffic Rules Publication NO. 1C (MFTRP NO. 1C)”.

In the sections that follow we provide brief descriptions of these standards and

their applicability to the transportation and storage of explosives.

**IV. HMR Requirements Applicable to Explosives Storage**

*General.* The HMR require hazardous materials stored incidental to movement to meet all the applicable requirements for hazard communication (including shipping papers and emergency response information), packaging, and handling that apply when shipments are actually moving in transportation. The HMR include specific carrier requirements for transportation of hazardous materials by air, highway, rail, and vessel.

Explosives, or Class 1 materials, are one of the most stringently regulated hazardous materials under the HMR. The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so (49 CFR 173.50(a)). Class 1 materials are divided into six divisions (49 CFR 173.50(b)). As provided in the following table, assignment of an explosive to a division depends on the degree and nature of the explosive hazard.

Division	Hazard	Description of hazard	Examples
1.1	Mass explosion hazard .....	This explosive will affect almost the entire load instantaneously	Grenades, mines, and nitro-glycerin.
1.2	Projection hazard without a mass explosion hazard.	This explosive will project fragments outward at some distance	Rockets and warheads.
1.3	Fire hazard and either a minor projection hazard or minor blast hazard or both but not a mass explosion hazard.	This explosive will cause fire and may or may not project fragments outward at some distance.	Projectiles, signal smoke, and tracers for ammunition.
1.4	Minor explosion hazard .....	The explosive affects of this material are largely confined to the package and no projection of fragments of any appreciable size or range is expected.	Ammunition, airbags, and model rocket motors.
1.5	Very insensitive explosive .....	This explosive has a mass explosion hazard, but is represented by a low probability of detonation while in transportation.	Blasting agents and ammonia-nitrate fuel oil mixture.
1.6	Extremely insensitive article .....	This explosive is an article that contains only extremely insensitive detonating substances which demonstrate a negligible probability of accidental initiation or propagation.	Insensitive article and military.

The HMR prohibit transportation of an explosive unless it has been examined, classed, and approved by PHMSA’s Associate Administrator for Hazardous Materials Safety, with separate provisions covering the transportation of new explosives for examination or developmental testing, explosives approval by a foreign government, small arms cartridges, and fireworks manufactured in accordance with APA Standard 87–1 (49 CFR 173.56). The approval granted by the Associate Administrator specifies packaging and other transportation provisions that must be followed by the person who offers or transports the explosive material. In addition to packaging requirements, the HMR require explosives to be marked and labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information. In addition, Parts 174, 175, 176, and 177 of the HMR specify modal requirements for loading and unloading, blocking and bracing, stowage, segregation, and compatibility.

*Security plans.* In accordance with Subpart I of Part 172 of the HMR, persons who offer for transportation and persons who transport certain hazardous materials for transportation in commerce, including shipments of explosives for which placarding is required under the HMR, must develop and implement security plans. A security plan must include an assessment of possible transportation security risks for the covered shipments and appropriate measures to address the identified risks. At a minimum, a security plan must include measures to prevent unauthorized access to shipments and to address personnel and en route security. The en route security element of the plan must include measures to address the security risks of the shipment while it is moving from its origin to its destination, including shipments stored incidental to movement. Thus, a facility at which a shipment subject to the security plan requirements is stored during transportation must itself be covered by a security plan. The HMR requirement for a security plan sets forth general requirements for a security plan’s

components rather than a prescriptive list of specific items that must be included. The regulation establishes a performance standard that provides shippers and carriers with the flexibility necessary to develop plans that address their individual circumstances and operational environment.

**V. FMCSA Requirements Applicable to Explosives Storage**

Motor carriers that transport hazardous materials in commerce must comply with both the HMR and the Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR parts 390–397), administered by the FMCSA. The FMCSRs address driver qualifications; vehicle parts and accessories; driving requirements and hours of service; vehicle inspection, repair and maintenance; and driving and parking rules for the transportation of hazardous materials. The FMCSRs include requirements for storage of explosives incidental to movement. In accordance with the FMCSRs, a motor vehicle that contains Division 1.1, 1.2, or 1.3 explosives must be attended at all times, including during incidental

storage, unless the motor vehicle is located on the motor carrier's property, the shipper or consignee's property, or at a "safe haven" (49 CFR 397.5).

Under the FMCSRs, a "safe haven" is defined as an area specifically approved in writing by Federal, State, or local government authorities for the parking of unattended vehicles containing Division 1.1, 1.2, and 1.3 explosive materials (49 CFR 397.5(d)(3)). The decision as to what constitutes a safe haven is generally made by the local competent authority having jurisdiction over the area. The FMCSRs do not include requirements for safety or security measures for safe havens.

In addition, a motor vehicle containing a Division 1.1, 1.2, or 1.3 explosive may not be parked on or within 5 feet of the traveled portion of a public highway or street; on private property without the consent of the person in charge of the property; or within 300 feet of a bridge, tunnel, dwelling, or place where people work or congregate unless for brief periods when parking in such locations is unavoidable (49 CFR 397.7(a)).

#### VI. USCG Requirements Applicable to Explosives Storage

The United States Coast Guard (USCG) issues regulations for the safe and secure handling and storage of explosives and other dangerous cargos that are within or contiguous to waterfront facilities. The USCG's primary statutory authority is set forth in Title 46, U.S. Code, the Ports and Waterways Safety Act, 33 U.S.C. 1221, *et seq.*, and the Espionage Act of 1917, as amended by the Magnuson Act of 1950, 16 U.S.C. 1858, and most recently by the Maritime Transportation and Security Act of 2002, 46 U.S.C. 70108, in addition to Executive Orders and Coast Guard regulations implementing the statutory authorities.

*USCG Safety Regulations.* The USCG regulations at 33 CFR part 126 establish requirements for designated waterfront facilities. Section 126.15 requires designated waterfront facilities that handle, store, stow, load, discharge, or transport dangerous cargo to meet specific conditions. The term "dangerous cargo" is defined in § 126.3; it includes all of the hazardous materials subject to the HMR except for those subject to regulation only when transported by air. The conditions for designated waterfront facilities include:

1. Fire extinguishing equipment, such as automatic sprinklers, hydrants, hose connections, and firefighting water supplies must be available and maintained in adequate quantities and locations. Fire extinguishing equipment

must meet State and local laws. In the absence of applicable State and local laws, fire extinguishing equipment must meet NFPA 10, 13, 14, and 307. 33 CFR 126.15(a)(1).

2. Hydrants, standpipes, hose stations, fire extinguishers, and fire alarm boxes must be conspicuously marked and readily accessible according to NFPA 10, 13, 14, and 307. 33 CFR 126.15(a)(2).

3. Warning signs must be constructed and installed according to NFPA 307, chapter 7–8.7. 33 CFR 126.15(a)(3).

4. If the facility transfers dangerous cargo between sunset and sunrise, it must have outdoor lighting that adequately illuminates the transfer work area. The lighting must be installed and maintained according to NFPA 70 and must be located or shielded so that it cannot be mistaken for an aid to navigation and does not interfere with navigation on waterways. 33 CFR 126.15(a)(4).

5. If the facility conducts cargo operations involving foreign-flag vessels, the facility must have an international shore connection meeting ASTM F–1121. 33 CFR 126.15(a)(5).

6. Whenever dangerous cargo is transferred or stored on the facility, access to the facility must be limited to authorized personnel including: persons working on the facility or vessel; authorized delivery and service personnel; Coast Guard and other Federal, State, and local officials; local emergency personnel; and other persons authorized by the owner or operator of the facility. 33 CFR 126.15(a)(6).

7. Guards must be stationed, or equivalent controls acceptable to the COTP must be used, to deter and detect unlawful entrance; to detect and report fire hazards, fires, and releases of dangerous cargoes and hazardous materials; to check the readiness of protective equipment; and to report other emergency situations at the facility. 33 CFR 126.15(a)(7).

8. Coast Guard personnel must be allowed to enter the facility to conduct inspections or board vessels moored at the facility. 33 CFR 126.15(a)(8).

9. When dangerous cargo is being transferred or stored on the facility, material handling equipment, trucks, and other motor vehicles operated by internal combustion engines must meet the requirements of NFPA 307, chapter 9. 33 CFR 126.15(a)(9).

10. Smoking is allowed on the facility where permitted under State or local law. Signs must be posted marking authorized smoking areas. "No Smoking" signs must be conspicuously posted elsewhere on the facility. 33 CFR 126.15(a)(10).

11. All rubbish, debris, and waste materials must be placed in adequate receptacles. 33 CFR 126.15(a)(11).

12. The COTP may determine that any equipment, material, or standard is not reasonably adequate under the circumstances. If so, the COTP informs the owner or operator in writing and provides an opportunity for the owner or operator to have the deficiency corrected. 33 CFR 126.15(a)(12).

13. When dangerous cargo is not in transport units, all cargo, freight, merchandise, and other items or material on the facility must be arranged to provide access for firefighting and clearance for fire prevention according to NFPA 307, chapter 8–5. 33 CFR 126.15(b)(1).

14. When dangerous cargo is not in transport units, the facility must have and maintain, in adequate quantities and locations, portable fire extinguishers that meet the requirements of NFPA 10. These extinguishers must be inspected and maintained in accordance with NFPA 10. 33 CFR 126.15(b)(2).

15. When dangerous cargo is not in transport units, all new electrical equipment and wiring installed on the facility must be of the same type and installed as specified under NFPA 70. All defective or dangerous electrical equipment and wiring must be promptly repaired, replaced, or permanently disconnected. 33 CFR 126.15(b)(3).

16. When dangerous cargo is not in transport units, all open fires and open-flame lamps are prohibited on the facility. Heating equipment must meet NFPA 307, chapter 9–4. 33 CFR 126.15(b)(4).

17. When dangerous cargo is not in transport units, hazardous material(s) used in the operation or maintenance of the facility may be stored only in amounts necessary for normal operating conditions. These materials must be stored in compartments that are remote from combustible material; constructed to provide safe storage; and kept clean and free of scrap materials, empty containers, soiled wiping rags, waste, and other debris. Flammable liquids must be stored according to NFPA 30, chapter 4. 33 CFR 126.15(b)(5).

18. When dangerous cargo is in transport units, terminal yards must conform to the standards in NFPA 307, chapter 5. 33 CFR 126.15(c)(1).

19. When dangerous cargo is in transport units, containers packed with dangerous cargo that are vertically stacked must be stacked no more than four high. 33 CFR 126.15(c)(2).

A general permit for handling, storing, stowing, loading, discharging or transporting dangerous cargo (other than

designated dangerous cargo) is granted by regulation to those waterfront facilities that comply with these conditions (33 CFR 126.27). The Captain of the Port is authorized to terminate or suspend the general permit for a facility whenever he deems that the security or safety of the port or vessels or facility requires it (33 CFR 126.31). Division 1.1 and 1.2 explosive materials, further identified as "designated dangerous cargoes," may only be handled, loaded, discharged, or transported at waterfront facilities authorized by a permit issued by the Captain of the Port (33 CFR 126.17). These Division 1.1 and 1.2 explosive materials and certain other high-hazard materials may only be handled at a "facility of a particular hazard," which must meet additional conditions for warning alarms (33 CFR 126.16(b)).

**Anchorage Regulations.** Another area of Coast Guard regulations that is related to the topic of storage of Class 1 explosive materials in transportation is the Anchorage Regulations set forth in 33 CFR part 110. In particular, Subpart B of Part 110 prescribes permitted explosives anchorage grounds for certain ports and places in the United States as well as conditions that may pertain to explosives laden vessels using those anchorage areas.

**USCG Security Requirements.** On October 22, 2003 the United States Coast Guard published six final maritime security rules (68 FR 60448) applicable to certain vessels and facilities. The rules establish regulations for domestic maritime security that are based on the international maritime security standards in the International Convention for Safety of Life at Sea, 1974, (SOLAS) and the new International Ship and Port Facility Security Code (ISPS Code). An important objective of the ISPS Code is to ensure that countries adopt compatible requirements so that a vessel's compliance with one country's standards does not prevent it from meeting the standards of another country.

The Coast Guard's final rules require owners and operators of certain classes of vessels and facilities to perform security assessments, develop security plans, and implement security measures and procedures to address the risk or mitigate the potential results of an act that results in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area (33 CFR parts 104 and 105, respectively). These requirements apply to about 10,000 vessels and about 5,000 facilities, including facilities that handle

hazardous material. Foreign and domestic commercial and cargo vessels as well as barges transporting petroleum, other hazardous liquids, and certain other dangerous cargoes in bulk are covered by these rules. Vessel security plans must include measures for access control, restricted areas, handling cargo, delivery of vessel stores and bunkering, and monitoring. Security measures for each activity must be scaled to provide for increased levels of security at increased threat levels.

For purposes of the USCG regulations, a "facility" is any structure or facility of any kind located in, on, under, or adjacent to any waters of the United States and used by a public or private entity, including any contiguous or adjoining property under common ownership or operation (33 CFR 101.105). Facility security plans must include measures for access control, restricted areas, handling cargo, delivery of vessel stores and bunkering, and monitoring (33 CFR 105.405). Security measures for each activity must be scaled to provide for increased levels of security at increased threat levels (33 CFR 105.230). Some additional security measures are prescribed for facilities that handle "certain dangerous cargoes" including Division 1.1, 1.2, and 1.5D explosives (33 CFR 105.295).

In addition, the October 22, 2003 final rules: (1) Establish USCG Captains of the Ports as Federal Maritime Security Coordinators (33 CFR 103.200); (2) require the establishment of Area Maritime Security Committees (33 CFR 103.300); and (3) mandate the development and implementation of Area Maritime Security Plans to address security of the infrastructure and operations of a port (33 CFR 103.500). The Area Maritime Security Plan is primarily a communication and coordination document. Core elements of the Area Maritime Security Plan include, but are not limited to: (1) Details of operational and physical measures that must be in place at all threat levels (33 CFR 103.505(a)); (2) expected timeframes for responding to security threats and changes to threat levels (33 CFR 103.505(g)); (3) communications procedures (33 CFR 103.505(q)); (4) measures to enhance the security of vessels, facilities, and operations that are not covered by other security plan regulations or requirements (33 CFR 103.505(n)); (5) measures to protect the plan and related information (33 CFR 103.505(m)); (6) periodic review, audit, and updating procedures (33 CFR 103.505(j)); and (7) procedures for reporting security incidents (33 CFR 103.505(k)).

## VII. ATF Regulations

Congress enacted Title XI of the Organized Crime Control Act of 1970 to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Chapter 40 of the 1970 Act is entitled Importation, Manufacture, Distribution and Storage of Explosive Materials. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) U.S. Department of Justice has been delegated the authority to enforce Chapter 40. ATF has promulgated regulations contained in 27 CFR part 555 to implement its provisions.

ATF regulations contain detailed provisions governing the storage of explosive materials. These storage regulations address numerous issues including: (1) A requirement to inspect storage facilities at least every seven days (27 CFR 555.204); (2) where magazines may be located (27 CFR 555.206); (3) construction requirements of magazines, including locking mechanisms (27 CFR 555.207–211); (4) quantity restrictions and restrictions on the items that may be stored together (27 CFR 555.213); and (5) distance restrictions (27 CFR 555.218–224). In addition, all theft or loss of explosive materials by licensees, permittees, carriers of explosives materials, and other persons must be reported to ATF within 24 hours of discovery (27 CFR 555.30).

Below we provide information on the explosives storage regulations found in 27 CFR part 555, subpart K. For a thorough understanding of the regulatory requirements, we recommend you review the complete ATF regulations.

1. Explosive materials fall into one of three classes—high explosives (i.e., Dynamite, Flash Powder, Bulk Salutes), low explosives (i.e., Black Powder, safety fuses, igniters, igniter cords, fuse lighters, and display fireworks), or blasting agents (i.e., Ammonium nitrate fuel oil and certain water gels). 27 CFR 555.202.

2. There are 5 types of explosives magazines. Type 1 magazines are permanent magazines for the storage of high explosives and all other classes of explosive materials. Type 2 magazines are mobile and portable indoor and outdoor magazines for the storage of high explosives and all other classes of explosive materials. Type 3 magazines are portable outdoor magazines for the temporary storage of high explosives while attended (for example, a "daybox") and all other classes of

explosives materials. Type 4 magazines are magazines for the storage of low explosives. Blasting agents and detonators that will not mass detonate may be stored in type 4 magazines. Type 5 magazines are for the storage of blasting agents. Type 4 and 5 magazines can be in the form of a trailer or semi-trailer; however, they must be immobilized by removing the wheels or installing a kingpin locking device or other ATF approved method if they are left unattended. 27 CFR 555.203, 207–211.

3. The regulations specify magazine construction requirements including, but not limited to, walls, floors, foundations, roofs, bullet-resistant ceilings, doors, locks, and ventilation systems. 27 CFR 555.207–211.

4. Any person who stores explosive materials must notify the authority having jurisdiction for fire and safety in the locality where the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosives are being stored. 27 CFR 555.201(f).

5. Smoking, matches, open flames, and spark producing devices are not permitted in any magazine, within 50 feet of any outdoor magazine, or within any room containing an indoor magazine. 27 CFR 555.212.

6. Magazines must be clean, dry, and free of grit, paper, empty packaging and containers, and rubbish. Cleaning utensils, which may be left in the magazines, cannot have spark-producing metal parts. The surrounding area must be kept clear of rubbish, brush, dry grass, or trees for 25 feet in all directions. 27 CFR 555.215.

7. Lighting in any explosives storage magazine must comply with the National Electrical Code (NFPA 70–81). Battery-activated safety lights may be used in explosive storage magazines. 27 CFR 555.217.

8. Explosive materials must be stored in accordance with the table of distances contained in the ATF regulations. 27 CFR 555.218–224.

#### **VIII. NFPA 498, Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives**

The National Fire Protection Association (NFPA) has published standards for safe havens under NFPA 498, Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives. NFPA 498 was specifically designed to handle cargoes of explosive materials in a transportation setting. The standard is widely used and accepted by the explosives transportation industry and by Federal, State, and local

governments. It addresses fire, theft, and explosion hazards of explosive materials in parked vehicles at safe havens and interchange lots. Detailed information on the provisions contained in NFPA 498 is provided below:

1. The term “explosives interchange lot” is defined as a specially designed safe area of a motor vehicle terminal where less-than-truckload lots of explosives can be held for transfer from one vehicle to another for continuance in transportation. The term “explosives motor vehicle facility” is defined as a designated area where motor vehicles transporting explosives can be parked, pending further movement in transportation. Such a facility can be a safe haven or interchange lot and can include maintenance shops, driver rest services, or any combination of these conveniences. The term “safe haven” is defined as a secured area specifically designated and approved in writing by local, State, or Federal governmental authorities for the parking of vehicles containing Division 1.1, Division 1.2, or Division 1.3 materials. NFPA 498 section 1–3.

2. A safe haven must be located in a secured area that is no closer than 300 ft (91.5m) to a bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble. The perimeter of the safe haven must be cleared of weeds, underbrush, vegetation, or other combustible materials for a distance of 25 ft (7.6 m). The safe haven must be protected from trespassers by warning signs, gates, and patrols. NFPA 498 sections 2–1.1, 2–1.2, 2–1.3, and 2–1.4.

3. When vehicles carrying Division 1.1, Division 1.2, or Division 1.3 materials are parked in a safe haven, the entrance to the safe haven must be marked with this warning sign:

DANGER NO SMOKING  
NEVER FIGHT EXPLOSIVE FIRES  
VEHICLES ON THIS SITE CONTAIN  
EXPLOSIVES  
CALL \_\_\_\_\_

The sign must be weatherproof with reflective printing, and the letters must be at least 2 in. high. NFPA 498 section 2–1.4.

4. The shipping paper for all 1.1, 1.2, and 1.3 materials and corresponding emergency response information must be presented to the guard patrolling the safe haven. NFPA 498 section 2–1.5.1.

5. Vehicles will be inspected before they enter the safe haven. Any safety (e.g., hot tires, hot wheel bearings, hot brakes, any accumulation of oil or grease, any defects in the electrical system, or any apparent physical damage to the vehicle that could cause

or contribute to a fire) or security threats that are identified by the inspector must be corrected before the vehicle is permitted to enter the safe haven. NFPA 498 section 2–2.1.

6. Trailers are to be positioned in the safe haven with spacing of not less than 5 ft (1.5 m) maintained in all directions between parked trailers. Additionally, trailers may not be parked in a manner that would require their movement to move another vehicle. Immediately upon correctly positioning a loaded trailer the tractor must be disconnected and removed from the safe haven. NFPA 498 sections 2–2.2 and 2–2.3.

7. The explosives transport vehicles, including trailers, in the interchange lot must be maintained in the same condition as is required for highway transportation, including placarding. NFPA 498 section 2–2.4.

8. Where a self-propelled vehicle loaded with explosives is parked in a safe haven it must be parked at least 25 ft (7.6 m) from any other vehicles containing explosives, and must be in operable condition, properly placarded, and in a position and condition where it can be moved easily in case of necessity or emergency. NFPA 498 section 2–2.5.

9. No explosives may be transferred from one vehicle to another in a safe haven except in case of necessity or emergency. NFPA 498 section 2–2.6.

10. No vehicle transporting other hazardous materials may be parked in a safe haven unless the materials being transported are compatible with explosives. NFPA 498 section 2–2.7.

11. Except for minor repairs, no repair work involving cutting or welding, operation of the vehicle engine, or the electrical wiring may be performed on any vehicle parked in a safe haven that is carrying explosives. NFPA 498 section 2–3.1.

12. Except for firearms carried by law enforcement and security personnel where specifically authorized by the authority having jurisdiction, smoking, matches, open flames, spark-producing devices, and firearms are not permitted inside or within 50 ft (15.3 m) of the safe haven, loading dock, or interchange lot. NFPA 498 section 2–3.2.

13. When any vehicle transporting explosives is parked in a safe haven, at least one trained person, 21 years of age or older, must be assigned to patrol the safe haven on a dedicated basis. Safe havens located on explosives manufacturing facilities or at motor vehicle terminals must employ other means of acceptable security such as existing plant or terminal protection systems or electronic surveillance devices. NFPA 498 section 2–4.1.

14. Where an area at the loading dock is designated for the temporary holding of explosives in a trailer, it must not be located within 50 ft (15.3 m) of a fire hazard such as an area where smoking is permitted, where hot work is being done, or where combustible or flammable materials are present. NFPA 498 section 3-1.3.

15. Explosives delivered to the interchange lot by a connecting carrier must be retained in the trailer at a designated section of the loading dock, or the trailer must be parked in an isolated area of the interchange lot, or the explosives must be placed in the holding facility. NFPA 498 section 3-2.2.

16. Explosives may not be retained on the lot, either in a trailer or holding facility, for a period longer than necessary, but in no case for more than 100 hours. NFPA 498 section 3-2.4.

**IX. Institute of Makers of Explosives Safety Library Publication No. 27, "Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives"**

In January of 2005 the Institute of Makers of Explosives (IME) published recommended guidelines (SLP-27) for the manufacture, sale and distribution, transportation, storage, and use of Class 1 materials. SLP-27 establishes a best practices guideline for the transportation of explosives by highway and vessel. Specifically, it provides detailed transportation information on security plans, training, loading, and unloading requirements as they apply to shipments of explosives transported by highway or vessel. Following is a list of the significant transportation related requirements contained in the IME publication, "Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives."

*Transportation by Highway or Vessel*

1. Those persons transporting explosives must be properly trained and shipments must comply with DOT security plan requirements, as applicable. SLP-27 section 3.1.

2. Loading of stored materials or materials that are manufactured and immediately transported should be done as conspicuously as possible and without undue delay. SLP-27 section 3.2.

3. Unloading and placement of explosives in proper storage should be completed upon arrival at the final destination. SLP-27 section 3.3.

*Transportation by Highway*

1. For international shipments carriers should participate in the U.S. Customs

and Border Protection Free and Secure Trade (FAST) program. In addition, carriers should plan to avoid any unnecessary delays at border crossings. SLP-27 section 3.4.1.

2. Cross docking and trailer transfers should be done in secure areas. SLP-27 section 3.4.1.2.

3. Safe havens should be operated in accordance with the current edition of NFPA 498 and be reviewed by each carrier's safety department prior to use. SLP-27 section 3.4.2.

4. If at all possible congested areas and rush hour traffic should be avoided. SLP-27 section 3.4.3.

5. Parking or stopping of the vehicle should be kept to a minimum, but if necessary must conform to the requirements in 49 CFR part 397. SLP-27 section 3.4.4.

6. For Division 1.1, 1.2, and 1.3 materials, a trained and authorized person that is capable of moving the vehicle must be in attendance at all times. SLP-27 section 3.4.5.

7. Cargo compartments should be locked and sealed with the corresponding seal numbers recorded on the shipping paper. SLP-27 section 3.4.6.

8. A route plan, that includes all stops, must be prepared for Division 1.1, 1.2, and 1.3 materials in accordance with 49 CFR 397.67(d). SLP-27 section 3.4.7.

9. A dual driver program should be used for certain materials if the shipment cannot be completed within a single driver's hours-of-service. SLP-27 section 3.4.8.

10. Only vehicles capable of two way communication or those equipped with a two-way GPS system should be used for the transportation of Class 1 materials. In addition, shipments that are longer than 11 hours in duration should be monitored by GPS or by an equivalent tracking system. SLP-27 section 3.1.9.

11. A battery disconnect switch or steering wheel lock should be installed on vehicles transporting Class 1 materials. SLP-27 section 3.4.10.

12. If mechanical problems occur the driver should contact dispatch, proceed to the safest possible location, and always stay with the vehicle. SLP-27 section 3.4.11.

13. The driver should not stop to render aid to others. SLP-27 section 3.4.11.3.

14. If an incident occurs the driver should contact dispatch and State law enforcement officials immediately. SLP-27 section 3.4.11.2.

*Transportation by Vessel*

1. Division 1.1, 1.2, and 1.3 materials should be staged in a safe haven or area designated by the Captain of the Port (COTP). SLP-27 section 3.5.1.

2. A qualified individual should serve as the Responsible Safety and Security Individual (RSSI). The RSSI should be present when Division 1.1, 1.2, or 1.3 materials are handled at the berth. SLP-27 section 3.5.2.

3. Emergency response plans should be consistent with those described in 29 CFR 1910.120(q) and 33 CFR. SLP-27 section 3.5.3.1.

4. The facility operator should develop an emergency response plan for the facility, a copy of which should be distributed to the RSSI, port authority, regulatory authority, and master of the ship. In addition, the facility operator should notify the local authorities of the net explosive quantity at least 24-hours in advance of the expected handling dates. SLP-27 section 3.5.3.4.

5. The vessel operator should maintain the vessel in a manner that would allow for immediate departure, should the need arise. SLP-27 section 3.5.3.5.

6. The emergency response plans for the ship and waterfront facility should be consistent. SLP-27 section 3.5.3.6.

7. The RSSI should ensure that the shipping papers accurately indicate the total amount of Class 1 materials on the vessel. SLP-27 section 3.5.6.

8. For loading and unloading the RSSI should have a list of each container or trailer and confirm that each is on the list. SLP-27 sections 3.5.7.1 and 3.5.8.1.

9. Loading and unloading should be done in a manner that does not cause undue delay and minimizes the amount of time explosives are in the berth. SLP-27 sections 3.5.7.4 and 3.5.8.5.

10. The facility operator should inspect packages of Class 1 material for evidence of unauthorized entry. If such evidence exists the facility operator should contact the RSSI. SLP-27 section 3.5.8.6.

11. Only the motor vehicles required to load or unload the explosives are allowed in the berth or inside the warehouse. The drivers should stay in the immediate vicinity of their vehicles. Division 1.1, 1.2, and 1.3 materials should be attended at all times. SLP-27 section 3.5.9.

12. To maintain safety and security Division 1.1, 1.2, and 1.3 shipments that involve the use of multiple shippers and carriers should be planned in advance and coordinated with facility operator. SLP-27 section 3.5.11.

13. The RSSI should maintain contact with the U.S. Coast Guard, master of the

ship and facility operator, and the motor carrier when Class 1 materials are being handled. SLP-27 section 3.5.12.

14. When Class 1 materials are in the berth only the personnel needed to do the job in a safe and secure manner should be present. SLP-27 section 3.5.13.3.

15. Waterfront facilities that handle explosives should meet the standards for interchange lots found in NFPA 498. SLP-27 section 3.5.13.4.

## **X. SDDC Freight Traffic Rules Publication No. 1C**

The Department of Defense (DOD) has published standards for non-government safe havens used for commercial shipments of DOD munitions made under the provisions of Surface Deployment and Distribution Command (SDDC) Freight Traffic Rules Publication No. 1C (MFTRP No. 1C). The rules apply to DOD shipments of explosives. Following is a list of key requirements in MFTRP No. 1C that apply to explosives stored during transportation:

1. The rules outlined in Section 4, Part A apply to explosives classified as Division 1.1, 1.2, 1.3, and 1.4. MFTRP No. 1C—Item 300.

2. When a shipment arrives at an installation during other than consignee designated hours a temporary holding area will be provided for shipments. The installation will provide safety and security protection as outlined in Part II, Chapter 205 of the Defense Transportation Regulation (DTR). MFTRP No. 1C—Item 305.

3. Secure holding in the event of emergencies, such as when shipments of Class 1, Division 1.1, 1.2, 1.3, or 1.4 (A, B, or C) materials are endangered by civil disturbance or natural disaster or prevented from proceeding to destinations by circumstances beyond the control of the carrier. Secure holding requirements:

a. The carrier will notify the consignor and consignee of the delay.

b. Shipments must be removed from secure holding as soon as the shipment is no longer endangered.

c. Vehicles in a secure holding will be parked inside an appropriate security area (fenced area).

d. Installation security will be extended when required to provide reasonable protection.

e. Shipping documents will be examined to prevent surreptitious entry of any unauthorized shipments into the installation.

f. Installation personnel will determine if carrier personnel will remain with the vehicle for constant surveillance.

g. Inspection provisions will be applied.

h. For parking lots and rail yards the compatibility restrictions and quantity-distance requirements of DOD Manual 6055.9 STD must be applied. MFTRP No. 1C—Item 310.

4. Terminal Security Standards. The carrier must maintain a comprehensive security plan including facility security. Diagram of the terminal that shows controlled and restricted areas, security force locations, surveillance equipment locations, and implementation procedures for the plan. Included in the plan are the following:

a. Access Control.

b. Guard Force standards, qualification, training, equipment.

c. Fencing.

d. Lighting.

e. Barriers (e.g., jersey concrete barriers, etc.).

f. Key and lock control.

g. Emergency communications.

h. Emergency power.

i. Emergency response forces.

j. Procedures for response to terrorism/criminal threats or other emergencies.

Small arms, ammunition and explosives must be afforded double barrier protection. General terminal areas will be designated “controlled areas” and surrounded by a perimeter fence to limit access. Secure trailer and/or drom parking areas will be designated “restricted areas” and will be located within the established controlled area. The restricted area will be located in a revetment area protected by an earth-graded berm a minimum of 20 feet in height. The restricted area will also be protected by its own perimeter fence located on top of the earth-graded berm. The entrance into the restricted area will be constructed in such a way that it prevents a straight drive/view into the parking area. Since the guards do not have direct unobstructed view of the entire area, the restricted area will have a color Closed Circuit Television (CCTV) system to provide enhanced security over the parking area. Administrative buildings that are located within the terminal, maintenance facilities and terminal guard stations will be included within the controlled area and provided CCTV coverage. Structures used by security forces will be of substantial construction (i.e. masonry or shielded) to mitigate any threat from small arms fire. Warning signs must be posted at each entry point and along the terminal perimeter where they can be easily seen and understood by anyone approaching the terminal facility. In areas where English is one of two or more languages commonly

spoken, warning signs will contain the local language in addition to English. The wording of the signs will denote warning of a restricted area. Warning signs will be posted at intervals not to exceed 100 feet. MFTRP No. 1C—Item 312.

5. These provisions are very similar to the safe haven requirements found in NFPA 498. They provide the minimum required safety standards for commercial carrier terminals to handle Division 1 ammunition and explosives. This Item requires carriers to have a comprehensive site plan. The terminal must be approved by a State or local HAZMAT approving authority. The terminal must have a clear zone of 20 feet inside and 20 feet outside of the perimeter that is clear of weeds, brush, vegetation or other combustible material. No smoking signs that include the emergency response number to call in the event of a fire. Terminal employees must be informed of the hazard classification of explosives and the danger posed to them. Vehicle that can move explosive trailers must be kept in terminal at all times. Fire protection equipment must be provided.

Vehicles must undergo a safety inspection. Spacing of 5 feet is required between parked trailers. The trailers must be maintained in highway condition. No vehicle transporting other hazardous materials, including commercial explosives, must be parked in a terminal unless the materials being transported are compatible with explosives. No repair work, no smoking or spark producing devices, and no electrical lines closer than the length of the lines. MFTRP No. 1C—Item 314.

## **XI. Comments**

Shippers and carriers of explosives and other high-hazard materials are urged to carefully consider the implications of incorporating these governmental and industry standards into the HMR. We urge you to consider the effects on transportation safety and security at explosives storage facilities and the effects on the intermodal transportation of explosives. Commenters should be aware that the information and data generated in response to this ANPRM could result in a notice of proposed rulemaking that would apply more generally to shippers and carriers of explosives and other high-hazard materials. We invite commenters to submit data and information on:

1. The effectiveness of different types of safety and security measures.

2. The costs involved with implementing specific safety and security measures.



3. The related safety or productivity benefits that would help offset costs.

4. The effect that implementing specific safety and security measures will have on the human environment.

5. Ways or incentives that may be appropriate to consider in promoting adoption of safety and security measures in conjunction with or separate from general regulatory requirements.

6. The overall safety and security of safe havens for temporary storage during transportation, including suggestions for improving security at safe havens or alternatives to the use of safe havens.

7. The conditions and circumstances under which temporary storage in safe havens should be required.

8. Whether specific safety and security measures should be limited to certain explosives and, if so, which explosives might warrant specific security or safety measures (i.e., to which explosives in Division 1 through Division 6 and in what quantity should these measures apply).

9. Whether enhanced safety or security requirements for storage during transportation should also apply to other types of hazardous materials (e.g., materials toxic by inhalation) and, if so, which hazardous materials.

10. Whether enhanced safety or security requirements for storage during transportation should apply to transportation by all modes or only certain specified forms of transportation (e.g., railroad, highway, etc.).

11. Whether we should consider aggregation limits on the storage of explosives and other high-hazard materials at a single facility during transportation.

12. Whether we should consider limits on the time that a shipment of explosives or other high-hazard materials could be stored during transportation.

13. Whether shipping documents should indicate that a shipment will be stored at a safe haven or other facility during transportation.

14. Whether the regulations and standards outlined in this ANPRM can be transformed into multimodal storage requirements for the transportation of explosives.

15. Whether there are additional standards, other than those outlined above, that we should take into consideration.

16. Whether development of an industry or consensus standard or regulation should be pursued in this area.

We are particularly interested in comments from explosives shippers and carriers and State governments

regarding their experiences with safe havens. We would like to know if State and local governments have concerns regarding the use of safe havens in and around their communities, including possible economic impacts of terrorist activities or accidents. We would like information on the benefits realized, the costs incurred, any technical or practical difficulties encountered, and other real-world experience gained from transporting or regulating the transportation of explosives as it relates to safe havens.

## XII. Regulatory Notices

### A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” We therefore request comments, including specific data if possible, concerning the costs and benefits that may be associated with adoption of specific security and storage requirements for carriers that include explosives storage as part of their transportation cycle.

### B. Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect 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. We invite State and local governments with an interest in this rulemaking to comment on the effect that adoption of specific storage and security requirements for carriers that transport and store explosives in commerce may have on State or local safety or environmental protection programs.

### C. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that “significantly or uniquely affect” Indian communities and that impose “substantial and direct compliance costs” on such communities. We invite Indian tribal governments to provide comments as to the effect that adoption of specific

storage and security requirements for explosives that are transported in commerce may have on Indian communities.

### D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), we must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. If your business or organization is a small entity and if adoption of specific storage requirements applicable to explosives transported in commerce could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

### E. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. Interested parties are invited to address the potential environmental impacts of regulations applicable to the storage of explosives transported in commerce. We are particularly interested in comments about safety and security measures that would provide greater benefit to the human environment, or on alternative actions the agency could take that would provide beneficial impacts.

### F. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce.

### G. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is considered a significant regulatory action under section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This ANPRM was reviewed by the Office of Management and Budget.

E.O. 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." We therefore request comments, including specific data if possible, concerning the costs and benefits of incorporating requirements for the storage of explosives and other high-hazard materials during transportation into the HMR.

#### H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) 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 number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

#### I. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) of you may visit <http://dms.dot.gov>.

Issued in Washington, DC, on November 10, 2005, under authority delegated in 49 CFR part 106.

**Robert McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 05-22751 Filed 11-15-05; 8:45 am]

**BILLING CODE 4910-60-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 051028280-5280-01; I.D. 102105A]

RIN 0648-AT11

#### Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Amendment 11

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 11 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) which would change the framework for the annual apportionment of the Pacific sardine harvest guideline along the U.S. Pacific coast. The purpose of the proposed rule is to achieve optimal utilization of the Pacific sardine resource and equitable allocation of the harvest opportunity for Pacific sardine.

**DATES:** Comments must be received by December 16, 2005.

**ADDRESSES:** You may submit comments on this proposed rule identified by I.D. 102105A by any of the following methods:

- E-mail: [0648-AT11.SWR@noaa.gov](mailto:0648-AT11.SWR@noaa.gov). Include I.D. 102105A in the subject line of the message.
- Federal e-Rulemaking portal: <http://www.regulations.gov> Follow the instruction for submitting comments.
- Fax: (562) 980-4047.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802.

For copies of Amendment 11 entitled *Allocation of the Pacific Sardine Harvest Guideline Amendment 11 to the Coastal Pelagic Species fishery Management Plan*, and the accompanying environmental assessment/initial regulatory flexibility analysis/regulatory impact review (EA/IRFA/RIR) may be obtained at the address above.

**FOR FURTHER INFORMATION CONTACT:** Joshua Lindsay, Southwest Region, NMFS, (562) 980-4034.

**SUPPLEMENTARY INFORMATION:** Pacific sardines are managed pursuant to the CPS FMP, which was implemented by regulations published at 64 FR 69893, December 15, 1999. According to the original allocation scheme in the CPS FMP, the annual harvest guideline for Pacific sardine was allocated two-thirds south of Pt. Piedras Blancas, California (35° 40' N. lat.) (a point south of Monterey, California, which included the fishery in Southern California) and one-third north (included fisheries in Monterey, California, Oregon, and Washington), beginning annually on January 1. On October 1, the harvest guideline remaining in each subarea was added together, then divided equally between the two areas.

In 2002, the northern allocation was reached before October 1, which

required closure of the fishery while significant amounts of Pacific sardine remained unharvested in the south (67 FR 58733, September 18, 2002). Rough ocean conditions in the Pacific Northwest beginning in October makes fishing for Pacific sardine with a purse seine gear difficult or impossible. Thus, even if the harvest of Pacific sardine were provided to fisheries in the Pacific Northwest after October 1, it would not likely be obtained because the rough ocean conditions along the coast during that time would preclude fishing for Pacific sardine. Because the Pacific sardine fisheries off Oregon and Washington would be virtually over by October, the Pacific Fishery Management Council (Council) requested an emergency rule to make the required allocation in 2002 earlier than October 1, to avoid losses in jobs and revenue. An emergency rule was implemented on September 26, 2002 (67 FR 60601), that reallocated the harvest guideline and reopened the fishery.

The CPS FMP established a limited entry fishery south of Pt. Arena, California (39° N. lat.), which was a point north of San Francisco, California. An open access fishery existed north of Pt. Arena, California made up of Pacific sardine fisheries off Northern California, Oregon, and Washington.

When the CPS FMP was implemented no Pacific sardine fishery in Oregon and Washington existed. The Council adopted the allocation procedure included in the CPS FMP to protect the Monterey, California fishery (in the northern subarea or Subarea A) from the possibility of the fishery in Southern California (in the southern subarea or Subarea B) catching the entire harvest guideline before Pacific sardine became available in Monterey. As a result of the FMP's allocation procedure, a fishing pattern developed whereby Pacific sardine was caught by the Southern California fleet at the beginning of the year, by the Pacific Northwest fleet in the summer, and by the Monterey fleet in the fall. The fishing pattern led to the possibility that the fishery in the northern subarea might preempt the fishery in the southern subarea. If Pacific sardine remained unharvested in either subarea following the reallocation on October 1, the FMP did not provide a procedure to make further reallocations to any subarea to increase the likelihood of achieving optimum yield (OY) in the Pacific sardine fishery.

The Council recognized that a process with more flexibility for making allocation decisions was needed. Therefore, the Council considered amending the framework process for implementing the CPS FMP found at 50