

your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lily Wong, EPA Region IX, (415) 947-4114, wong.lily@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses the following SCAQMD rules: Rule 2004, Rule 2007, and Rule 2010. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 22, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.
[FR Doc. E8-14883 Filed 7-2-08; 8:45 am]

BILLING CODE 6560-50-P

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 During Transportation

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

ACTION: Advance notice of proposed rulemaking (ANPRM); reopening of comment period and announcement of public meeting.

SUMMARY: PHMSA is concerned that current requirements may not adequately address the risks associated with the storage of explosives while they are in transportation. On November 16, 2005, we published an advance notice of proposed rulemaking to solicit comments concerning measures to reduce those risks. The comment period closed February 14, 2006. To ensure that our stakeholders are fully aware of the risks we are addressing and given sufficient opportunity to comment, this ANPRM re-opens the comment period, summarizes the comments already in the docket, and announces a public meeting.

DATES: *Written comments:* Comments must be received by October 1, 2008.

Public meeting: August 7, 2008, starting at 9 a.m. and ending at 1 p.m.

ADDRESSES:

Public meeting: The meeting will be held at the U.S. DOT headquarters 1200 New Jersey Ave., SE., Washington, DC 20590. The main visitor's entrance is located in the West Building, on New Jersey Avenue and M Street. For detailed directions please see Section IV. To sign up for the meeting or to request special accommodations, please contact Mr. Ben Supko or Ms. Susan Gorsky at the telephone number or address listed under **FOR FURTHER INFORMATION CONTACT** below.

Comments: You may submit comments identified by the docket number PHMSA-2005-22987 by 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 at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 (Volume 65, Number 70; Pages 19477-78), which may also be found at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky or Ben Supko, Office of Hazardous Materials Standards, telephone (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-10, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On November 16, 2005 PHMSA published an advance notice of proposed rulemaking (ANPRM) under Docket HM-238 (70 FR 69493) to solicit comments concerning measures to reduce the risks posed by the storage of explosives while they are in transportation. For persons interested in viewing the ANPRM, it is accessible by PHMSA docket number (PHMSA-2005-22987) through the Federal eRulemaking Portal (<http://www.regulations.gov>). The ANPRM focused primarily on the safe storage of explosives. We also, however, invited commenters to address issues related to security and storage of other types of high-hazard materials.

As indicated in the ANPRM, we are concerned that the current regulations do not adequately address the safety and security risks associated with the storage of explosives while they are in transportation. Brief summaries of the Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR parts 390–397) and Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), as discussed in the ANPRM, are provided below:

A. FMCSRs

The FMCSRs are administered by the Federal Motor Carrier Safety Administration (FMCSA) to address driver qualifications; vehicle parts and accessories; driving requirements and hours of service; vehicle inspection, repair and maintenance; driving and parking rules for the transportation of hazardous materials; hazardous materials safety permits; and written route plans. 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.

The FMCSRs require any person who files a Motor Carrier Identification Report Form (MCS-150) according to the schedule set forth in § 390.19(a) of the 49 CFR and transports more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material or an amount of a Division 1.5 (explosive) material that requires placarding under part 172 of the 49 CFR to hold a valid safety permit. A safety permit is a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403 (49 CFR 385.402). Persons holding a safety permit and transporting Division 1.1, 1.2, and 1.3 materials must prepare a written route plan that meets the requirements of § 397.67. The route plan requires carriers to establish a route that avoids

heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys (49 CFR 397.67).

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)).

B. HMR

In accordance with the HMR, the same requirements apply to the transportation of hazardous materials whether the materials are incidentally stored or actually moving (e.g., shipping papers, emergency response information, hazard communication, packaging, and segregation). As a result, the HMR require each person who incidentally stores explosives during transportation to have a security plan. 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 provide standards or incorporate guidelines for facilities to follow when storing explosives incidental to transportation.

C. ANPRM

In the November 2005 ANPRM, we summarized government and industry standards for explosives storage. The standards focus on explosives storage, but vary greatly by mode of transportation, type of explosives, and whether the explosive is in transportation. The standards covered in the ANPRM are listed below. Detailed information on the standards may be obtained by accessing the public docket for this rulemaking.

- 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" (NFPA 498).
- 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)."

II. Purpose and Scope of ANPRM

The purpose of this ANPRM is to re-open the comment period, which originally closed February 14, 2006, and to announce a public meeting to solicit comments and discussion on the lack of uniform standards for establishing, approving, and maintaining safe havens for the temporary storage of explosives during motor vehicle transportation. As described in the sections above, there are currently no minimum or uniform criteria for federal, state, or local governments use when approving the establishment and operation of safe havens. In addition, it is likely that current, approved, safe havens do not comply with the very minimum requirements established by Part 397 of the FMCSRs.

One way to decrease the risk associated with motor vehicles transporting explosives being left unattended at rest and truck stops is to require explosives to be attended at all times through the use of driver teams. However, historical experience indicates that this would increase the potential risk to the general public. Enforcing an "attendance" requirement is difficult at best. There would be little incentive for operators of vehicles to comply, they may even remove the placards and other visible evidence of the explosive being transported in order to leave the vehicles unattended at locations of their choice, such as residential communities and business districts.

Another way of decreasing risk is to ensure that explosives are stored safely during transportation. Industry consensus standards, such as those provided in NFPA 498, and other guidelines could be incorporated into the HMR to establish a uniform baseline for safe haven locations. This is also a complicated issue that may actually reduce the number of safe havens. Owners of safe havens may be unwilling to absorb the cost required to bring their property into compliance. Development of new, less stringent standards may be an alternative that will balance the risk of unattended explosives with the cost of establishing and maintaining adequate safe haven locations.

While our November 16, 2005 ANPRM focused primarily on safety issues related to the temporary storage of explosives transported by highway, we also discussed additional concerns

regarding: (1) Security; (2) storage by rail and vessel modes; and (3) storage of other high-hazard materials. Since publication of the ANPRM and after reviewing ongoing federal programs intended to enhance the safety and security of hazardous materials stored during transportation by all modes, we decided to narrow the scope of this rulemaking to address the area posing the largest risk to the public—the development of measures for ensuring the safety of explosives temporarily stored during transportation by motor vehicle. The following sections of this preamble detail some of the actions taken by PHMSA and other agencies that promise to reduce risks in the areas of rail and motor carrier security issues, storage during transportation by rail and vessel, and storage of high-hazard materials.

A. PHMSA and TSA Rulemakings Related to Rail Security

PHMSA and Transportation Security Administration (TSA) are working cooperatively to address security issues related to the transportation by rail of high-hazard materials—toxic-inhalation-hazard (TIH) materials, radioactive materials, and explosives. On December 21, 2006, PHMSA, in consultation with the Federal Railroad Administration (FRA) and TSA, published a notice of proposed rulemaking (NPRM; 71 FR 76833) proposing to revise the current requirements in the HMR applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. Based on comments received in response to the NPRM and the provisions of the 9/11 Commission Act, we are adopting the following revisions to the security plan provisions:

- Rail carriers must compile information and data on the commodities transported, including the routes over which these commodities are transported.
- Rail carriers transporting the specified hazardous materials must use the data they compile and relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route to analyze the safety and security risks for each route used and practicable alternative routes to the route used.
- Using these analyses, rail carriers must select the safest and most secure practicable route for the specified hazardous materials.
- In developing their security plans, rail carriers must specifically address the security risks associated with

shipments delayed in transit or temporarily stored in transit.

- Rail carriers transporting the covered hazardous materials must notify consignees of any significant unplanned delays affecting the delivery of the hazardous material.

- Rail carriers must work with shippers and consignees to minimize the time a rail car containing one of the specified hazardous materials is placed on track awaiting pick-up, delivery, or transfer.

- Rail carriers must conduct security visual inspections at ground level of rail cars containing hazardous materials that have been accepted for transportation or placed in a train to check for signs of tampering or the introduction of an improvised explosive device (IED).

Also on December 21, 2006, TSA published an NPRM proposing additional security requirements for rail transportation. The TSA rulemaking would enhance security in the rail transportation mode by proposing requirements on freight and passenger railroads, rail transit systems, and on facilities with rail connections that ship, receive, or unload certain hazardous materials. The TSA NPRM includes proposals applicable to the transportation of TIH materials, radioactive materials, and explosives by rail: (1) Location reporting of rail cars upon request from TSA; (2) enhanced chain-of-custody procedures to ensure positive and secure change of physical custody when transferring rail cars between carriers and between carriers and rail hazardous materials shipper and receiver facilities; (3) enhanced physical security measures for rail cars awaiting pick-up at shippers' facilities; and (4) enhanced physical security measures for rail cars awaiting unloading at consignee facilities in high-threat urban areas.

B. 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 cargoes 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.

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. These requirements adequately address safety issues associated with the temporary storage of explosives during transportation by vessel.

C. TSA Hazardous Materials Truck Security Pilot

In August 2005, TSA initiated the "TSA Hazardous Materials Truck Security Pilot." This congressionally mandated pilot program was designed to test the functionality and capabilities of a centralized truck tracking system. The pilot utilized specific protocols capable of interfacing with existing truck tracking systems, government intelligence centers, and first responders. The goal was for TSA to establish and test a prototype Truck Tracking Center that would allow TSA to "continually" track truck locations and specific hazardous materials load types in all 50 states. The tracking system also allowed for automatic or manual notification of exception based events. The TSA Hazardous Materials Truck Security Pilot, including the prototype Truck Tracking Center, ended in 2007.

As we indicated in a June 27, 2007 (72 FR 35211) notice withdrawing Docket HM-232A, entitled Security Requirements for Motor Carriers Transporting Hazardous Materials, any rulemaking to address motor carrier security tracking should be carried out under TSA's legal authority, rather than primarily as an amendment to the HMR. In the notice we advised the public that the TSA has assumed the lead role from PHMSA for rulemaking addressing the security of motor carrier shipments of hazardous materials under the HM-232A docket. Accordingly, we withdrew the ANPRM and closed the rulemaking proceeding. As described in the withdrawal notice, the action was consistent with and supportive of the respective transportation security roles and responsibilities of the DOT and DHS as delineated in a Memorandum of Understanding (MOU) signed September 28, 2004, and the roles of TSA and PHMSA as outlined in an Annex to that MOU signed August 7, 2006.

In light of these ongoing efforts and extensive consultation and coordination with TSA in several other areas to develop measures to enhance transportation security and to identify high-risk materials for which additional

enhanced security measures may be necessary, we have decided to limit the focus of this rulemaking to the safe storage of explosives during transportation by motor vehicle.

Working with TSA, we will continue to weigh security risks as we evaluate options for the safe storage of explosives during transportation by motor vehicle.

III. Summary of Comments on the ANPRM

We received 22 comments in response to the ANPRM, as follows:

Commenter	Document No.
Rex C. Railsback	PHMSA-2005-22987-002
Shell Chemical LP	PHMSA-2005-22987-003
Institute of Makers of Explosives (IME)	PHMSA-2005-22987-004
North American Automotive Hazmat Action Committee (NAAHAC)	PHMSA-2005-22987-006
Department of Defense Explosive Safety Board	PHMSA-2005-22987-007
Pacific Maritime Association (PMA)	PHMSA-2005-22987-008
Association of American Railroads (AAR)	PHMSA-2005-22987-009
Baker Petrolite Corporation (BPC)	PHMSA-2005-22987-0010
Boyle Transportation	PHMSA-2005-22987-0011
Air Transport Association	PHMSA-2005-22987-0012
International Vessel Operators Hazardous Materials Association, Inc. (VOHMA)	PHMSA-2005-22987-0013
U.S. Department of Energy (DOE)	PHMSA-2005-22987-0014
Onyx Environmental Services L.L.C. (Onyx)	PHMSA-2005-22987-0015
National Propane Gas Association (NPGA)	PHMSA-2005-22987-0016
PPG Industries, Inc. (PPG)	PHMSA-2005-22987-0017
Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA)	PHMSA-2005-22987-0018
American Trucking Associations (ATA)	PHMSA-2005-22987-0019
The Alliance of Special Effects & Pyrotechnic Operators, Inc. (ASEPO)	PHMSA-2005-22987-0020
Sporting Arms and Ammunition Manufacturers Institute, Inc. (SAAMI)	PHMSA-2005-22987-0021
Dangerous Goods Advisory Council (DGAC)	PHMSA-2005-22987-0022
ARKEMA, Inc. (ARKEMA)	PHMSA-2005-22987-0023
Compressed Gas Association (CGA)	PHMSA-2005-22987-0024

The comments are available for review through the Federal eRulemaking Portal (<http://www.regulations.gov>).

Several of the commenters provided comments highlighting security concerns including specific DHS security initiatives (e.g., transportation worker identity credential (TWIC), cargo security) that are beyond the scope of this rulemaking. We support TSA efforts and agree that the TWIC program, cargo chain security regulations, and the truck security pilot will, when implemented, provide for a more efficient and effective means of screening employees, securing cargo, and ensuring hazardous materials are transported securely. It is not our intention to propose requirements applicable to the storage of explosives in transportation that will conflict with or duplicate DHS regulations. If we determine to move forward with rulemaking, our goal will be to enhance the safety of explosives stored during transportation while providing additional flexibility for motor carriers transporting these materials.

Generally, commenters suggest that a lack of consistent regulations for the storage of explosives during transportation creates a significant safety concern. The commenters do not support a cookie-cutter solution that could limit transportation or create an undue burden for transportation by a particular mode. Commenters suggest

that an effective approach would be one that promotes flexibility and provides several storage options for explosives while they are in transportation.

As indicated above, the intention of the ANPRM was to gather information from commenters to help us determine if our stakeholders support further regulatory action. Below we paraphrase the questions asked in the ANPRM and provide a summary of the applicable comments.

1. Effectiveness of Different Types of Safety and Security Measures

IME, NAAHAC, PMA, Boyle Transportation, VOHMA, Onyx, PPG, COSTHA, ASEPO, AAR, and ARKEMA provided comments regarding the effectiveness of different types of safety and security measures. Generally, these commenters suggest that current safety measures are on target, but could use some improvement.

In its comments, ARKEMA outlines several issues that should be addressed in a rulemaking proposal, such as a clear and consistent definition of what constitutes a safe haven, attendance, and the Hours of Service Rules when locating safe havens.

ONYX suggests constant attendance to effectively secure higher-risk explosives in Division 1.1, 1.2, and 1.3 during transportation. In addition, for materials in Division 1.4, 1.5 and 1.6, ONYX indicates adequate safety and security during transportation can be maintained by (1) expediting delivery, (2)

minimizing the time the materials are located at a transfer facility, and (3) providing site-specific security measures for any transfer facility.

Boyle Transportation indicates handling and storage during transportation is adequately addressed by NFPA 498. According to Boyle Transportation, "This standard should be the baseline for any enhancements. And, if introduced into regulation, [NFPA 498] needs to be applicable to all modes so that these materials are consistently secured."

ATA, COSTHA, AAR, PMA, and VOHMA express concern regarding the development of a one-size fits all rulemaking and provide support for the adequacy of current requirements. ATA indicates the trucking industry has already implemented measures to ensure the safe transportation of hazardous materials.

2. The Costs Involved With Implementing Specific Safety and Security Measures

IME, PMA, Boyle Transportation, VOHMA, ONYX, ATA, and ARKEMA provided comments regarding the costs of implementing enhanced safety measures. Most comments revolve around the costs of physical security, the impact of additional regulations on the explosives transportation industry, and the cost of constructing and maintaining safe havens.

Boyle Transportation, ONYX, and ATA express concern regarding the

dwindling number of carriers transporting explosives. According to Boyle Transportation, implementation of SDDC MFTRP No. 1C eliminated 27 of 30 possible terminals as temporary storage facilities, representing a more than 25% increase in carrier costs due to the inability to perform logistics activities and maintenance at terminal facilities. ATA indicates it is likely more requirements will lead to a niche industry that transports these materials at a much greater cost. ATA states requirements imposed upon this segment of the industry have led to a significant contraction in the number of carriers willing to transport explosives. Currently more than 500,000 carriers are registered with the FMCSA, and approximately 19 transport ammunition and explosives for DOD. Similarly, ONYX indicates it incurs approximately a 15–20% increase over the typical expense of transporting using a single driver when it uses dual drivers to transport Division 1.1, 1.2 and 1.3 materials.

Boyle Transportation and ARKEMA provide additional comments regarding the number of safe havens and other storage locations for explosives. Boyle Transportation notes that less-than-truckload shipments were moved point-to-point as a result of carriers' inability to use terminals, generating much more mileage than previously consolidated shipments. ARKEMA indicates that, in an effort to meet guidelines and secure capacity to move their goods, explosives manufacturers might be forced to handle the transportation themselves or hire specialized carriers to perform the transportation. According to Boyle Transportation, a simple solution is to allow commercial vehicles transporting explosives to stop at Federally designated safe havens. In addition, Boyle Transportation states, "Most carriers that designed truck terminals for the handling and storage of explosives used NFPA 498 as a guideline."

3. The Related Safety or Productivity Benefits That Would Help Offset Costs

IME, PMA, Boyle Transportation, ONYX, and ATA provided comments in regard to safety and productivity benefits available to offset the costs of explosive storage standards. IME explains the key to explosives safety is exposing the minimum amount of people to the threat of an accidental explosion. Boyle Transportation states, "The safety benefit is insurance against the risk of a high consequence, low probability event. Most of this benefit accrues to the general public not the specific carrier." According to ATA, the

hazardous materials regulatory requirement to transport materials without undue delay has tremendous safety and security benefits.

4. The Effect That Implementing Specific Safety and Security Measures Will Have on the Human Environment

IME, PMA, Boyle Transportation, ONYX, and ATA provided comments on the impact of implementing safety and security measures on the human environment. The comments were divided on this issue. IME expects little impact on the human environment. Boyle Transportation and ONYX indicate that reducing the safety and security risks associated with the transportation of explosives will benefit the public and regulated community. PMA and ATA suggest that disruptions in the flow of cargo may cause significant environmental and land use issues.

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

IME, NAAHAC, PMA, Boyle Transportation, ONYX, and ATA provided comments in response to this question. Generally, the commenters indicate citizens will benefit from the safe transportation of explosives and, therefore, it is beneficial for the government to promote such regulations. Funding methods provided by the commenters include reduced insurance rates, increased inspection protocols or frequencies, new or increased fines, tax credits or direct grants, surcharges or user fees on shipments, and research and education. Commenters suggest that these types of measures could be utilized to fund a more extensive safe haven program that accounts for the true costs and benefits it imposes.

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

The comments are divided when it comes to the safety and security of safe havens; however, commenters generally agree that the addition of accessible storage locations aids in the safe and secure transportation of explosives.

PMA, Baker Hughes, VOHMA, ATA, and SAAMI express concern regarding any mandated use of safe havens. Baker Hughes states, "Restricting shipments to major shipping lanes where safe havens

would be located would not allow us to efficiently service our customers. Shipments would actually be in transit longer, thereby creating more risk rather than less." VOHMA, ATA, and SAAMI indicate storing explosives and other high-hazard materials in concentrated locations such as safe havens may cause terrorist actions to be directed toward safe havens. According to ATA, a driver's best defense may be to blend in with other trucks on the road as well as in a rest area. ATA states, "A standard that allows trucks carrying extremely hazardous materials to be parked in areas that meet Federal security standards may be more appropriate than the use of designated safe havens."

IME, NAAHAC, Boyle Transportation, ASEPO, and DGAC support the use of safe havens for the storage of explosives. ASEPO states, "a concerted effort on the part of the Federal government should be made to use its vast resource, including its land, to facilitate the creation of new safe havens in areas where those in private hands have been closed." Boyle Transportation's comments indicate it agrees with the incorporation of safe havens into the HMR; however, different standards should be developed for temporary parking at truck stops and carrier terminals (less than 4 hours) than for handling or storage during transportation for up to 100 hours. IME and DGAC recommend the incorporation of *NFPA 498, Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives (2006 ed.)* into the HMR. DGAC goes on to state, to avoid frustration, "DGAC believes that facilities meeting NFPA 498, Standards for Safe Havens and Interchange Lots for Vehicles Transporting Explosives (2006 ed.) should be recognized as suitable safe havens."

7. The Conditions and Circumstances Under Which Temporary Storage in Safe Havens Should Be Required

IME, NAAHAC, Boyle Transportation, and ONYX support the performance-based standards provided in NFPA 498 and indicate they pave that way for consistent reasonable requirements for in transit storage facilities provided they are readily available. However, IME requests "FMCSA strike its vague and arbitrary condition at 397.5(d)(3)" which indicates a safe haven is a location approved by state or local government for the unattended parking of Division 1.1, 1.2, or 1.3 materials. In addition ONYX states, it would be "unreasonable for the other lower-hazard explosive materials, particularly when these materials are present in

small quantities, as is most often the case (e.g., the less-than-truckload (LTL) shipment of 2 flares classified as a Division 1.4 along with other hazardous wastes)" to comply with the safe haven requirements. Similarly, NAAHAC states, "Once established, temporary storage should apply to placardable quantities of Class 1 materials . . ."

ATA, VOHMA, and DOE state their concerns regarding the mandated use of safe havens. ATA indicates that the current number of safe havens has been inadequate for years, and "Until there is an extensive network of safe havens, it is unreasonable to require carriers to use safe havens in the transportation of highly hazardous materials." DOE and VOHMA express concern regarding the spacing and accessibility of safe havens. DOE indicates we must take into account a driver's ability to reach a designated safe haven based on weather conditions, emergencies, or other factors causing unanticipated delays. VOHMA's concerns focus around the placement of safe havens and the likelihood of frustrated shipments. VOHMA states, "The cost associated with frustrated cargoes for all goods is high, and certainly the costs associated with frustrated high hazard shipments would be even higher."

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)

IME, NAAHAC, PMA, Boyle Transportation, ONYX, and ATA support specific safety and security measures for certain explosives, but differ on which measures should apply and which materials should be subject. IME prefers the application of the safety and security measures provided in SLP-27, which are applicable to explosives in Division 1.1, 1.2, and 1.3. NAAHAC states, "Specific safety and security transportation measures should be limited to explosive shipments that require placards." PMA recommends we follow the standards provided in USCG requirements applicable to explosives storage (33 CFR Part 126) as they apply to type and quantity of materials. Boyle Transportation supports increased safety and security measures for Division 1 through Division 1.4 explosives. In addition, Boyle states, "Shipments of explosives should require two drivers." ONYX indicates the use of safe havens for lower-hazard explosives materials is not justified; however, it supports the current FMCSA

requirements for Division 1.1, 1.2, and 1.3 explosives to be attended at all times. To limit extremely hazardous materials in one place, ATA states, "One concept that merits additional consideration is using the concept of maximum net explosive mass as a means of limiting the quantity of extremely hazardous materials that are allowed to be present on any one transport vehicle, train, ship, or in any one area."

9. Whether We Should Consider Aggregation Limits on the Storage of Explosives and Other High-Hazard Materials at a Single Facility During Transportation

Shell Chemical, NAAHAC, PMA, Baker Hughes, VOHMA, CGA, and AAR oppose aggregation limits on the storage of explosives at a single facility during transportation. Shell Chemical states, "Limits on storage would place a burden on certain locations and disrupt their operational processes." NAAHAC expresses concern regarding the likelihood of drivers being required to seek alternate safe haven due to the fact that a facility had already reached its "allowable" quantity of Class 1 hazardous materials. NAAHAC indicates under such circumstances the drivers may have to drive hundreds of miles to seek an alternate parking location and possibly violate the FMCSA hours of operation limit, providing for a greater risk.

IME, Boyle Transportation, ONYX, and ATA indicate they may support an aggregation limit on the amount of explosives stored at a single facility while in transportation. IME states, "Risk-based aggregation limits on the storage of explosives and other high-hazard materials at a single facility during transportation are appropriate." ATA supports the concept of limiting the quantity based on a maximum net explosive mass.

10. Whether We Should Consider Limits on the Time That a Shipment of Explosives or Other High-Hazard Materials Could Be Stored During Transportation

Shell Chemical, IME, NAAHAC, PMA, ATA, and CGA indicate we should not consider limits on the amount of time explosives or other high-hazard materials may be stored during transportation. Shell Chemical indicates time limits will have an enormous impact on the supply systems for these materials and would do nothing more than shift the risk from one jurisdiction to others. IME and CGA indicate the requirement for materials to be transported without undue delay is

sufficient. CGA states "DOT has also stated that anything should be deliverable within 10 days. This was their reason to require a shipping paper to be retained for 375 days before the recent change to the 2-year retention period."

11. Whether Shipping Documents Should Indicate That a Shipment Will Be Stored at a Safe Haven or Other Facility During Transportation

IME, Boyle Transportation, and ONYX agree that shipping documents should provide the locations where a shipment will be stored during transportation. IME states, "Shipping documents, specifically the route or trip plan, should indicate all stops which includes storage at a safe haven or other facility during transportation." Boyle Transportation states "A documented route of travel (paper or electronic) and tracking systems that detect out of route conditions should be a requirement for all modes and stops for safe haven en route should be identified. ONYX indicates it would support the addition of storage locations on the route plan for Division 1.1, 1.2 or 1.3 materials but not for other explosives in Divisions 1.4, 1.5, and 1.6.

12. Whether There Are Additional Standards, Other Than Those Outlined Above, That We Should Take Into Consideration

NAAHAC, PMA, Boyle Transportation, and CGA indicated we may want to review additional standards and programs for developing uniform storage requirements for explosives during transportation. Those standards and programs are listed below:

- Uniform Fire Code and International Fire Code;
- Requirements for a Declaration of Security under Coast Guard regulations;
- Hazards of Electromagnetic Radiation to Ordnance (HERO) certification required by DOD for any electronic system in a commercial vehicle used to transport DOD munitions.
- Safety Permit regulation to transport highly toxic (Zone A) and bulk quantities of dangerous goods
- Risk Management Programs—regulate the amounts of highly toxic dangerous goods stored at a facility
- CDL hazmat endorsement
- Driver background checks
- State laws pertaining to dangerous goods transport

13. Whether Development of an Industry or Consensus Standard or Regulation Should Be Pursued in This Area

Shell Chemical, Boyle Transportation, and ATA highlight the importance of involving industry representatives in the rulemaking process. IME and NAAHAC support our development of a rulemaking in this area. IME calls for the adoption of the consensus standard, NFPA 498. PMA, ONYX, and CGA indicate they do not support regulatory action in this area. ONYX indicates it supports the use and operation of safe havens, but “does not believe there is a need for PHMSA to pursue regulations for the transportation of explosive materials.”

IV. Public Meeting

We are holding a public meeting on Thursday, August 7, 2008 at U.S. DOT headquarters located at 1200 New Jersey Ave, SE., Washington, DC 20590. The meeting will begin at 9 a.m. in conference room 6 of our Conference Center, which is located in the atrium of the West Building. The main visitor's entrance is located in the West Building, on New Jersey Avenue and M Street. Upon entering the lobby, visitors must report to the security desk. Visitors should indicate that they will be attending the Explosives Storage Public Meeting and wait to be escorted to the Conference Center. Due to the limited amount of parking around DOT Headquarters, use of public transit is strongly advised. DOT is served by the Navy Yard Metrorail Station (Green line). The closest exit to DOT Headquarters is the Navy Yard exit. The West building is located diagonally across M Street from the Navy Yard Metrorail Station.

The public meeting will focus on safety issues associated with the temporary storage of explosives during transportation. PHMSA encourages all interested persons, including state and local officials, emergency response personnel, and explosives shippers and carriers, to participate in this meeting. We would like to use this forum to promote a dialogue among all interested stakeholders to help us identify the most appropriate strategies for enhancing the safe storage of explosives during transportation. Any person wishing to participate in the public meeting should provide their name and organization to Ben Supko or Susan Gorsky, by telephone or in writing no later than July 24, 2008. Providing this information will facilitate the security screening process for entry into the building on the day of the meeting.

Participants do not need to prepare oral comments, but rather, be prepared to take part in an open discussion on issues raised by the comments summarized above. Some questions to consider before the meeting include:

1. Are safe havens currently available? How many? Where are they located?
2. Would a network of safe havens provide a safety benefit?
3. What is the value of a rest stop for the vehicle and the driver?
4. Would companies use safe havens or continue using driver teams? Does one promote safety more than the other?
5. Would the adoption of an industry consensus standard such as NFPA 498 promote the development of safe havens?
6. Do facilities that are being used as safe havens meet the requirements of NFPA 498?
7. Would you expect companies to convert existing facilities that meet NFPA 498 into safe havens?
8. How can we improve on the safety measures provided in NFPA 498? Should we include aggregation limits, time limits, etc.?
9. If we incorporate by reference NFPA 498 into the HMR, should we expect a drop in the number of carriers similar to what occurred when DOD implemented SDDS MFTRP No.1C?
10. Would it be more appropriate to align safe havens with the SDDC MFTRP No.1C than a consensus standard such as NFPA 498?
11. What is the impact of eliminating the requirement for safe havens to be approved by Federal, state, or local government officials?
12. Would state and local governments allow the development of safe havens without prior approval?
13. Are zoning restrictions the primary force against the development of safe havens?
14. What emergency response needs must be taken into consideration when selecting a location for a safe haven and how should they be addressed?
15. Are areas that house carrier facilities (close proximity to transportation arteries, industrial parks, etc.) sufficient locations for safe havens in terms of emergency response capabilities?
16. What costs apply to the operation of safe havens?
17. Would safe haven operators charge a fee to carriers for allowing them to use their safe haven?
18. Is the concept of temporary parking (less than 4 hours) at truck stops and carrier terminals a sufficient alternative to safe havens?

We also urge interested parties to identify issues we may have overlooked

in the ANPRM. For example, the ANPRM made no mention of a final report entitled, “Recommended National Criteria for the Establishment and Operation of Safe Havens” that was published in November of 1990 by the Commercial Vehicle Safety Alliance (CVSA). The CVSA report may be outdated, but it did address available safe havens, future locations for safe havens, a national standard for safe havens, and several other issues pertinent to this docket. For persons interested in preparing comments or viewing the CVSA report, it is accessible by PHMSA docket number (PHMSA–2005–22987) on the Federal eRulemaking Portal (on the Web site <http://www.regulations.gov>).

V. Regulatory Analyses and 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 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 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 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 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. 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.

H. 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) or you may visit <http://www.regulations.gov>.

Issued in Washington, DC, on June 30, 2008, under authority delegated in 49 CFR part 106.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

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