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SUPPLEMENTARY INFORMATION:

Availability of Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html;

(3) Visiting the RSPA web page at <http://hazmat.dot.gov>; or

(4) Visiting the TSA Laws and Policy web page at <http://www.tsa.dot.gov/public/index.jsp>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this document.

Abbreviations and Terms Used in This Document

ATF—Bureau of Alcohol, Tobacco, Firearms, and Explosives

ATSA—Aviation and Transportation Security Act

CHRC—Criminal History Records Check
DHS—Department of Homeland Security

DOJ—Department of Justice

DOT—Department of Transportation

FAA—Federal Aviation Administration
Federal hazmat law—Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*)

FMCSA—Federal Motor Carrier Safety Administration

FRA—Federal Railroad Administration

GAO—General Accounting Office

Hazmat—Hazardous materials

HMR—Hazardous Material Regulations (49 CFR Parts 171–180)

RSPA—Research and Special Programs Administration

SEA—The Safe Explosives Act

TSA—Transportation Security

Administration

USCG—U.S. Coast Guard

I. Background

The Research and Special Programs Administration (RSPA) and the Federal Railroad Administration (FRA), agencies within the Department of Transportation (DOT), and the Transportation Security Administration (TSA), an agency within the Department of Homeland Security (DHS), have determined that in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by DOT, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives by rail by persons described under section 842(i) does not present a sufficient security risk warranting further regulation at this time. In view of the foregoing conclusion, no additional security regulations addressing this aspect of the transportation of explosives are immediately necessary. Accordingly, under 18 U.S.C. 845(a)(1), discussed in greater detail below, persons engaged in the commercial transportation of explosives by rail are excepted from the application of 18 U.S.C. 842(i).

As a threshold matter, it is important to discuss the role that Federal agencies play in the transportation of explosives by rail. In accordance with Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), RSPA regulates the safe and secure transportation of hazardous materials (hazmat), including explosives, in all modes of transportation. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) include packaging, identification, handling, and security requirements. Modal administrations within DOT—the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and FRA—enforce these regulations in their respective areas of authority. FRA pursues its enforcement responsibilities with a particular emphasis on the transportation or shipment of hazardous materials by rail, including the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of containers that are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad. In addition, FRA issues and enforces a variety of rail safety regulations that address track and roadbed conditions;

signal systems; locomotive, freight car and passenger equipment safety; emergency preparedness; hours of service of railroad employees; operating practices and procedures; qualification standards for certain employees; and alcohol and drug testing of railroad employees in safety-sensitive service.

TSA was created following the terrorist attacks of September 11, 2001, as an agency within DOT. TSA was transferred to the DHS on March 1, 2003, and has statutory authority to set standards for security and make determinations regarding the adequacy of security in all modes of transportation. DOT agencies consult with TSA on transportation security matters. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) is an agency within the Department of Justice (DOJ), and has statutory authority to address, among other things, the manufacture, purchase, possession and use of explosives.

Representatives of RSPA, FRA, TSA, and DOJ consulted extensively with each other to ensure that this document accurately reflects the security considerations relevant to those persons responsible for transportation of explosives in commerce by rail.

II. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.¹ Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully “ship or transport any explosive in or affecting interstate or foreign commerce” or “receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.” Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal

¹ Pub. L. 107–296, November 25, 2002, 116 Stat. 2280