

regulatory action, after public notice and comment, to address those risks.

Nevertheless, non-placarded shipments of explosives continue to be subject to general HMR requirements governing packaging and hazard communication. These risk-based safety requirements also enhance overall transportation security. For example, for high hazard shipments, such as Class 1 materials, the stringent packaging required by the HMR to enhance the safety of the shipment in transportation makes it difficult for someone to tamper with the shipment for a criminal or terrorist purpose. Similarly, shipping documents help shippers, carriers, and consignees account for specific shipments and identify discrepancies or missing packages. In addition, under the HM-232 final rule, hazardous materials employers must ensure that all hazardous materials employees receive security awareness training. Such training must include an awareness of the security risks associated with hazardous materials transportation and a component covering how to recognize and respond to possible security threats.

A joint decision by DOT and TSA as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to warrant background check or other security requirements is determinative. As noted above, DOT and TSA previously determined that the transportation of non-placarded shipments by persons described under section 842(i) does not present a sufficient security risk to warrant further regulation at this time. That determination also applies to the transportation in commerce of non-placarded explosives via rail.

For the transportation of explosives by rail in amounts that require placarding, RSPA and FRA regulations, the protections inherent in railroad operations against improper use of explosives by railroad employees, and security safeguards imposed by the railroads themselves adequately address, at the current time, security risks associated with rail employees who are involved in such transportation. DOT regulations ensure that explosives shipments are properly loaded, labeled, and documented, and that the shipments are very difficult to tamper with. In addition, the HM-232 final rule requires persons who transport certain hazardous materials to develop and implement security plans. Thus, railroads that carry hazardous materials, including explosives, in amounts that require placarding must have a security plan that conforms to HM-232 requirements. The plan must

include an assessment of possible transportation security risks for covered shipments and appropriate measures to address the risks. Specific measures put into place under the plan must address personnel security. To the extent that a railroad identifies security vulnerabilities related to its personnel, its security plan must address those vulnerabilities. Further, major railroads have their own authorized law enforcement officers, and the nature of railroad operations makes it difficult for an employee to have any realistic opportunity to gain access to, improperly use, or redirect the movement of the shipments. Major railroads screen potential employees in a way that is designed to reveal those who are under indictment or have been convicted of serious felonies, are fugitives from justice, are in the country illegally, have renounced their citizenship, or have been dishonorably discharged from the armed forces. Serious felonies involve those offenses that generally pose a substantial threat to public safety and security.

Periodic operational testing and the nature of railroad work create an environment in which mental disorders that give rise to safety or security concerns are likely to be noticed and addressed. FRA's alcohol and drug regulations effectively prevent substance abusers from serving in security-sensitive positions. Recent security enhancements undertaken by the major railroads have also helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession. Small railroads rarely handle any explosives shipments, and many of the safeguards against misuse of those materials that exist on larger railroads are also present on small ones.

For all of these reasons, DOT and TSA have determined that the transportation of explosives via rail by persons described under section 842(i) does not pose a sufficient security risk warranting further regulation at this time. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons while they are engaged in the transportation of explosives in commerce via rail.

It is important to note that this determination may be reassessed as DOT and TSA continue to identify and address security risks associated with the transportation of explosives. For example, in a rulemaking to be developed under Docket HM-232A, RSPA is evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks

in transportation. Likewise, TSA is considering transportation worker identification rules that would likely include certain railroad workers and entail background checks. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements will be developed through normal notice and comment procedures, unless security threats justify expedited or emergency rulemaking.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2003-15353]

#### Notice of Receipt of Petition for Decision That Nonconforming 2002 BMW Z8 Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 2002 BMW Z8 passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002 BMW Z8 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is July 9, 2003.