



---

*The safety association of the commercial explosives industry.*

March 19, 2002

Desk Officer for the Coast Guard  
Docket Management Facility  
U.S. Department of Transportation  
Room PL-401  
400 Seventh Street SW  
Washington, DC 20590-0001

Dear Officer:

On behalf of the Institute of Makers of Explosives (IME), I am writing to comment on USCG Docket 2001-11106, and specifically the information collection request (ICR) OMB Control Number 2115-0013 titled "Application and Permit to Handle Hazardous Materials." Notice and request for comments on this ICR were published in the Federal Register (FR) on page 7734 on February 20, 2002. IME did not send comments on the notice published in 66 FR 64336 (December 12, 2001). We hope our comments may still be considered to the extent possible.

The IME represents 27 manufacturers of high explosives and blasting agents and eight affiliate members that provide other related services. In 2000, 2.7 million metric tons of explosives were consumed in the United States of which IME member companies produced over 95 percent. These products are used in every state in the Union and are distributed worldwide. In the explosives industry alone, the value of our shipments is estimated in excess of \$1 billion annually.<sup>1</sup> The ability to transport and distribute these products safely and securely is critical to this industry.

The IME is the safety association of the commercial explosives industry. Our mission is to promote safety and the protection of employees, users, the public and the environment; and to encourage the adoption of uniform rules and regulations in the manufacture, transportation, storage, handling, use and disposal of explosive materials used in blasting and other essential operations. We do not sponsor trade shows or other marketing events.

We do not object to the US Coast Guard's (USCG) use of the ICR to monitor the transportation of explosives through ports. However, USCG policies to decide whether permits should be approved rely on guidance that has never been subject to notice and comments required by the Administrative Procedure Act. The effect of this guidance has been to severely restrict and in some cases eliminate explosive commerce through ports. USCG policies relative to the ICR increase the risk inherent in the movement of Class 1 materials. These policies increase risk by frustrating the movement of commercial explosives by sea, thus shifting the risk to other transport

---

<sup>1</sup> Explosives Manufacturing, 1997 Economic Census, US Department of Commerce, August 1999, EC97M-32598.

modes. These policies raise concern about the ability of American firms to meet demand at home and abroad. The current policies do not serve the public interest for safety, security or efficiency in the transportation of dangerous goods.

The USCG has also underestimated the burden placed on the public in completing the ICR. While it may take 1 hour of secretarial and management time combined to fill in the boxes on the form, IME is informed that the time needed to gather this information and other information not explicitly required on the form, but demanded by Captain of the Ports (COTP), is at least 5 to 20 times that estimated by USCG.

### Background

The USCG shares rulemaking authority over hazardous materials transportation with RSPA for movements by vessel and through waterfront facilities.<sup>2</sup> Marine movements, by their nature, require intermodal handling. USCG rules specifically preclude Class 1 cargo from a “waterfront facility except when laden within a railroad car or highway vehicle and shall remain in such railroad car or highway vehicle except when removed as an incident of its prompt transshipment. [Likewise, Class 1 cargo] shall not be brought onto [a] waterfront facility from a vessel except as an incident of its prompt transshipment by railroad car or highway vehicle.”<sup>3</sup>

Despite rigorous regulation of Class 1 materials under RSPA’s Hazardous Materials Regulations (HMR) and the fact that the USCG enforces the HMR in its area of jurisdiction, the USCG has issued a “Marine Safety Manual” (MSM) that sets quantity-distance (Q/D) standards for establishing limits on the size of Class 1 shipments that may be handled at one time in a port.<sup>4</sup> The MSM is not a regulatory document that has been subject to the requirements of the Administrative Procedure Act or Executive Orders affecting regulatory documents. The MSM states that in issuing permits to handle explosives, the Captain of the Port (COTP) should consider a number of factors, not just Q/D tables. However, USCG guidance to the COTPs for the handling of explosives in ports generally focuses solely on separation distances.

No other DOT operating administration applies a Q/D approach to the transport of explosives, or any other hazardous material. Rather, the other DOT operating administrations endorse a risk-based approach to the transportation of hazardous materials that focuses on preventing incidents and preparing for and responding to incidents in order to minimize the consequences. The USCG view, articulated in the application of the MSM Q/D limitation, is that each explosive shipment must be treated as if it will spontaneously explode with no warning.

It is understood that the USCG needs to obtain information regarding explosives being handled at ports and must properly weigh the risk of accidental detonation of these materials. In this regard, it should be noted that there has not been a single explosion or incident involving commercial explosive materials in transportation at a port in the United States in nearly 90 years. Furthermore, the circumstances surrounding that last event in 1913 could not legally be replicated

---

<sup>2</sup> 33 CFR and 49 CFR.

<sup>3</sup> 33 CFR 126.21(c).

<sup>4</sup> Marine Safety Manual, Chapter 3, Section L. No other hazard class is subject to MSM quantity-distance limitations at this time. Although the same type of immediate consequences could be seen to occur from catastrophic releases of other hazard materials, including chlorine, propane, or radioactive materials.

today.<sup>5</sup> As noted above, USCG policy does not consider the probability of an accidental detonation, yet traditional risk assessment calls for factoring the probability of an event with the consequences of that event.

The effect of the MSM Q/D policy on the transportation of commercial explosives has been to close all U.S. commercial ports except one to the dockside loading or unloading of shipload quantities of Class 1 materials. Additionally, there are significant ramifications for containerized Class 1 freight loaded/unloaded by crane.<sup>6</sup>

The application of Q/D principles in transportation has contributed to unfortunate and avoidable situations and continues to thwart the safe and expedient movement of explosives. The lack of ports north of Norfolk, VA that accept a container or more of Class 1 material resulted in the truck transport of a 1999 shipment of black powder destined for Vermont which, unfortunately, overturned on the Capitol Beltway. In Louisiana, Class 1 cargo was accidentally lost overboard while adhering to USCG requirements for nighttime lightering.<sup>7</sup> More recently, the intermodal movement of portable tank cars filled with explosives from LaConner, WA to Alaska was also complicated by the application of Q/D. A recent change in the COTP for Southeast Alaska resulted in severe restrictions in explosive commerce after the new COTP established new limits on explosive quantities, based on strict application of Q/D principles, practically overnight.

These shipments all involved multi-modes of transportation. In fact, the so-called “black powder” incident was referenced twice in the DOT’s 2000 cross-modal Hazardous Materials Programs Evaluation Report.<sup>8</sup> If opportunities to use one mode of transportation are denied, other modes will be used. To the extent that the USCG’s Q/D policy has closed or limited access to US ports, domestic transportation distances have increased as shippers turn to foreign ports and trucks to deliver explosives. It is incumbent that the safety and security trade-offs between truck and vessel transportation be understood so that impediments unilaterally imposed by one modal administration to the safest, most secure routing of Class 1 materials can be removed or appropriately modified.

### History

After four years of increasing commercial movements of explosives through ports, exports and imports of explosives declined over 40 percent for some categories during 1998.<sup>9</sup> This is the year that the Port of Morgan City, LA was closed to shipload movements of Class 1 materials by the COTP based on the quantity-distance criteria of the MSM. Morgan City is a preferred port for these movements because of its depth of draft, seclusion, and proximity to Camden, AR – the

---

<sup>5</sup> An explosion destroyed the British steamer “Alum Chine” in the Patapsco River about six miles southeast of Baltimore, MD. The ship was loaded with bulk coal and was having 600,000 pounds of dynamite loaded on top of the coal when fire broke out. The cause of the fire was never determined.

<sup>6</sup> USCG regulations (33 CFR 126.17) do provide an exemption from permit requirements and hence the MSM quantity-distance standard for Class 1 materials that are rolled on and off vessels in containers. However, this is not an option because higher value goods are the freight of choice for commercial ports with roll-on/roll-off capability.

<sup>7</sup> In fact, the USCG requirement for night time unloading directly conflicts with OSHA rules that prohibit the delivery of explosives to or from “any railway station, truck terminal, pier, wharf, harbor facility, or airport terminal between the hours of sunset and sunrise.” [29 CFR 1910.109(f)(5).]

<sup>8</sup> Departmentwide Program Evaluation of the Hazardous Materials Transportation Programs, March 2000, pages ii and 22.

<sup>9</sup> Source: U.S. Census Bureau, Foreign Trade Division. Imports and exports have remained depressed during 1999 and 2000 but are recovering as other transportation routing is used.

location of the Nation's principal commercial storage terminal, a facility that can handle, at one time, shipload quantities of Class 1 materials. Like the black powder incident previously described, the closing of Morgan City shifted risks to other modes. For example, imports through Canada have risen 45 percent since 1998.

In June 1999, we had the opportunity to meet personally with the former Assistant Commandant of the USCG, Adm. Robert C. North, and his staff to discuss this issue. At the conclusion of that meeting, Adm. North directed his staff members to work with us to resolve this issue.

Shortly thereafter, a modified Q/D policy was issued by the USCG which reduced the setback distances required if the shipment met certain other safety precautions. While this early USCG effort was laudable, it had no effect in opening any ports to the dockside delivery of Division 1.1 or 1.2 materials.

Adm. North also invited IME to develop a risk management procedure that would serve as an alternative to the current Q/D standard in the MSM. We welcomed the opportunity to develop such recommendations and committed to finalizing these recommendations by the end of 2000.

On June 14, 2000, the Office of Intermodalism convened a meeting with affected modes to discuss the systemwide implications of this issue. Present were RSPA, FMCSA, USCG, and OST. USCG stated that they were pursuing a rulemaking that would address our concerns.<sup>10</sup> While the rulemaking, as described, would address some of our "long-term" concerns, it provided no relief in the short-term. So IME promised to pursue its effort to develop industry consensus standards to supplement, not replace, the HMR, and to heighten the level of safety and security for such shipments.

On January 9, 2001, we submitted to the USCG a best-practices document titled SLP-24, "Recommendations for Handling 50 Metric Tons or More of Commercial Division 1.1 and 1.2 Break-bulk Explosive Materials in Transportation at Commercial Waterfront Facilities in the United States." The SLP-24 recommendations do not create zero risk as demanded by a Q/D scheme. Instead, the recommendations are built on the risk management approaches employed by many other federal agencies and industries in their quest to ensure the safe transportation of hazardous materials.

On April 19, 2001, the USCG acknowledged the receipt of our recommendations. At this time, we were pleased to learn that this issue had been transferred from the Field Activities Directorate to the Standards Directorate, in our view, a much more appropriate venue. Subsequent conversation with the Standards Directorate, revealed that the USCG no longer believed that the rulemaking lauded earlier at the June 2000 meeting in OST was the best approach to remedy this issue. This revelation refocused our pursuit of USGC's evaluation of our SLP-24 recommendations as an acceptable alternative to MSM Q/D standards.

In the spring, Adm. North retired and was replaced by Adm. Paul Pluta. IME wrote Adm. Pluta June 29, 2001 to inform him of this matter and invite his attention and commitment to address our concerns. On August 1<sup>st</sup>, we received a reply from Adm. Pluta to our January 9<sup>th</sup> transmittal of SLP-24. This letter rejected SLP-24 as the long-hoped-for alternative to the MSM Q/D standard. IME's first response was to approach the Office of Intermodalism with a request to reconvene that intermodal group that had met the previous summer on this issue. The Office of Intermodalism informed us that, in their view, this issue was not an intermodal issue. At this

---

<sup>10</sup> The USCG still has not published the promised rulemaking, USCG-1998-4302.

point IME requested a meeting with Adm. Pluta. It was also at this time that the above-mentioned intermodal movement of explosives to Alaska was frustrated, leading to OST intervention.<sup>11</sup> This shipment supplies the world's largest zinc mine with its annual explosive needs during one 10-week period before ice renders the waterway impassable to vessels.

IME officially responded to the USCG's August 1, 2001 letter on August 17<sup>th</sup>. We were disappointed that the USCG found little value in our proposal and best practices recommendations. We asked for reconsideration of the position that the Coast Guard's Q/D standard is a necessary adjunct to the HMR, clarification of the Coast Guard's objections to SLP-24, and the opportunity for a meeting.

The USCG suggested that we meet with USCG staff to, hopefully, work out a resolution of this matter, so that the meeting could show progress before meeting with Adm. Pluta on the matter. IME agreed and subsequently met with USCG junior officers and civilians on September 7<sup>th</sup>, October 24<sup>th</sup>, and December 4<sup>th</sup>. These meetings allowed IME to show that our recommendations were not duplicates of other federal rules and to clarify that IME was not trying to discredit the underlying assumptions about the USCG's Q/D setbacks. At the December 4<sup>th</sup> meeting, the IME proposed an alternative risk assessment methodology to Q/D. At the staff level, we were told that this methodology was the type of documentation and analysis that the USCG was looking for and that he would run it by the USCG "risk analysts" to make a final determination. Based on this meeting and later follow-up with USCG staff affirming that IME's risk assessment methodology was workable, IME rerequested the meeting with Adm. Pluta. This meeting was scheduled to take place February 1<sup>st</sup>.

The day before the meeting the USCG informed us that because of the intermodal aspects of the issues, the Coast Guard would not be able to provide a final decision on IME's proposals. Up to this point, USCG had fended off intervention by other agencies by arguing that this was not an intermodal issue and hence "not their issue". IME responded that we had long been well aware of the intermodal implications of the Q/D restriction at ports and expressed our profound disappointment with the assessment that the USCG will not be able to provide us with a final decision on our proposal. Obviously, our disappointment stemmed from the fact that the USCG had the SLP-24 document since January 2001 and, since the rejection of the document in August, we had, as suggested, met with USCG staff three times to answer and clarify questions and concerns. We would have requested or been willing to have more meetings with USCG staff had we been led to believe that issues were still unresolved.

The February 1<sup>st</sup> meeting unfolded as predicted. Adm. Pluta expressed his desire to identify a risk-based methodology for the movement of explosives through ports but that his staff still had questions about the IME-proposed methodology and that staff work with us to resolve these remaining concerns. When staff was asked to identify what their concerns were no new issue was put on the table.

USCG has since informed IME that our proposed methodology is unacceptable. They have offered to use methodology developed by the Department of Defense Explosives Safety Board (DDESB) to evaluate test cases. However, complications abound in the application of the DDESB model in commercial port operations. IME's methodology is based on the DDESB

---

<sup>11</sup> Senator Ted Stevens, R-AK, was so concerned about the frustration of the shipment through commercial ports because of USCG standards that he included a provision in the FY 2002 Defense Authorization Act to open the naval port at Indian Island, WA for this purpose. (P.L. 107-107, Section 1070.)

model, but addresses the shortcomings preventing DDESB's use of the model in a commercial port setting. When asked when the USCG would complete a pilot analysis of an IME-suggested commercial port, USCG could not and has not provided an answer.

In the meantime, we learned that the COPT over Morgan City, LA, who had halted the dockside unloading of large quantities of explosives in 1998, had moved on and the new COPT has, for the time being, lifted the restriction on dockside unloading of up to 800 MT of explosives pending more information. However, the opening of one port does not serve the needs of the explosives industry.

The piecemeal approach to resolving the Q/D issue for commercial explosives shipments, as is evidenced by the WA/AK and LA situations, is not good public policy. Better guidance is needed and, we believe, would be welcome by COPTs that are faced with decisions about the movement of commercial explosives through their ports.

### Conclusion

We believe that current formulations of modern commercial explosives and shipping practices have improved the safety of these materials in transportation. Now, security concerns must factor into transportation decisions. We strongly believe the current USCG practices, such as lightering at night or the transfer of risk to other modes, create security risks. IME has been attempting to selectively and strategically reopen the Nation's waterways to the regulated safe, secure commerce of Class 1 materials. IME's efforts have resulted in a proposal, SLP-24, and an accompanying risk assessment methodology which we developed to serve as an alternative to the USCG Q/D standards. Although it appears that the USCG has picked up the pace of its work on this issue in recent months, overall we are extremely disappointed in the delays we have encountered, still with no end in sight, given the consequences to our industry, and the resources we have committed to a resolution of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lon Santis". The signature is written in a cursive, flowing style.

Lon Santis,  
Manager of Technical Services