



702 H Street, NW, Suite 300, Washington, DC 20001  
Tel: 202-462-1177 • Fax: 202-462-4507  
1-800-326-0959 • www.greenpeaceusa.org

## Q&A on Safer Technologies Requirements in Sec. 2110 of H.R. 5577 “Chemical Facility Anti-Terrorism Act of 2008”

*Does the bill require ALL chemical facilities to adopt methods “to reduce the consequences of a terrorist attack”?*

**No.** This requirement only covers the high-risk (Tier 1) chemical facilities selected by the Department of Homeland Security (DHS). The bill also exempts facilities that can show that safer methods to reduce the consequences of an attack at their facility:

- \*\*\* Will not significantly reduce the risk of death or injury or shift risks
- \*\*\* Are not technically feasible
- \*\*\* Will be too costly and impair the business of the plant

*Will wastewater and drinking water facilities be included and therefore required to implement safer methods or technologies?*

**Yes.** The bill does include wastewater and drinking water facilities. Only those water facilities that were designated in the highest risk tier by the DHS would be required to implement safer methods or technologies but even these would not be required unless there was federal funding to pay for the conversion. The bill authorizes \$100 million for fiscal year 2010 to implement safer methods and technologies with priority to be given to publicly owned water systems.

*Will this requirement burden facilities with unacceptable costs?*

**No.** A survey by the Center for American Progress identified 284 facilities that switched to safer methods since 1999. They found that 87 percent spent less than \$1 million, and one half reported spending less than \$100,000. And 34% of facilities expected “cost savings or improved profitability.” Washington, D.C. converted its sewage treatment plant within 90 days after the 9/11 attacks for less than \$0.50 per water customer per year.

*Will this requirement result in job losses?*

**No.** Plants that invest in the safety and security of their infrastructure invest in American communities and eliminate or reduce their: liability, regulatory costs and improve workplace safety. Major trade unions, such as the United Steelworkers, United Auto Workers, International Chemical Workers/UFCW and Communication Workers of America support the bill.

*Will the use of safer technologies shift risks elsewhere?*

**No.** The bill specifically prohibits the shifting of risks to other facilities.

*Does the bill micro-manage chemical facilities by requiring them to adopt a specific safer technology?*



**No.** Each high-risk facility is free to choose “any technology or process” that will reduce the consequences of a terrorist attack. The bill lists 12 different categories as examples but they are free to choose “any” method that reduces the consequences of an attack.

*Should government require safer design and safer technologies to be used in the private sector?*

**Yes.** The Federal Aviation Administration (FAA) has required airplane security and safety standards for decades. The feasibility and cost-effectiveness are balanced against security and safety needs. After 9/11 all commercial airliners were required to harden cockpit doors and X-ray machines for airline baggage were installed at hundreds of airports.

*Is this requirement more appropriate for environmental legislation than security legislation?*

**No.** In a February 27, 2008 statement the Association of American Railroads said, “It’s time for the big chemical companies to do their part to help protect America. They should stop manufacturing dangerous chemicals when safer substitutes are available. And if they won’t do it, Congress should do it for them in the Chemical Facility Anti-Terrorism Act of 2008.”

In 2006 the GAO (GAO-06-150), concluded that “Implementing inherently safer technologies potentially could lessen the consequences of a terrorist attack by reducing the chemical risks present at facilities, thereby making facilities less attractive targets.” And a June 2006 National Academy of Sciences study endorsed the adoption of safer technologies as “the most desirable solution to preventing chemical releases” from a terrorist attack.

*Can different types of chemical facilities use safer methods to reduce the consequences of risks?*

**Yes.** Eighty-nine percent of hazardous chemical facilities are users of chemicals rather than chemical makers. Users of hazardous chemicals can often switch to safer methods faster than makers of hazardous chemicals.

*The DHS testified on February 26, 2008 that they expect their regulations to cover approximately 6,000 chemical facilities. Is it possible to address so many risks with safer methods?*

**Yes.** According to the EPA, only four substances account for 55 percent of the processes that pose off-site consequences to communities. These substances are chlorine, ammonia, hydrogen fluoride and sulfur dioxide. All of these are among the 284 plants that have already converted since 1999 according to EPA data.



702 H Street, NW, Suite 300, Washington, DC 20001  
Tel: 202-462-1177 • Fax: 202-462-4507  
1-800-326-0959 • www.greenpeaceusa.org

### Chronology of Failed Legislation on Chemical Security

1999: Senator Frank Lautenberg (D-NJ) introduces S. 1470. The Chemical Security Act of 1999. In April 2000 he calls on Senator James Inhofe (R-OK) to hold hearings on the bill which was never adopted.

October 31, 2001: Senator Jon Corzine (D-NJ) introduces the "Chemical Security Act of 2001" (S. 1602), requiring chemical facilities to use safer available technologies where available to prevent catastrophic attacks.

May 16, 2002: An internal EPA briefing document entitled "Proposal for Chemical Security Legislation" says that new legislation is needed because security of industry cannot be assured under current law.

June 11, 2002: EPA proposes White House roll out of chemical security policy through new guidance and regulations saying, "EPA is not seeking legislation on chemical security at this time." Guidance was to be issued in July 2002 along with an inspection of 30 high-risk chemical facilities.

July 25, 2002: The Senate EPW Committee unanimously adopts a compromise version of Senator Jon Corzine's (D-NJ) bill (S. 1602) to require safer technologies or chemicals where available to prevent catastrophic attacks.

January 14, 2003: Senator Corzine reintroduces a chemical security bill (S. 157), nearly identical to the compromise version of S. 1602 that was unanimously adopted by the EPW Committee July 25, 2002.

April 29, 2003: Representative Frank Pallone (D-NJ) introduces the Chemical Security Act of 2003 (H.R. 1861) in the U.S. House of Representatives. This bill mirrors the provisions of Senator Jon Corzine bill (S. 157).

October 23, 2003: The Senate EPW Committee adopts a flawed bill (S. 994) on a close party-line vote. The bill has no enforceable provision to prevent catastrophic attacks by requiring safer technologies or chemicals and rubber stamps industry's voluntary programs and never makes it to the floor.

July 22, 2004: House Select Committee on Homeland Security fails to move a bill with pending chemical security amendments due to "scheduling" and "jurisdictional disputes."

May 10, 2005: Representative Frank Pallone (D-NJ) introduces the "Chemical Security Act of 2005" (H.R. 2237) which requires EPA and the Department of Homeland Security to work together to identify "high priority" chemical facilities. Once identified, these facilities would be required to assess vulnerabilities and hazards, and then develop and implement a plan to improve security and use safer technologies within 18 months.

December 19, 2005: Senator Collins introduces the Chemical Facility Anti-Terrorism Act of 2005 (S. 2145). The bill fails to require any safer technologies that could prevent catastrophic attacks on chemical facilities. Homeland Security Committee members such as Senators Joseph Lieberman (D-CT) and Frank Lautenberg (D-NJ) pledge to offer strengthening amendments.

March 30, 2006: Senators Lautenberg (D-NJ), Obama (D-IL), Kerry (D-MA), Menendez (NJ), Durbin (D-IL), Biden (D-DE) introduces a broad chemical security bill (S. 2486) that requires safer technologies when feasible at chemical plants, protects state authority to adopt stronger protections, gives plant employees meaningful participation in security programs and ensures a role for the EPA in oversight of facilities.

May 18, 2006: Senators Biden (D-DE), Jeffords (I-VT) and Boxer (D-CA) introduce the Community Water Treatment Hazards Reduction Act of 2006 (S. 2855) which requires high risk water facilities to identify safer technologies to eliminate hazards posed by the use of chlorine gas. The bill also authorizes \$125 million a year over five years in grants to the highest risk facilities for capital costs needed to convert plants to safer technologies, including ultra-violet light, ozone or bleach.

May 19, 2006: Senator Inhofe, chair of the Environment and Public Works Committee, schedules a Committee vote for May 23rd on his wastewater security bill (S. 2781). The bill will squander millions of dollars on outdated security measures instead of funding the elimination of hazards posed by chlorine gas through the use of safer technologies as recommended by a 2005 Government Accountability Office report.



June 14-15 2006: Senate Homeland Security and Governmental Affairs Committee votes out weak chemical security legislation (S. 2145). Senator Voinovich (R-OH) proposes 14 weakening amendments. A Voinovich amendment to preempt states is rejected by a 9 to 7 vote. A Lieberman (D-CT) amendment to add cost-effective safer technology requirements is rejected 11 to 5.

July 28, 2006: House Homeland Security Committee completes mark up of H.R. 5695. The Committee embraces a compromise requiring the use of safer technologies at high priority facilities offered by Representative Markey (D-MA). An amendment by Representative James Langevin (D-RI) improves the right of state and local governments to set stronger security standards but falls short of a similar provision in S. 2145.

September 25, 2006: In a rush to show voters they have done "something" the Conference Committee on DHS Appropriations approved a 740 word unenforceable 3-year chemical security amendment supported by the chemical industry.

October 4, 2006: President Bush signs temporary chemical security statute which will expire in October 3, 2009.

December 22, 2006: The Bush DHS proposes new rules that assert DHS authority to prevent states from setting stronger security standards even though there is no such authority in the temporary law. The proposed rules also fail to require safer available chemicals or other technologies (IST) that can eliminate the magnitude of an attack.

June 12, 2007: President Bush threatened to veto a Department of Homeland Security (DHS) spending bill. Among their objections was "strong" opposition to a chemical plant security provision that would have restored the authority of states to set stronger security standards at chemical plants than the federal government. The chemical industry began lobbying for federal preemption to overrule state authority in 2005 when New Jersey announced stronger chemical security regulations. The bill was vetoed and the provision was eliminated in the final DHS spending bill.

December 27, 2007: President Bush signs \$500 billion omnibus spending that includes an amendment by Senator Lautenberg (D-NJ) to the DHS funding bill that will allow states to set more stringent security standards.

March 6, 2008: House Homeland Security Committee adopts H.R. 5577 which requires high risk facilities to use safer more secure technologies as long as they are feasible, cost effective and do not shift risks to other facilities.



**FRIENDS OF THE EARTH  
GREENPEACE  
OMB WATCH  
PHYSICIANS FOR SOCIAL RESPONSIBILITY**

December 16, 2009

PJ Crowley, Obama Transition Team  
for U.S. Department of Transportation  
Washington, DC

Dear Mr. Crowley:

The U.S. Department of Transportation on November 26, 2008 has finalized its Interim Final Rule [Docket PHMSA-RSPA-2004-18730] (IFR), promulgated by DOT on April 15, 2008, on routing of hazardous materials (hazmat) railcars with security sensitive cargoes. The Final Rule, effective December 26, 2008, is only marginally different from the Interim Final Rule and in fact is worse in a few ways. We would appreciate a meeting with you on this issue as soon as practicable.

The Final Rule allows the individual railroads to analyze and select the "safest and most secure routes" for security sensitive cargoes (in our view, as we stated in comments on the Proposed Rule), unilaterally, with no federal standard of adequacy, in near-complete secrecy, with no significant role for state and local officials, and with no credible oversight role for already-overstretched federal officials. The Final Rule provides no clear grounds for federal agency intervention in the railroads' ongoing routing analyses and route selection, but we strongly urge the transition team and the incoming administration to take various prompt actions creatively to remedy that situation, while also urging Congress to enact a more adequate law.

Despite earlier Congressional efforts, no cities are now protected by systematic, permanent re-routing of what the federal regulators call WMD cargoes. After spirited national debate and considerable media attention, Congress eventually enacted HR 1, the 9/11 Commission Act, Section 1551, to promote re-routing. But railroad lobbying had severely weakened the final bill.

We view the now-Final Rule implementing the law as featuring the same fatal flaws that have consistently characterized the rule since its introduction in rulemaking in 2004. The agency's "Midnight Regulation" move now virtually guarantees considerable opposition from shut-out state and local officials in the early months of 2009, as railroads continue to meet (in secret) to devise "routing tools" and plans to comply with an extremely difficult and liability-laden route selection process.



We need a protective government's involvement in life-and-death public policy matters involving hazmat routing security. We strongly urge the transition team and the incoming administration to take immediate action:

- To scrutinize the rule and the rulemaking record
- To utilize the Congressional Review Act to deal with this rule
- To investigate how the \$5 million grant from US DHS/FEMA to the Railroad Research Foundation is being used (behind closed doors) to develop a "routing tool" that will allow individual railroads to weight 27 new "factors" in routing decisions, including economic and safety factors which the railroad industry has consistently indicated will be counter-poised to security factors, in order to rule out protective re-routing around our 60 DHS-designated major target cities.
- To consider how elected state and local officials can participate in the routing analysis and selection process.
- To consider whether DHS should play a more significant role in the issues of the routing of hazardous chemicals for security purposes. (Currently DHS has the lead only for hazmat railcar storage issues, in a companion rule.)
- To ensure that all "through" rail shipments of ultrahazardous cargo are re-routed around High Threat Target Areas wherever feasible, by means including the use of interchange agreements, market swap agreements among carriers and shippers, etc.

Thank you for your consideration of our requests. We attach an appendix with selected critical comments on the rulemaking docket from state and local officials and chemical shippers, and our fuller critique of the Final Rule will follow shortly. For more information, please contact Friends of the Earth consultant Fred Millar at 703-979-9191 or [fmillar@erols.com](mailto:fmillar@erols.com).

Sincerely,

Brent Blackwelder, President, Friends of the Earth  
Rick Hind, Legislative Director, Greenpeace  
Gary Bass, Executive Director, OMB Watch  
Dr. Michael McCalley, Executive Director, Physicians for Social Responsibility



These comments have been culled from the entire rulemaking record. They indicate numerous key concerns about the content of the rule which we believe have not been resolved by the Final Rule.

**THE CITY OF CLEVELAND** commented (February 16, 2007):

“The requirement that only one other route be analyzed and that it only has to be one over which the entity has the “authority to operate” is not adequate for a thorough enough analysis to identify the route that the presents the lowest overall safety and security risk. When more than one route is viable, it should be assessed. With regard to routes over which the carrier has not received authority to operate, the PHMSA, the FRA, and the TSA should consider achieving the objective of using the route presenting the lowest risk through the use of agency analysis and plans, and associated cooperative agreements and regulatory approaches with the carriers to achieve that objective and incorporate those methods in the rules.

Although the alternative route analysis must include the criteria in Appendix D of Part 172, there is no definition of the term “safest and most secure commercially practicable routes” in the rule, or how the criteria has to be included in making that determination in the rule to ensure the analysis is meaningful and the FRA Associate Administrator for Safety can enforce the requirement. The definition on page 76841 and associated discussion contains many other general terms that, themselves, are not defined, such as “significantly.” The discussion indicates that if a possible alternative route would significantly increase a carrier’s operating costs, as well as the costs to its customers, the carrier need not use that route.

The rules should require an objective measurement of what is commercially practicable such as requiring a cost v. benefit analysis to determine if the costs to the carrier may significantly reduce the risks to the carrier and the public in terms of lives and property saved. While individuals usually want to make decisions based in good faith, individual businesses, without more objective criteria required, may not be able to justify that using an alternative route is not voluntarily disproportionately internalizing the risk.”

**The CALIFORNIA PUBLIC UTILITY COMMISSION** commented (May 15, 2008), objecting to “making costs to railroads and shippers the ultimate determinant, i.e., excluding the overall costs and damages to the nation and its population in general”... “thereby placing the US public at unnecessary risk”.

**BALTIMORE CITY** commented (February 20, 2007) p. 2:

“The proposal seems unlikely to require any significant modifications to the way hazardous materials are currently transported. The proposed regulation emphasizes that the rail carrier must ensure that ‘the specified materials are moving on the safest and most secure commercially practicable routes,’ 71 Fed Reg. at 76842. However, the notice then states that, ‘[T]he route with the lowest overall safety and security risk should be selected and used,’ Id. Several pages later in connection with a discussion of how these plans will be reviewed and these requirements enforced, the notice refers to a failure on the shipper’s part [sic] to ‘choose the safest, most secure practicable route,’ 71 Fed. Reg. at 76844. The regulated, as well as others, are left to wonder which route should be accepted – the ‘safest and most secure’, ‘the most secure commercially practicable,’ the route that presents the ‘lowest overall safety and security risk,’ or the route that is the ‘safest most secure practicable?’”

**CONTRA COSTA COUNTY, CALIFORNIA** commented (May 14, 2008):

“1. The Interim Final Rule leaves too much leeway for the railroads to reject alternative routes due to economic factors. The last sentence on Federal Register Page 20760 states: "If using a possible alternative route would significantly increase a carrier's operating costs, as well as the costs to its customers, the carrier should consider and document these facts in its route analysis. We expect that carriers will make these decisions in good faith, using the financial management principles generally applied to other business decisions affecting safety and security." It is difficult, if not impossible, to quantify the weight that should be given to economic concerns over public safety, or what constitutes a "significant" increase to a railroad's costs, but we suggest the rule provides too much opportunity for the railroads to let economic concerns drive the process.

2. The Final Rule should clarify that state and local governments can have consultation with the railroads during the data-collection process. As written, the Interim Final Rule states the railroads "must seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to the route(s) utilized." This suggests a one-way process in which the railroads will request specific data, and we provide it. We suggest state and local governments should have the opportunity to consult with the railroads and provide any and all information we believe is relevant, rather than be limited just to providing specific data requested by the railroads. Such consultations were intended to be part of the process, according to staff of the Federal Railroad Administration, but the wording used in the Interim Final Rule doesn't seem to reflect this. The Final Rule also should specify the types of local agencies that will be part of the consultation process. ...

7. The economic factors should be applied in a staged manner in identifying recommended routes, and only after an evaluation is completed based solely on non-economic factors. As noted earlier, the Interim Final Rule leaves too much leeway for railroads to avoid considering alternatives by citing economic factors. The railroads should be required to analyze all possible routes on safety factors alone, to determine the safest route, next safest route, and so on. Only then should the railroads be permitted to apply economic considerations. If the process does not produce an objective analysis of the safest routes, it will be of little real effectiveness.

8. The route analysis model developed by the Railroad Research Foundation or other models used by the railroad operators to identify recommended routes should be available to state and local agencies to review.”

**THE NATIONAL CONFERENCE OF STATE LEGISLATURES** commented (May 16, 2008) :

“NCSL believes it was incumbent on PHMSA to follow-up with public sector organizations by phone or e-mail to verify that the information was sent to the correct address and to establish a point of contact with our organization. Interestingly, no other member of our state and local government coalition (which includes the National Governor's Association, the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors) recalls receiving any follow-up about this proposed rule from PHMSA. PHMSA did not conduct any follow-up contact with any of these organizations and then construed our silence as some sort of acquiescence.

The purpose of Executive Order 13132 is to prevent this type of situation from occurring. E.O. 13132 makes it incumbent upon the **agency** to engage in **meaningful** consultation with state and local officials



or their national associations who are impacted by the potentially preemptive nature of the proposed rule or by its intergovernmental ramifications. NCSL does not believe that one mailing constitutes meaningful consultation as contemplated by E.O. 13132. In sum, PHMSA's attempts at meaningful consultation were feeble at best and disingenuous at worst.

NCSL offers the following for inclusion in a final rule.

- There should be explicit language assuring that no sort of legal immunity is granted to or assumed on behalf of rail carriers for negligence or other wrongdoing following from an accident causing environmental damage, death or other harm. Final language should expressly state that rail carriers shall be responsible for negligent acts resulting from the transport of hazardous materials should a court of competent jurisdiction make that determination.
- Consultation with states in the consideration of alternative routes should be mandatory. On page 20771 (c) (2) of the interim final rule, it states that rail carriers "must seek relevant information from state, local, and tribal officials, AS APPROPRIATE, when performing their route analyses. NCSL feels that making consultation mandatory would reduce or eliminate any prospect for overlooking or withholding any relevant information.
- On page 20772, (g), the interim final rule stipulates that rail carriers' safety and security plans include procedures for consulting with offerors and consignees regarding storage or transit delays of hazardous materials. NCSL believes that these plans should also include procedures for consulting with states to ensure that plans of all private entities involved conform to and respect state law, regulations and HazMat procedures.
- The section on Recordkeeping, p. 20772 (h), requires rail carriers to maintain and reasonably make available to the Department of Transportation (DOT) and the Department of Homeland Security (DHS) copies of the information required in the rule. States, local officials and emergency personnel should also have access to these records under the same terms as DOT and DHS. NCSL strongly suggests the addition of this records' access to a final rule."

**DOW CHEMICAL COMPANY** commented (May 15, 2008):

**"Section Reference: § 172.820(d) – Alternative route analysis**

In its Comments to the NPRM, Dow urged PHMSA to consider mechanisms, including 49 U.S.C. § 333, that would assist a rail carrier in analyzing the safety and security risks of an alternative route over which it has no authority to operate. In the Interim Final Rule, PHMSA has included a requirement that a rail carrier "must consider the use of interchange agreements with other rail carriers" when determining practicable alternative routes. (73 Fed. Reg. at 20,771). Dow supports PHMSA's inclusion of this requirement in the Interim Final Rule. However, Dow again strongly urges PHMSA to utilize existing statutory authority under 49 U.S.C. § 333, which provides relief for potential antitrust concerns, and encourages PHMSA to develop an office or internal mechanism that builds upon and coordinates with the current conference convened under that section.

Section 333(d)(1) authorizes the Secretary of Transportation to hold conferences on and mediate disputes resulting from proposed rail unification or coordination projects. The Secretary may invite rail carriers, their employees, shippers, and consumer representatives to such a conference. (See *id.* § 333(d)(1)(A)-(B), (D)). Importantly, the statute expressly grants conference attendees



antitrust immunity “for any discussion at the conference and for any agreements reached at the conference, that are entered into with the approval of the Secretary to achieve or determine a plan of action to carry out the unification or coordination project.” (Id. § 333(d)(2)).

In late 2005, the Federal Railroad Administration (FRA) granted a joint request by the American Railroad Association and the American Chemistry Council to convene a conference under the authority of 49 U.S.C. § 333 to discuss ways to minimize security and safety risks associated with the rail transportation of poisonous by inhalation (PIH) materials. Dow understands that the FRA met with rail carriers to discuss modeling and routing options for PIH materials, and that the FRA held further meetings with rail carriers, as well as separate meetings with rail shippers of chlorine and anhydrous ammonia. To date, however, FRA has not convened a meeting at which all invitees to the Section 333 conference could meet together, rather than separately, to discuss routing options for PIH and other hazardous materials.

The current Section 333 conference presents a unique (if not unmatched) opportunity, free from antitrust concerns, for major shippers and rail carriers of PIH materials to evaluate together, and from their different perspectives, the safety and security of PIH and other hazardous materials transportation routes across the entire rail system. The FRA’s current approach to the Section 333 conference – where the agency is meeting separately with rail carriers and shippers – does not promote a coordinated, consistent, and systematic approach to safe and secure rail transportation of hazardous materials. A meeting or series of meetings coordinated by PHMSA and involving both rail carriers and shippers will promote consistency and efficiency, will allow participants to more fully evaluate risk-reducing arrangements, such as swaps, on a national scale, and will ensure that the results of the Section 333 conference accurately reflect the realities of commerce.”

**SOME CHEMICAL SHIPPERS** have also objected to these and various other key aspects of the rule as it has moved along. Both of the following examples of routing problems illustrate the perils of current routing arrangements and the potentials for significant risk reductions.

1. **Dow Chemical Company**, a major chlorine producer and shipper, has reported in 2008 that it formerly supplied its Midland MI plant with chlorine railcars from its own Fort Saskatchewan Alberta plant about 1200 miles away. [The most likely rail route passed through the DHS-designated High Threat Urban Areas (target cities) of Minneapolis-St Paul, Milwaukee and Chicago.] Dow officials told state officials the company had decided for homeland security reasons to switch its supplier, and now brings chlorine railcars to Midland from a West Virginia chlorine production facility (not owned by Dow, so perhaps at a higher cost) only some 400 miles away. It seems quite likely, though (see the PPG evidence, below), that the new chlorine routes come through several Ohio target cities and others on the way to Midland. While Dow may have significantly reduced its safety and security risks with alternative routing, there is currently no mandate that either shipper or railroad carrier inform local or state officials of such routing shifts, and **we are unclear whether Dow routes utilize the best risk-reduction alternatives en route to Midland.** Dow supported the Final Rule.
2. **PPG Industries Inc.** has formally commented (May 16, 2008) on the routing rulemaking docket [PHMSA-RSPA-2004-18730]. PPG provided therein an example which illustrates a



potential serious impact on several Ohio cities. It also highlights the need that Dow and other major chemical shippers [see Appendix C] have indicated for a key improvement in the regulation, namely **the need to mandate railroad interchange arrangements and railroad carrier/chemical shipper cooperation to reduce serious homeland security risks.**

The PPG comment states, in part, concerning the current Interim Final Rule:

“The rule is very clear on how rail carriers are to assess the risk on existing routes for existing origin and destination pairs. PPG believes the rule does not clearly state that the rail carrier must work with other rail carriers to determine the safest route that involves all carriers. PPG’s example is that CSX can take chlorine from our Natrium WV facility to our customer north of our plant by taking the shipment south to Cincinnati and then north through Columbus to our customers in northern Ohio, Michigan and Iowa. A competing rail carrier, the Wheeling and Lake Erie Railroad, can interchange with the CSX 20 miles north of the Natrium plant and the WLE can move the cars north. This route can eliminate as much as 300 miles and two HTUA. As PPG reads the rule, the CSX does not have to consider this [WLE interchange] route in their assessment. PPG wants some assurance that carriers will be required to work together to select the least risky route.

Similarly there is no provision for competing carriers to provide alternate routings that would be less risky. PPG’s example follows the same example above. If the WLE were allowed to have track rights over the CSX into our facility 20 miles south of the current interchange point, the risk associated with an interchange could be avoided including the dwell time in the interchange yard. As the rule reads now, it is unclear how a competing carrier could suggest such an alternative.”

