On February 20, 2008, the Department of Labor conducted two half-day open forums to discuss updating, “Industrial Code Rule 39, Possession, Handling, Storage and Transportation of Explosives” with interested parties. The purpose of the meeting was to get input from the regulated community prior to starting the formal rule making process. The meetings were held at the, Onondaga County Library, 447 S. Salina St., Syracuse, New York.

The focus of both meetings was to look at ways to increase the physical security of the various sites where explosives are currently being stored. The emphasis was on ways of developing layers of security around these sites. This added security would act to slow down and detect intruders on these sites. It is believed that by monitoring and detecting events in real time, as they are happening, will significantly increase the chances that intruders would be apprehended before they have a chance to use the materials they were seeking.

Additionally, as part of this increased emphasis on security, the Department is exploring changing the number and type of licenses that it issues. There would be separate High and Low Explosive Dealer Manufacturer’s License as well as a Pyrotechnics’ Dealer Manufacturer’s License and separate High and Low Explosives Own and Possess Licenses. There would be a new Pyrotechnicians License that would be required for anyone who sets up and shoots a pyrotechnic display, and lastly there would be an Explosives Handlers Permit that would be required for any employee who has unsupervised access to explosives. All license and permit applicants would have to pass a criminal background check.

The morning session was for smokeless and black powder dealers, historical re-enactors and stakeholders associated with the pyrotechnics industry. The afternoon session was for individuals and businesses using or associated with high explosives. Approximately 80 individuals attended one or both of the sessions.

In attendance from NYDOL were the following persons:

1. Pico Ben-Amotz, Deputy Commissioner Worker Protection, NYSDOL
2. Maureen Cox, Director of Safety and Health, NYSDOL
3. David Rupert, Assistant Director of Safety and Health, NYSDOL
4. Lansing Lord, Program Manager, Industry Inspections, NYSDOL
5. Joseph Gallagher, Program Manager, Industry Inspections, NYSDOL
6. Department of Labor Dist Office Supervisors and Senior Inspectors

Industry Organization Representative attending included:

1. Jeffrey Dean, Executive Director and General Counsel, International Society of Explosives Engineers.
2. David Hamling, President and CEO, New York Construction Materials Association.
A number of people indicated that they had some form of security beyond what is currently required by Code Rule 39. This included fences and gates around property as well as some camera surveillance.

At the end of both the morning and afternoon sessions the groups meet among themselves to select individuals to act as spokes persons for their respective parts of the explosive industry. These individuals will be brought together at a follow-up meeting scheduled for Thursday March 13, 2008 at 10:00 A.M. in Albany, NY.

Industry Representatives

Andre Hagadorn - Adirondack Natural Stone  
Bill Youngs - North American Industrial Services  
Bob LaPetro  
Bruce Brannen - Strider Construction Co.  
Doug Nothnagle - Nothnagle Enterprises, Inc.  
Edward A. Fuhr - Graymont Materials (NY) Inc.  
Felix Grucci - Fireworks by Grucci  
Hank Disce - Maxam North America  
Jim Young - Young Explosives  
John C. Brulia - Austin Powder Company  
John Parmerton - Applied Tactical Technologies, Inc.  
Julie Pecori - Dyno Nobel Inc.  
Kevin Fritschler - American fireworks Mfg. Co.  
Laurie Britton - Alpha Drilling & Blasting  
Lee Tillotson - Thomas Drilling & Blasting Corp.  
Lisa Ponce - Hilltop Energy Inc.  
Lori Britton - Alpha Drilling & Blasting  
Peter Kranenburg - Independent Contractor  
Richard Galletta - Maine Drilling & Blasting  
Robert LaPietro - J & J Pyrotechnics  
Ron Sporyz - American Fireworks  
Tom Merzke - Amchar Wholesale
Below is a summary of the questions and answers from both the morning and afternoon sessions.

1. **Question** – Does the Department plan to make a distinction between the requirements for low and high explosive magazines.

   **Answer** - The Department does not intend to differentiate between the additional security requirements for low explosive and high explosives storage facilities. According to ATF statistics, approximately 40% of the bombs used in this country are built using low explosives resulting in about $5,000,000 in damage each year.

2. **Question** – How much of the annual damage is from stolen explosives.

   **Answer** – That information was not available.

3. **Question** – Is the Department asking for both an outer and inner perimeter security plan?

   **Answers** - Yes

4. **Question** – Has the Department considered the cost of installation of intrusion detection systems?

   **Answer** – It appears that an intrusion detection system can be installed for between $1,500 and $2,500 that will cover up to four magazines. Since most of the cost is for the transmitter the cost does not decrease significantly if you only have two magazines. The monthly service charges varied between approximately $35 - $85.00 per month, depending on the service provider and if it was cellular or satellite.

5. **Question** – Has the Department considered the cost of having electricity provided to remote areas so that alarm systems will work? How will the system work in areas with no phone service?

   **Answer** – Most of the current alarm systems work off of batteries and the batteries have a life of about six months. A number of locations have installed small solar panels that provide a trickle charge for the batteries that extends their life. The alarms work using cellular phones where available or they can be made to use satellite phones.

6. **Question** - What is the expectation for response to alarms?

   **Answer** – A notification should be sent within 15 minutes of sensor being activated. A person should respond to the location within one hour to determine if the alarm is real.

7. **Question** – How often would magazines have to be checked? Daily? What about weekends?
Answer – The frequency of security checks would depend upon the security systems in place to protect the site. In the absence of any intrusion detection, the checks would have to be hourly.

8. Question – Is each sight expected to come up with a plan on how they will secure their sight?

Answer – Yes, each facility will be asked to submit a security plan. The plan would then be reviewed by the Department. Once the plan is approved the Department inspectors would then check to make sure that the facility is complying with the plan. As things change over time the plan could be updated as needed.

9. Question – Will the Industry be given time to comply with new proposed regulations?

Answer – Yes. The plan is to phase this in over time. Once the regulations are promulgated everyone would be given a period of time to develop submit and have their plan approved. After that they would be given time to implement the plan requirements. The time frames have not been worked out and the Department is interested in industry input on what are reasonable time frames.

10. Question - Are there “Homeland Security” funds available to help defer some of the costs?

Answer – No, Homeland Security can only provide funds to government agencies not to private companies. The Department is exploring other ways to help offset some of the costs associated with these security requirements.

11. Question – Does the Department intend to consider the size of the operation when imposing these new requirements?

Answer – No, even small quantities of explosives can do significant damage.

12. Question – Have the changes been run by the ATF.

Answer – We have had conversations with people from the ATF and will continue to do so as the need arises.

13. Question – Will there be uniformity or requirements as mandated by various State and Federal governmental entities.

Answer – There should be no conflicts between the current federal regulations and the changes proposed for Code Rule 39.
14. Question – Has the Department considered the difficulty in licensing pyrotechnicians? Most of these people are part time and may only work a few days a year. Small businesses will not be able to absorb the costs. Only the crew chiefs should be certified not all persons.

Answer – There are significant public safety issues surrounding display fireworks. The new regulations would require that the person in charge of the shoot have a pyrotechnician’s license. The applicant would have to demonstrate through training and experience that they are knowledgeable about how to properly set up and shoot display fireworks. Individuals who work under the direct supervision of the pyrotechnician would not have to be separately certified unless they were allowed unsupervised access to explosives. Those individuals would have to obtain a handler’s certificate from the Department and pass a criminal background check.

15. Question – If pyrotechnicians have to be trained who is responsible for that training? Is there a course they will have to take?

Answer – As part of the certification process the pyrotechnician would have to be able to demonstrate that they have the required knowledge to properly set up and shoot a display. The Department would not provide the training, it would be up to the applicant to gain the required knowledge and experience. The Departments role would be to test the applicant to make sure that they have the experience and knowledge required.

16. Question – Has the Department considered using the background checks from other agencies? Currently many individuals are required to submit to several background checks a year.

Answer – The Department is exploring accepting ATF criminal background checks. There are details that need to be worked out and it would require a statutory change in the Labor Law. The Department is actively working on this.

17. Question – Will new background checks be required every year.

Answer – Currently if someone passes a background check and then is arrested in New York State, the Department is notified. If the arrest occurs out of state we are not notified until we submit a new request for a background check. The Department is working to see if they can get this changed.

18. Question – Will individuals with handler’s certificates be able to take the certification with them when they change employers? Currently it can take several months to get an ATF background check completed. The IME is currently working with the ATF to make it so that there employee certification goes with the employee.

Answer – Currently the Departments thinking is that the certification would expire if the employee changes employment. The Department is willing to reexamine this issue.
19. **Question** – Can anything be done about increasing the penalties for people who steal explosives? In recent cases the people who stole the material never even went to jail.

**Answer** – Currently under the Labor Law, possession of explosives by an unlicensed individual is a felony. The Department will do what it can to make sure that anyone who is arrested for stealing explosives is prosecuted.

20. **Question** – Does the Department have to depend upon weight for certifying a magazine? A box of 50 igniters contains only 2 oz. of explosives.

**Answer** – The Department can use actual counts of the number of devices similar to what it currently does for high explosive detonators.


**Answer** – Everyone would have to be licensed even companies coming in from out of state. Companies that are based in New York and companies that regularly do business in New York would have an advantage in that they would be more familiar with the regulations. The Department can not restrict who does business in the state.

22. **Question** – How many instances of thefts of fireworks are there and why penalize the industry for something that hasn’t happened.

**Answer** – There have been a few cases of fireworks being stolen. In this day and age we can not wait until something happens and fix it afterwards.

23. **Question** – Does the Department have a system of granting variances from the code?

**Answer** – The Department does have a system where variances can be granted.

24. **Question** – Will the same security requirements apply to underground mines?

**Answer** – The security requirements will apply to all above ground storage at underground facilities. With material stored underground as long as access is controlled to the mine existing security arrangements should be sufficient.

25. **Question** – Has the Department considered changing the requirements for blasters for example in New Jersey blasters are certified on the amount of explosives that they can shoot at one time?

**Answer** – As part of the review of the regulations the Department is reviewing the requirements for blasters. Including the maintenance of records and reporting of incidents.
26. **Question** – How will drop trailers and ANFO storage be handled?

**Answer** – All drop trailers should be stored within the outer perimeter of the security area.

27. **Question** – How would temporary storage of high explosives at construction sites be handled?

**Answer** – Companies that anticipate doing that type of storage would have to develop a general plan to address how they plan to handle the security. For example if there were a night watchman on the site and they had the ability to summon help if needed, and they were able to check the boxes each hour that could be sufficient. The Department would inspect the site as soon as possible and any adjustments to the plan to deal with special circumstances could be dealt with at that time.

28. **Question** – What about magazines with only occasional use a few times a year would they have to have alarms and perimeter security?

**Answer** – Any one wishing to get a certificate for a magazine would need to demonstrate that the magazine is in compliance with the Departments regulations. If the owner is using some type of security service or electronic monitoring system, the system could be shut off when the magazine is empty and not in use.

29. **Question** – Can anything be done about the signage a requirement, putting up Explosive Signs draws more people then it deters?

**Answer** – This can be looked at. It might be more effective to put up no trespassing signs etc. Sites will still be required to put up the required explosives -do not fight fires sign some where near the entrance to the property.

30. **Question** – If a night watchman was used, would they be required to have a background check?

**Answer** – We would only require a background check on individuals who had unsupervised access to explosives. As long as the watchman did not have access the keys and contents of the magazines they would not be required to pass a background check.

31. **Question** – Could one or more business entities share an explosive magazine site?

**Answer** – The Department felt that this was possible but those present from the Industry felt that it was not possible. It raised too many questions about who would be responsible for security etc.