DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 176, and 177

[Docket No. RSPA–03–14982 (HM–232C)]

RIN 2137–AD79

Hazardous Materials: Enhancing Hazardous Materials Transportation Security

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule incorporates into the Hazardous Materials Regulations a requirement that shippers and transporters of certain hazardous materials comply with Federal security regulations that apply to motor carrier and vessel transportation. In addition, this interim final rule revises the procedures for applying for an exemption from the Hazardous Materials Regulations to require applicants to certify compliance with applicable Federal transportation security laws and regulations. This interim final rule will assure that shippers and transporters are aware of and comply with their security obligations.

DATES: *Effective Date.* This interim final rule is effective May 5, 2003.

Compliance Date: June 4, 2003.

Comments. Submit comments by June 4, 2003. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC. 20590–0001. Comments should identify Docket Number RSPA–03–14982 (HM–232C) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at *http://dms.dot.gov/* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at *http://dms.dot.gov/.*

FOR FURTHER INFORMATION CONTACT: Susan Gorsky, (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

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I. Background

Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel cars and trucks, and heat and cool homes and offices. Hazardous materials are used for farming and medical applications and in manufacturing, mining, and other industrial processes. Millions of tons of explosive, toxic, corrosive, flammable, and radioactive materials are transported every day. Hazardous materials move by plane, train, truck, or vessel in quantities ranging from several ounces to many thousands of gallons. The vast majority of hazardous materials shipments arrive safely at their destinations. Most incidents that do occur involve small releases of material and present no serious threat to life or property.

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Under the Department of Transportation's Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I, to a low hazard, Packing Group III, material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, which are based on the internationally recognized United Nations system for classification, identification, and ranking of hazardous materials, all hazardous materials are divided into nine general classes according to their physical, chemical, and nuclear properties as follows:

Class 1—Explosives
Class 2—Compressed, flammable, nonflammable, and poison gases
Class 3—Flammable liquids
Class 4—Flammable solids
Class 5—Oxidizers and organic peroxides
Class 6—Toxic and infectious materials
Class 7—Radioactive materials
Class 8—Corrosive materials
Class 9—Miscellaneous dangerous substances and articles

Within Classes 1, 2, 4, 5, and 6, there are more specifically defined divisions, and within Class 1 there are Compatibility Group subdivisions, as well. The hazard classes and divisions are not mutually exclusive. Certain hazardous materials have multiple dangerous properties, each of which must be addressed according to its relative potential to do harm. In these cases, the UN system and the HMR allow identification and communication of both the primary and subsidiary threats.

DOT's hazardous materials transportation safety program has historically focused on reducing risks related to the unintentional release of hazardous materials. The HMR are designed to achieve two goals: (1) To ensure that hazardous materials are packaged and handled safely during transportation, thus minimizing the possibility of their release should an incident occur, and (2) to effectively communicate to carriers, transportation workers, and emergency responders the hazards of the materials being transported. The HMR specify how to classify and package a hazardous material. Further, the HMR prescribe a system of hazard communication using

placards, labels, package markings, and shipping papers. In addition, the HMR prescribe training requirements for persons who prepare hazardous materials for shipment or transport hazardous materials. The HMR also include operational requirements applicable to each mode of transportation.

II. Security Guidance

In the wake of the terrorist attacks of September 11, 2001, and subsequent threats related to biological and other hazardous materials, DOT undertook a broad review of government and industry hazardous materials transportation safety and security programs. As part of this review, we established the Hazardous Materials Direct Action Group (Hazmat DAG). The Hazmat DAG met with representatives of the hazardous materials industry, emergency response community, and state governments to discuss transportation security issues and continuing terrorist threats. In addition, we created a DOT Intermodal Hazardous Materials Transportation Security Task Force, which considered attack or sabotage vulnerabilities, existing security measures, and potential ways to reduce vulnerabilities. The Task Force included representatives from the Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Aviation Administration (FAA), U.S. Coast Guard (USCG), and Office of the Secretary.

Based in part on discussions in the Hazmat DAG and on the results of the Task Force review, on February 14, 2002, we published an advisory notice to inform shippers and carriers of voluntary measures that can enhance the security of hazardous materials shipments during transportation (67 FR 6963). The notice addresses personnel, facility, and en route security issues and includes contact points for obtaining additional, more detailed information. Among other recommendations, the security advisory notice advised employers to be aware of the possibility that someone they employ may pose a potential security risk. We recommended that employers consider establishing a process to verify the information provided by applicants on application forms or resumes, including checking with former and current employers and personal references provided by job applicants.

In addition, FMCSA conducted a number of on-site security reviews with hazardous materials shippers and carriers. The reviews were targeted to high-risk hazardous materials, including explosives, radioactive materials, materials that are poisonous by inhalation, and flammable gases and liquids. The on-site security reviews included reviews by the FMCSA investigator and company officials of carrier records in order to identify suspicious activities by company employees that could affect transportation security. The security reviews resulted in 280 findings of suspicious activities by employees, with 126 referrals to the Federal Bureau of Investigation (FBI). Examples of suspicious activity that provided the basis for the FBI referrals include false personnel information, citizenship irregularities, FBI watch list, and previous employment irregularities.

The review included recommendations for addressing identified security risks, including risks associated with current or new employees. The FMCSA recommendations for mitigating such risks include measures such as: (1) Implementing methods for security identification (*i.e.*, ID badges) and systems to verify employee identification; (2) reviewing employee and applicant personnel information with a particular focus on gaps in employment, frequent job shifts, all names used by the applicant, type of military discharge, citizenship, present and prior residence information, personal references, and criminal history; and (3) verifying compliance with the Immigration Reform and Control Act of 1986 to assure that I–9 forms are properly completed and maintained for all employees. A number of hazardous materials shippers and carriers have voluntarily implemented security programs that include measures to identify and address employee security issues.

III. Security Rulemaking

On March 25, 2003, the Research and Special Programs Administration (RSPA) published a final rule under Docket HM–232 (68 FR 14510). The final rule requires persons who offer certain hazardous materials for transportation in commerce and persons who transport certain hazardous materials in commerce to develop and implement security plans.

In developing the HM–232 final rule, we assessed the security risks associated with the transportation of different classes and quantities of hazardous materials. We concluded that the most significant security risks involve the transportation of certain radioactive materials, certain explosives, materials that are poisonous by inhalation, certain infectious and toxic substances, and bulk shipments of materials such as flammable and compressed gases, flammable liquids, flammable solids, and corrosives. Based on this security risk assessment, the HM–232 final rule requires persons who offer for transportation or transport the following hazardous materials to develop and implement security plans: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in Hazard Zone A; (4) a shipment in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) infectious substances listed as select agents by the Centers for Disease Control and Prevention (CDC) in 42 CFR part 73; and (6) a shipment that requires placarding. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. In effect, then, the HM–232 final rule applies the security plan requirement to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. Using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from materials that do not. It also provides consistency for the regulated community, thereby minimizing confusion and facilitating compliance.

The HM–232 final rule also includes new security awareness training requirements for all hazardous materials employees. This training must include an awareness of the security risks associated with hazardous materials transportation, measures designed to enhance transportation security, and a component covering how to recognize and respond to possible security threats.

IV. USA PATRIOT Act

DOT is working with the Department of Homeland Security's Transportation Security Administration (TSA) to administer provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act; Public Law 107–56, October 25, 2001, 115 Stat. 272). Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by

adding a new section 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides that a state may not issue a license to operate a motor vehicle transporting a hazardous material in commerce unless the Secretary of Transportation has first determined that the individual does not pose a security risk warranting denial of the license. Section 5103a(a)(2) subjects license renewals to the same requirements.

There is no ''hazmat license'' *per se* under state or Federal law. However, section 1012(b) of the USA PATRIOT Act also amended 49 U.S.C. 31305(a)(5), which prescribes fitness and testing standards for individuals operating a commercial motor vehicle carrying a hazardous material, by adding a new paragraph (C) to require a state to ensure that an individual has been vetted under 49 U.S.C. 5103a before the state issues a commercial driver's license (CDL). Thus, DOT And TSA interpret the ''hazmat license'' referred to in section 1012 as the hazardous materials endorsement to a CDL, which is required by 49 CFR 383.93(b)(4). To qualify for the hazardous materials endorsement, an individual must first pass a specialized knowledge test (§ 383.121) in addition to the requisite general knowledge and skills tests required for a CDL. Therefore, DOT and TSA consider section 5103a a *de facto* amendment to the CDL legislation.

Section 5103a(c) requires the Attorney General, upon the request of a state regarding issuance of a hazardous materials endorsement, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary of Transportation of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

TSA and DOT's Federal Motor Carrier Safety Administration (FMCSA) have developed regulations to implement the hazardous materials licensing provisions of the USA PATRIOT Act. TSA's regulation, published in today's edition of the **Federal Register**, addresses the procedures for making determinations as to whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a commercial driver's license and for appealing and issuing waivers to such a determination. Also in today's edition of the **Federal Register**, FMCSA is publishing a companion regulation amending Part 383 of the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit states from issuing, renewing, transferring, or upgrading a commercial driver's license with a hazardous materials endorsement unless the Attorney General has first conducted a background records check of the applicant, and TSA has determined that the applicant does not pose a security threat warranting denial of the hazardous materials endorsement.

Part 383 of the FMCSRs requires a driver to have a hazardous materials endorsement to the CDL only if the driver operates a commercial motor vehicle transporting hazardous materials in amounts required to be placarded under the HMR. FMCSA is amending Part 383 to require an operator of a commercial motor vehicle that transports materials on the CDC select agent list to have a hazardous materials endorsement to his or her CDL. Thus, TSA and FMCSA implementation of the USA PATRIOT Act is consistent with RSPA's assessment in HM–232 that the hazardous materials placarding thresholds, plus the CDC select agent list, cover materials that present the most significant security threats in transportation.

To assure consistency between the HMR and the FMCSR concerning the USA PATRIOT Act requirements for commercial motor vehicle drivers, in this final rule, we are amending Part 177 of the HMR to require compliance with Part 383 of the FMCSR.

TSA, with the assistance of DOT's Federal Railroad Administration, intends to issue a rule somewhat similar to the USA PATRIOT Act rule for railroad workers who are in security-sensitive positions. Upon issuance of such a rule, RSPA will issue an additional rule making any such railroad background check requirements part of the HMR.

V. Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002. Sections 1121–1123 of 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. Persons who violate 18 U.S.C. 842(i) are subject to criminal penalties.

18 U.S.C. 845(a)(1) provides an exception to 18 U.S.C 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.'' The Department of Justice has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of the transportation of explosives, and (2) those regulations cover the particular aspect of the safe transportation of explosives that prompted Congress to enact the criminal statute from which exemption is sought. For purposes of § 845(a)(1), if DOT determines that persons engaged in certain aspects of the transportation of explosives do not pose a security risk and do not warrant regulation, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

The HMR define a Class 1 material as any substance or article that is designed to function by explosion—that is, an extremely rapid release of gas or heat—or one that, by chemical reaction within itself, functions in a similar manner even if not designed to do so. Class 1 materials are divided into six divisions. Assignment of an explosive to a division depends on the degree and nature of the explosive hazard presented. Thus, a Division 1.1 explosive is one that presents a mass explosive hazard. A mass explosion is one that affects almost the entire load simultaneously. A Division 1.2 explosive has a projection hazard, which means that if the material explodes, it will project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. A Division 1.4 explosive has a minor explosion hazard

that is largely confined to the package and does not involve projection of fragments. A Division 1.5 explosive is a very insensitive explosive that has a mass explosion potential, but is so insensitive that it is unlikely to detonate under normal conditions of transport. A Division 1.6 explosive is an extremely insensitive article that does not have a mass explosion hazard and demonstrates a negligible probability of accidental initiation or propagation. Specific materials that are covered by the definition of Class 1 materials include such items as blasting agents, propellants, detonators, various types of ammunition, explosives charges and projectiles, ammonium nitrate-fuel oil mixtures, rockets, fireworks, and warheads.

For explosives transportation, the HMR prohibit transportation of an explosive unless it has been tested, classed, and approved by the Associate Administrator for Hazardous Materials Safety, RSPA. The approval granted by the Associate Administrator specifies packaging and other transportation provisions that must be followed by the person who offers or transports the explosive material. In addition to packaging requirements, the HMR require explosives to be labeled and/or placarded to indicate the explosive hazard. Explosives shipments generally must be accompanied by shipping papers and emergency response information.

The HMR definition for a Class 1 material is test- and performance-based and, thus, accommodates newly developed materials and modifications to existing materials. Moreover, the HMR definition for a Class 1 material is consistent with definitions used and accepted internationally (*i.e.*, the UN Recommendations for the Transport of Dangerous Goods, the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Maritime Organization International Maritime Dangerous Goods Code), not only for transportation, but for many other applications, as well.

For the most part, the HMR definition of an explosive is consistent with the relevant definition established by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). By statute, ATF regulates materials that are explosives, blasting agents, and detonators. An ''explosive'' is ''any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters;'' a ''blasting agent'' is, in part, ''any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive;'' and a ''detonator'' is ''any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.'' ATF supplements these statutory definitions with a list of specific materials, updated periodically, that are regulated as explosives. 18 U.S.C. 841(c)—(f). Certain statutory exemptions may apply. For example, certain types and quantities of black powder may be exempt from ATF regulation. 18 U.S.C. 845(a)(5).

Because the various definitions used by DOT and ATF are not identical, some materials are treated differently by the two agencies. For example, ATF lists several specific materials that it regulates as explosives that DOT regulates as non-explosive hazardous materials. Further, ATF regulates all mixtures that contain any of the materials it lists as explosives. ATF does not define a lower limit at which a mixture would cease to meet the definition for an explosive. The DOT definition, by contrast, depends on test results to determine whether a material should be classed as an explosive. Thus, if a mixture is tested and does not exhibit explosive properties, it would not be classed as an explosive under the HMR, even though the mixture might contain a material that, by itself, would be classed as an explosive.

Moreover, the ATF explosives list includes dinitrophenol, guncotton, nitrostarch, sodium picramate, and several other materials that DOT regulates as non-explosive hazardous materials when combined with water. When combined with water, these materials may not exhibit explosive properties and, thus, do not meet the DOT definition for an explosive. DOT regulates these materials, with specified percentages of water, as Division 4.1 (flammable solid) materials.

ATF regulates ammonium nitrate-fuel oil mixtures and ammonium nitrate explosive mixtures as explosive materials. Under the HMR, certain ammonium nitrate products are classed as Division 1.1 explosives, and ammonium nitrate-fuel oil mixtures are classed as Division 1.5 explosives. However, some mixtures that include ammonium nitrate among their components are classed as Division 5.1 (oxidizer) materials because they require further processing before they can be used to produce a practical explosion. Again, the difference results because the DOT classification criteria depend on testing to determine whether a material exhibits explosive properties; if a material is tested and found not to meet the DOT definition, it is not regulated as an explosive for purposes of the HMR.

A major difference between the ATF and DOT requirements for regulating explosives is how the agencies treat military and government shipments. In accordance with 18 U.S.C. 845, ATF generally does not regulate explosives being delivered to any agency of the United States or any state or political subdivision thereof; or explosives manufactured under the regulation of the military department of the United States or transported on behalf of the military department of the United States or transported to arsenals, navy yards, depots, or other establishments owned by, or operated on behalf of, the United States. Under the HMR, by contrast, government and military shipments of explosives are regulated if such shipments are transported by commercial carriers rather than government or military personnel.

For purposes of SEA, DOT compared the list of materials that ATF regulates as explosives with the definitions for different classes of hazardous materials regulated under the HMR and assessed the security risks associated with the transportation of such materials. We concluded that a mixture that does not meet the definition of a Class 1 material under the HMR generally does not pose a sufficient security risk when transported in commerce to warrant detailed employee background checks. Such mixtures may meet the definition of a different hazard class, in which case they are subject to applicable security requirements in HM–232 or in TSA, FMCSA, or USCG regulations, as incorporated into the HMR in this final rule, or they may not meet the definition of any hazard class, in which case they are not regulated as hazardous materials under the HMR.

We further concluded that a material regulated as an explosive by ATF but as a different class of hazardous material under the HMR, such as certain wetted materials and ammonium nitrate mixtures, generally will be subject to applicable security requirements in HM–232 or in TSA, FMCSA, or USCG regulations, as incorporated into the HMR in this final rule. If required to be placarded, shipments of such materials will be subject to the background check requirements mandated in the USA PATRIOT Act when transported by

motor carrier and to the security plan requirements in Subpart I of the HMR. When shipped in amounts that do not require placarding, such shipments do not pose a security risk when transported in commerce sufficient to warrant detailed employee background check requirements at this time.

Generally, we have determined that the placarding thresholds established in the HMR for explosives shipments represent explosives that pose the most significant security risk when transported in commerce. Explosives in the following quantities must be placarded in accordance with HMR requirements:

(1) Any quantity of Division 1.1, 1.2, or 1.3 explosives;

(2) More than 454 kg of Division 1.4, 1.5, or 1.6 explosives.

Examples of Division 1.4 explosives include toy caps, signal devices, flares, and distress signals. In quantities less than 454 kg, such explosives generally do not present a significant security threat involving their use during transportation for a criminal or terrorist act. Similarly, Division 1.5 and 1.6 explosives are sufficiently insensitive that, in amounts below 454 kg, they generally do not present a significant security threat.

To address implementation of SEA for Canadian transporters of explosives into the United States, TSA issued an interim final rule on February 6, 2003 (68 FR 6083), which took effect immediately. The regulation establishes temporary requirements for all Canadian motor carriers and rail carriers using certain aliens to transport explosives into the United States. In essence, the final rule prohibits a Canadian commercial transporter of explosives from entering the United States unless he or she is identified with a ''known'' status. A transporter is considered ''known'' by submitting specified information to Transport Canada, an agency within the Canadian government that oversees transportation safety and security. Transport Canada conducts checks to ensure that the transporter is a legitimate entity authorized to do business in Canada, and that there are no security concerns with the transporter. Transport Canada forwards this information to TSA, which may conduct additional security checks prior to forwarding the list of acceptable transporters to the U.S. Customs Service. The U.S. Customs service enforces the interim final rule by conducting checks at the U.S.-Canada border.

The HMR set forth provisions for the transportation by rail or highway of shipments of hazardous materials coming into the United States from Canada. Generally, in § 171.12a, the HMR permit shipments that originate in Canada and either terminate in the United States or transit the United States to a foreign destination to conform to requirements in the Canadian Transportation of Dangerous Goods Regulations, with some exceptions and limitations.

For consistency with the TSA requirements applicable to Canadian carriers of explosives, in this final rule, we are amending § 171.12a to require Canadian motor carriers and railroads that transport explosives into the United States to comply with the TSA regulations at 49 CFR 1572.9 and 1572.11 concerning the transportation of explosives from Canada to the United States.

VI. Vessel and Port Security

The USCG is responsible for assuring maritime security. Primary statutory authority is set forth in Title 14, U.S. Code, the Ports and Waterways Safety Act, 33 U.S.C. 1221, *et seq.*, and the Espionage Act of 1917, as amended by the Magnuson Act of 1950, and most recently by the Maritime Transportation and Security Act of 2002, in addition to Executive Orders and Coast Guard regulations implementing the statutory authorities. Since the September 11, 2001, terrorist attacks on the United States, the Coast Guard has quickly adapted to the changed environment to protect our nation's ports and waterways.

Vessels. With respect to the treatment of aliens and felons, the USCG regulations (33 CFR 160 Subchapter C, as amended by 68 FR 9537 (February 28, 2003); 33 CFR part 6; and 33 CFR 160.111(a)) require commercial vessels to provide information on crew and passenger identity and certain dangerous cargo, including explosives, to the U.S. Coast Guard National Vessel Movement Center. The notification must take place at least 96 hours prior to arrival in port so that the Coast Guard can identify any potential security and safety risk. This includes an examination of the conditions under which aliens may lawfully transport, ship, receive, and possess explosives via commercial vessel into a U.S. seaport from any overseas location and between domestic ports. The information provided is checked with law enforcement and intelligence databases. The Coast Guard then makes a determination as to whether the vessel or any of the persons on board present a security or safety threat to the United States. Based on this threat assessment, the Coast Guard may decide to subject a vessel to additional scrutiny, which may include boarding offshore and verification that neither the vessel nor the persons on board present a safety or security risk before they are allowed to enter U.S. territorial seas and ports.

The regulations in 33 CFR Part 6 provide the authority for the Coast Guard to board vessels and direct their movements for the purpose of security. In addition, the Coast Guard's authority to restrict and/or order movement of vessels is found in 33 CFR 160.111(a).

The Coast Guard has promulgated extensive regulations (46 CFR parts 10 and 12) to address which aliens, felons, ex-felons, non-citizens, persons who have been dishonorably discharged from the military, fugitives, persons who have been adjudged insane or otherwise determined by competent authority to be physically or mentally incompetent, drug users and ex-drug users may serve as licensed and unlicensed mariners on U.S. vessels. The licensing and documentation regime covers mariners that may handle explosives and other hazardous materials. Without such a license or document, an individual may not serve in a capacity requiring a license or document on any vessel of the United States. The regulations in 46 CFR part 10 apply to persons applying for a license as a deck or engineer officer or licensed operator of a vessel of the United States.

The Coast Guard carefully considers whether a felon or an ex-felon is sufficiently rehabilitated and whether a drug user or an ex-drug user is free from the use of dangerous drugs in order to determine if he or she should be entrusted with the responsibilities of service in the capacity for which he or she is seeking a license. With respect to felons, the review includes persons who are under indictment for felonies, as well as persons who have been convicted. The regulations at 46 CFR 10.201 contain a table of criminal offenses that are considered disqualifying depending on the crime and amount of time between application for the license and the conviction. The table of criminal offenses includes not only specific offenses, but also general categories of other crimes against property and public safety, for which an applicant may be denied a license depending on the circumstances. These general categories include, for example, arson and unlawful possession or use of a firearm or explosives. In addition, the regulations at 46 CFR 10.201 establish procedures an applicant must follow to prove citizenship. A person who has renounced his citizenship does not qualify for a Coast Guard license. Moreover, an application may be denied

to persons with ''habits of life and character'' that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include persons who are fugitives, or have been dishonorably discharged from the military. An applicant for a license must also pass a physical exam, which discloses whether he is physically and mentally competent to serve in the capacity for which he is applying. In addition, relevant data bases are checked; such data base checks will disclose information related to whether an applicant has ever been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case.

The requirements of 46 CFR 12.02–4, issued under authority of Chapter 73 of Title 46 of the United States Code, provide a similar regime for unlicensed seamen who are required to have a merchant mariners document in order to serve on the crew of a U.S. vessel. The regulations require an extensive application and review process that includes a check of criminal records and the National Driver Register. This ensures that only persons who have been vetted, from a safety and security standpoint, hold licenses or other appropriate documents to sail as officers or unlicensed seamen on U.S. vessels. Although the Coast Guard does not have a strict ''no-felon'' rule for either licensed or unlicensed mariners, the regulations provide for a regime to evaluate each individual case and determine whether the individual presents a security threat. Further, Coast Guard regulations at 46 CFR 12.02–10, implementing 46 U.S.C. 8103(b)(1) concerning citizenship requirements for unlicensed seamen, state that ''No applicant * * * shall be accepted unless the alien presents acceptable documentary evidence from the U.S. Immigration and Naturalization Service that he is lawfully admitted to the United States for permanent residence.'' Moreover, an application may be denied to persons with ''habits of life and character'' that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include fugitives and persons who have been dishonorably discharged from the military. In addition, a check of the relevant data bases is made; such data base checks will disclose information related to whether an applicant has ever been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case. The Coast Guard is currently engaged in amending its licensing and documentation processes in light of the terrorist attacks of September 11, 2001.

Ports. The USCG port security card regulations (33 CFR part 125), codified pursuant to the Espionage Act of 1917, as amended by the Magnuson Act of 1950, 50 U.S.C. 191 *et seq.*, govern who may gain access to a waterfront facility. The USCG has promulgated explosives handling regulations (33 CFR part 126) that allow loading or discharge and handling of explosives at designated waterfront facilities. These regulations restrict these activities to entities that have obtained a permit issued by the Coast Guard. Read together, these regulations provide a comprehensive regulatory regime for the safe and secure transportation, storage, possession, and handling of explosives at the facility. The regulations also provide for the security of the facility and the vessels at the facility from threats presented by terrorists and other prohibited categories of individuals, including felons and drug users, listed in 33 CFR 125.19. On August 7, 2002, the Coast Guard published a notice in the **Federal Register** (67 FR 51082) to: (1) Call attention to these regulations; (2) clarify the identification credentials that are acceptable to the Commandant in order to gain access to waterfront facilities, port, and harbor areas; (3) advise that Coast Guard Captains of the Port are responsible for ensuring that those allowed access to waterfront facilities do not present unacceptable security threats; and (4) note that individuals without proper identification may not gain access to waterfront facilities and vessels if conditions so warrant. These regulations allow the Coast Guard to screen who may safely and securely handle explosives and other hazardous materials on board vessels and at waterfront facilities, including longshoremen, and the truck drivers that drive the container chassis from shipside to and around the container marshalling yard.

The Coast Guard is engaged in on-going discussions with TSA to implement a regime, based in part on these regulations and in part on the regulations set forth in 33 CFR part 6, to ensure that any person granted access to waterfront facilities, including those designated waterfront facilities that handle explosives, does not present a security or safety threat. These discussions include TSA implementation of appropriate background screening checks designed to disclose those factors that would lead the Coast Guard to deny access to part or all of a given facility based on security risk and threat assessment. Finally, if the law enforcement and intelligence data bases to which the Coast Guard has access reveal information about an individual that makes that person an unacceptable risk or a threat to a facility, including any information relating to the individual's criminal background or drug use, 33 CFR 6.04–5 authorizes the Captain of the Port to deny access to that person and to prevent that person from taking any article or thing onto the vessel or waterfront facility.

The Coast Guard's comprehensive regulatory regime in 33 CFR 160 subchapter C, as amended by 68 FR 9537 (February 28, 2003), for vessels arriving in the United States; 46 CFR parts 10 and 12, for the licensing and documentation of seamen on commercial U.S. vessels; and 33 CFR parts 125 and 126, regarding access and control of handling of explosives and other hazardous materials on waterfront facilities, adequately addresses the security risks that may be associated with the transportation of hazardous materials, including explosives, by vessel. To assure consistency with these requirements, in this final rule, we are amending part 176 of the HMR, which addresses the transportation of hazardous materials by vessel, to require compliance with requirements in 46 CFR parts 10 and 12. The HMR already require compliance with 33 CFR parts 125, 126, and 160.

VII. Transportation by Air

In response to the September 11, 2001, terrorist attacks, Congress enacted the Aviation and Transportation Security Act (ATSA; Pub. L. 107–71; November 19, 2001; 115 Stat. 597), which established TSA and transferred authority for aviation security from FAA to TSA. FAA continues to have authority to regulate all areas of aviation safety and to enforce the HMR as they apply to air shipments of hazardous materials. Thus, TSA, RSPA, and FAA share responsibility for addressing security issues associated with the transportation of hazardous materials by air.

In summary, only a small number of operators transport explosives in amounts that would require placarding if transported by highway or rail. These air carriers operate pursuant to a security program approved by TSA and

an exemptions program administered by RSPA.

TSA, FAA, and RSPA regulations govern the safety and security of hazardous materials, including explosives, transported by aircraft. Following creation of TSA, DOT transferred to TSA a series of security regulations that had been issued and enforced by FAA prior to September 11, 2001. In addition, these security regulations were amended to address new statutory requirements in ATSA. See 49 CFR parts 1500, 1520, 1540, 1542, 1544, and 1546. Following this transfer of authority, TSA promulgated a number of additional security regulations concerning background checks on individuals in the aviation industry and procedures to enhance the security of airports and air carrier operations.

TSA requires all operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to adhere to a security program that includes a fingerprint-based criminal history record checks (CHRC) for all flight crewmembers. Any person who has been convicted of certain felonies and serious misdemeanors within the last 10 years is not permitted to operate the aircraft. These disqualifying offenses are consistent with those that would disqualify a person from holding a hazardous materials endorsement to a CDL under the USA PATRIOT Act implementing regulations.

In addition, the aircraft operator must develop procedures to restrict access to the cockpit during flights and to secure the aircraft from unauthorized entry while on the ground. As well, the operator must develop procedures to handle bomb and air piracy threats and must train security coordinators to oversee all ground activities.

In addition, certain air cargo entities operate under a Domestic Security Integrated Program (DSIP), which provides that all individuals with unescorted access to secured areas undergo a CHRC. Any individual with a conviction in the preceding 10 years for a disqualifying offense listed in 49 CFR 1544.229 is not permitted access to secured areas. Under the DSIP, the cargo carrier must complete a background check of the previous five years for any individual with access to controlled areas of the airport that have not been deemed security identification display areas. Further, the cargo operator must develop procedures that provide for personnel identification display areas and to address bomb or highjack threat information. The cargo carriers operating under a DSIP must provide security training to all employees and are subject to Security Directives issued by TSA.

TSA also requires CHRCs for passenger and baggage screeners; employees and contractors with access to secured areas, including baggage and cargo handlers; and supervisors. *See* 49 CFR 1542.209 and 1544.229–230. In addition, the airport must provide an escort for individuals in secured areas who have not completed a CHRC.

Aviation workers in safety sensitive service are subject to alcohol and drug regulations issued and enforced by FAA. *See* Appendices I and J to 14 CFR part 121. These regulations require random, probable cause, and post-accident drug and alcohol testing to ensure that employees in safety-sensitive service are not drug users or working under the influence of alcohol. Also, FAA's regulations require medical examinations periodically for all flight crewmembers to ensure that there are no physical or emotional limitations that may cause safety or security threats to aviation operations. *See* 14 CFR part 67.

There are also a variety of security measures in place affecting the transportation of explosives into the United States by aliens on aircraft. With respect to commercial passenger flights to the United States, TSA regulates foreign commercial passenger carriers under 49 CFR part 1546. Among other requirements, part 1546 requires foreign air carriers to adopt and implement a security program approved by TSA. Foreign air carriers must compare the names of all direct air carrier employees against various watch lists. In certain cases, the carrier is not permitted to allow the employee to have unescorted access to secured areas of the airport. The carrier must immediately notify the nearest field office of the FBI if an employee is an individual known to pose a security threat.

Certain foreign air carriers from countries of particular concern also operate under special security program procedures, which require the carrier to provide TSA advance notice of the identities of cockpit crewmembers. This includes pilots, copilots, flight engineers, and airline management personnel, as well as any relief or deadheading cockpit crew. The carrier must provide a variety of identifying information for each individual. If an individual is known to pose a security threat, the carrier is not permitted to allow the individual to operate on a flight into or out of the United States.

Also, under special security program procedures, foreign air carriers are required to examine the identification of all operational crewmembers and verify their assignment on each flight departing to the United States. If the foreign air carrier cannot verify the identity and flight assignment of a crewmember, the carrier must deny boarding and notify appropriate authorities.

FAA and TSA also regulate flights to the United States by various other commercial and private aircraft operators pursuant to a complex set of requirements set forth in a Notice to Airmen (NOTAM). Under this NOTAM, the operators must submit identifying information on flight crewmembers and passengers in advance of arrival in the United States, so that TSA can conduct background checks. In addition, TSA has the authority to issue Security Directives (SDs) to air carriers and airport operators, which have the force and effect of a regulation and may require certain actions or procedures immediately. For example, TSA has issued SDs to require background checks on individuals with unescorted access to certain secured areas of airports, special screening procedures to address individuals who may present a security threat at an airport, and a variety of new operational procedures that are triggered when the national security alert system level increases.

In addition to these regulations, NOTAMs, and SDs, TSA requires air carriers and airport operators to comply with a detailed Security Program designed to address the security risks associated with the type of operation. *See* 49 CFR 1542.103, and 1544.101. There are standard Security Programs for air carriers in scheduled passenger service, public charters, private charters, cargo operations, and small aircraft in commercial service. The Programs are tailored to the security concerns attendant to each type of operation based on the size of aircraft, the number and nature of the passengers, the degree to which aircraft enplane or deplane into secured areas of an airport, and a variety of other factors. Commercial airports that TSA has determined require formal Security Programs are also required to adopt a TSA-approved Security Program that must address background checks and identification for individuals with access to secured areas of the airport and aircraft, access control procedures, measures to control movement within secured areas, and escort procedures for vendors who are not subject to background checks.

Finally, TSA plans to issue strengthened cargo security program requirements for passenger carriers, Indirect Air Carriers (freight forwarders) and all-cargo air carriers by October 2003 that will address additional measures to ensure the security of cargo

operations. Requirements under consideration include expansion of background checks for those with access to air operations areas, and additional screening for those persons with access to the flight deck of all-cargo carriers.

The HMR establish requirements for the transportation of explosives on-board aircraft. Air carriers generally are prohibited from transporting explosives in amounts that would require placarding if transported by highway or rail. The HMR prohibit Division 1.1 and 1.2 explosives in any quantity from being transported by aircraft. A limited number of explosives classed as Division 1.3 are permitted for transportation by cargo aircraft in limited amounts. These include certain types of cartridges, flares, and distress signals. Additionally, a limited number of Division 1.4 explosives are permitted for transportation by passenger or cargo aircraft in limited amounts. Again, these include certain types of cartridges, detonators, fireworks, flares, fuses, and signal devices.

Under RSPA's exemptions program, a hazardous materials shipper or carrier may be granted an exemption from certain HMR requirements. An exemption authorizes a company or individual to transport a hazardous material in a manner that differs from the HMR, so long as an equivalent level of safety and security is maintained. Exemptions allow an operator quickly to implement new technologies and to evaluate new operational techniques that often enhance safety and increase productivity. In addition, exemptions permit timely movement of materials in an emergency or under adverse transportation conditions.

We have issued a limited number of exemptions that permit the transportation of certain explosives by air that would otherwise be prohibited for such transportation, including Division 1.1 and 1.2 explosives. There are currently 23 exemptions that authorize the transportation of explosives that are otherwise prohibited for transportation by air. All but one of these exemptions has been issued to an operator that is subject to TSA security requirements applicable to aircraft with a maximum certificated takeoff weight of 12,500 pounds of more. As discussed above, the TSA security requirements include provisions for CHRCs for all flight crewmembers, restricted access to the cockpit during flight, and ground security measures. We anticipate that the vast majority of exemptions applicants seeking to transport explosives by air that would otherwise be prohibited for such transportation will be air carriers that are subject to the TSA security requirements, including requirements for CHRCs for flight crews.

Persons applying for and renewing exemptions that permit the transportation of explosives that are otherwise prohibited for air transportation will need to demonstrate that the exemption proposal maintains an equivalent level of safety, including security, as is required by transportation regulations. To this end, in this interim final rule, we are amending the procedural regulations for applying for an exemption in 49 CFR Part 107 to require applicants to certify compliance with transportation security laws and regulations. With respect to explosive materials that are otherwise forbidden for transportation by air, this will include a certification to RSPA that the carrier complies with all applicable TSA security requirements and that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation. Each exemption will require, as a condition of the exemption, that the holder be in conformance with applicable transportation security requirements, including the prohibitions in 18 U.S.C. 842(i), before loading and departure. Consequently, DOT and TSA security requirements apply to these exemption holders and the exemption holders are not subject to criminal enforcement under 18 U.S.C. 842(i) when transporting explosives in commerce. Explosives permitted for transportation by passenger or cargo-only aircraft under the HMR without an exemption are not subject to the security certification requirements.

RSPA has determined that the types and quantities of explosives permitted for transportation without an exemption by passenger or cargo-only aircraft under the HMR do not present a security risk sufficient to warrant application of the TSA background check requirements at this time to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). Moreover, TSA regulations applicable to airport security address the risk that unauthorized persons may gain access to explosives being transported by aircraft at major airports. We are continuing our assessment of the security risks posed by the transportation of explosives by aircraft and will take appropriate regulatory action, after public notice and comment, to address those risks. In light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to air shipments of explosives permitted for transportation without an exemption under the HMR.

The TSA security regulations, including background check requirements, apply to nearly all of the explosives otherwise prohibited for transportation by air that are transported by air under the terms of an RSPA exemption. An applicant for an exemption or an exemption renewal to transport such prohibited explosives will be required to certify that it complies with all applicable TSA security requirements as part of the exemption application process. Those few applicants for an exemption that are not subject to the TSA security requirements will be required to certify as part of the exemption application or renewal that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation.

VIII. DOT Determination Under 18 U.S.C. 845(a)(1)

As noted above, 18 U.S.C. 845(a)(1) provides an exception to the prohibited persons provisions in 18 U.S.C. 842(i) for ''any aspect of the transportation of explosive materials via railroad, water, highway, or air, which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.''

DOT is authorized by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) to designate material, including an explosive, as hazardous when transporting that material in commerce in a particular amount and form may pose an unreasonable risk to health, safety, or security. 49 U.S.C. 5103. DOT regulations applicable to the transportation of explosives by all modes include the classification, packaging, hazard communication, and operational requirements described elsewhere in this preamble and the driver licensing and qualification requirements established by FMCSA and incorporated into the HMR. Further, the HMR include specific requirements for security plans and training adopted in the HM–232 final rule. Under this final rule, the HMR also incorporate USCG and TSA security regulations applicable to the transportation of explosives in commerce.

As discussed in detail above, we assessed the security risks associated with the transportation in commerce of explosives as defined in 18 U.S.C. 841(c)–(f). Based on this assessment, we concluded that the most significant security risks are associated with the transportation of explosives shipments in quantities that require placarding

under the HMR. Thus, the HM–232 final rule requires persons who offer or transport shipments of explosives in all modes of transportation that must be placarded under the HMR to develop and implement security plans. Similarly, the TSA and FMCSA regulations implementing the USA PATRIOT Act provisions for commercial vehicle driver security, and incorporated into the HMR in this final rule, apply to drivers of commercial vehicles transporting explosives in amounts that require placarding.

Non-placarded shipments of explosives are not subject to these requirements. We have determined that non-placarded shipments do not present a sufficient security risk in transportation, at this time, to warrant application of the TSA background check requirements to persons who transport those shipments in commerce or to persons who possess those shipments incidental to transportation in commerce, including persons subject to 18 U.S.C. 842(i). We are continuing our assessment of the security risks posed by the transportation of non-placarded shipments of explosives in commerce and will take appropriate 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 assure 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.

DOT's decision as to whether a particular hazardous material, including an explosive, presents a sufficient security risk when transported in commerce to justify background check or other security requirements is determinative. The TSA and FMCSA regulations implementing the USA PATRIOT Act and incorporated into the HMR in this final rule apply to the transport of placarded amounts of explosives by motor vehicle within the meaning of 18 U.S.C. 845(a)(1), and the provisions of 18 U.SC. 842(i) do not apply to persons engaged in such transportation in commerce. DOT has determined that the transportation of non-placarded shipments of explosives does not present a sufficient security risk to justify detailed security background check or other requirements at this time; in light of this determination, the provisions of 18 U.S.C. 842(i) do not apply to persons engaged in such transportation in commerce.

For the transportation of explosives by vessel, USCG regulations, as incorporated into the HMR in this final rule, adequately address security risks associated with such transportation; in light of this determination, the provisions of 18 U.S.C. 842(i) do not apply.

Air carriers generally are prohibited from transporting hazardous materials in amounts that would require placarding if transported by highway or rail except under an exemption issued by RSPA. As noted above, DOT has determined that the transportation of explosives permitted for air transportation without an exemption under the HMR—including by persons listed in 18 U.S.C. 842(i)—does not present a sufficient risk to justify detailed background checks or other additional regulation at this time. As amended in this rule, the HMR requirements for explosives transported under exemption that would otherwise be prohibited for transportation by air require a certification that the applicant for the exemption complies with transportation security laws and regulations and also that none of the ''prohibited persons'' listed in 18 U.S.C. 842(i), as amended by SEA, will participate in the transportation. DOT will enforce the certification requirement for exemption holders. Thus, the DOT regulations adequately address the security risks associated with the transportation by aircraft of explosives in commerce at this time.

It should be noted that these DOT determinations related to the provisions of 18 U.S.C. 842(i) may be reassessed as we 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 we are evaluating the need to require further security enhancements on materials or categories of materials that present the most serious security risks in transportation. Because of the potential impact of such enhanced security requirements on the economic viability of the hazardous materials transportation industry, any additional security requirements should be developed through normal notice-and-comment procedures, unless security threats justify expedited or emergency rulemaking.

IX. Comments on This Interim Final Rule

This interim final rule imposes a new requirement for persons applying for an exemption under 49 CFR part 107. For such persons, this interim final rule requires a certification that the applicant is in compliance with all applicable security laws and regulations. The new certification requirement will not add significantly to an exemption applicant's compliance costs. Because this interim final rule addresses essential security requirements necessary to promote public safety, we determined that it is impracticable and contrary to the public interest to precede it with a notice of proposed rulemaking and an opportunity for public comment. In addition, based on this determination, and our desire to ensure the uninterrupted movement of explosives in commerce, we have decided to make this rule immediately effective. We are requiring compliance with the substantive provisions of this rule 30 days after publication of this rule in the **Federal Register**.

The Regulatory Policies and Procedures of DOT (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we encourage persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. We will consider all comments received on or before the closing date for comments. We will consider late filed comments to the extent practicable. This interim final rule may be amended based on comments received.

X. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under Executive Order 12866 and the regulatory policies or procedures of the Department of Transportation (44 FR 11034). This final rule imposes minimal new compliance costs on the regulated industry. It incorporates into the HMR FMCSA,

TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule imposes minimal new compliance costs on the regulated industry. It incorporates into the HMR FMCSA, TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR. I hereby certify that the requirements of this final rule will not have a significant impact on a substantial number of small entities.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local, and Indian tribe requirements but does not impose any regulation with substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector.

F. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0051, Preemption Requirements with 4,219 burden hours, which includes information collection estimates for the exemptions application process. We are in the process of requesting OMB approval for extension of this approval; on February 5, 2003, we published a notice under Docket No. RSPA–2003–14307 requesting comments on extension of this approval (68 FR 5972).

We estimate that an application for an exemption will require 5 hours to complete. An application to renew an exemption will require one hour to complete. The addition of a security certification as part of an exemption application will not add any appreciable time to this process. Therefore, we are not resubmitting the approval request to OMB. Comments on the potential paperwork burden that may be associated with the new security certification requirement should be submitted to the docket identified for this interim final rule or to Docket No. RSPA–2003–14307.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Environmental Assessment

There are no significant environmental impacts associated with this final rule. It incorporates into the HMR FMCSA, TSA, and USCG requirements concerning security requirements related to the transportation of hazardous materials, including explosives, and adds a security certification requirement for applicants for exemptions from the HMR.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Parts 107, 171, 176, and 177, as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Section 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. In § 107.105, paragraph (c)(10) is added to read as follows:

§ 107.105 Application for exemption.

* * * * *

(c) * * *

(10) A certification that the applicant is in compliance with transportation security laws and regulations. When a Class 1 material is forbidden for transportation by air except under an exemption (*see* Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft must also certify that no person within the

categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

■ 3. In § 107.109, paragraph (a)(6) is added to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(6) Include a certification that the applicant is in compliance with transportation security laws and regulations. When a Class 1 material is forbidden for transportation by air except under an exemption (see Columns 9A and 9B in the table in 49 CFR 172.101), an applicant for an exemption to transport such Class 1 material on passenger-carrying or cargo-only aircraft must also certify that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 5. In § 171.12a, paragraph (b)(19) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(19) Rail and motor carriers must comply with 49 CFR 1572.9 and 49 CFR 1572.11 to the extent those regulations apply, when transporting Class 1 materials.

PART 176—CARRIAGE BY VESSEL

■ 6. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 7. Section 176.7 is added to read as follows:

§ 176.7 Documentation for vessel personnel.

Each owner, operator, master, agent, person in charge, and charterer must ensure that vessel personnel required to have a license, certificate of registry, or merchant mariner's document by 46 CFR parts 10 and 12 possess a license, certificate or document, as appropriate.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 8. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. Section 177.804 is revised to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

Motor carriers and other persons subject to this part must comply with 49 CFR part 383 and 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

Issued in Washington DC on April 25, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–10828 Filed 5–2–03; 8:45 am]

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