

enhanced security for the products they manufacture and transport and have developed and implemented thorough and detailed security programs. We do not agree that the imposition of prudent, common-sense security measures will cause massive disruptions in the movement of hazardous materials. We recognize that the provisions proposed in the NPRM and adopted, with modifications, in this final rule, will impose new costs of doing business on both hazardous materials shippers and carriers. As discussed in the following sections, in this final rule we revised certain proposals in response to comments on the NPRM to increase the effectiveness and reduce potential costs impacts of the new security provisions.

Several commenters note that the security measures proposed in the NPRM would not have prevented the September 11th terrorist attacks, the 1993 attack on the World Trade Center, or the 1995 attack on the Murrah Building in Oklahoma City. Nowhere in the NPRM do we state that the proposed security requirements would have prevented past attacks. Rather, we discussed the September 11th terrorist atrocities to indicate the heightened risk of terrorism with which we all now live and the need to reassess and address security vulnerabilities in all areas of our public and private lives. The discussion of the attack on the Murrah Building was intended as an illustration of the devastating consequences that can result from a criminal or terrorist act involving hazardous materials and to provide an estimate of the economic costs of such an act. We cannot limit our actions on security to efforts to prevent terrorist attacks that have already occurred. It is incumbent on everyone responsible for the safety and security of the United States to proactively assess future terrorist threats and take actions to try to prevent future attacks. We believe that the new requirements in this final rule will enhance the security of hazardous materials in transportation and, thus, help to deter and prevent terrorists from using hazardous materials in the transportation system as weapons of destruction or intimidation.

B. Security Authority

Some commenters question whether RSPA is the appropriate agency to issue transportation security regulations. These commenters suggest that the Transportation Security Agency (TSA) or the proposed Department of Homeland Security would be better suited to issue transportation security-related regulations. One commenter points out that TSA has been given the responsibility for security in all modes

of transportation, and that TSA has been authorized to issue, rescind and revise such regulations as are necessary to carry out the functions of the Administration.

The HMR are promulgated under the mandate in § 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*, as amended by § 1711 of the Homeland Security Act of 2002, Pub. L. 107–296) that the Secretary of Transportation “prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce.” Section 5103(b)(1)(B) provides that the HMR “shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate.”

Hazardous materials shippers and carriers should be aware that this final rule is the first step in what may be a series of rulemakings to address the security of hazardous materials shipments. The joint RSPA–FMCSA ANPRM described above may result in one or more proposals to require specific security measures for hazardous materials that pose a significant security risk in transportation. In addition, TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule. We consult and coordinate with TSA concerning security-related hazardous materials transportation regulations and will continue to do so after TSA becomes part of the new Department of Homeland Security.

C. Industry Consensus Standards

One commenter suggests that we should work with the hazardous materials industry to develop consensus standards for hazardous materials transportation security. “Instead of implementing its proposals, RSPA should hold one or more public meetings to solicit recommendations from shippers, carriers, and other members of the interested public as to security enhancements, and as to regulatory approaches, that will accomplish more, and do so more efficiently.” (National Small Shipments Traffic Conference, Inc., and the Health and Personal Care Logistics Conference, Inc.) We appreciate this suggestion; indeed, we are aware that a number of industry associations have developed and disseminated recommendations for enhancing the security of hazardous materials and expect that they will form the basis for many individual company plans. However, we do not agree that a consensus-standards approach is appropriate for this rulemaking.

Consensus standards generally are specification standards; that is, they set forth specific requirements for achieving a regulatory goal. One of the goals of this final rule is to establish a performance standard for hazardous materials transportation security plans. Performance standards generally permit a regulated entity to determine the specific measures necessary to achieve compliance with the established performance goal. In the case of hazardous materials transportation security, the flexibility provided by a performance standard permits a company to implement a security plan that is tailored to its specific circumstances and operations.

A consensus-standards process is a lengthy process. It can take many months or even years for the parties developing such a standard to reach consensus on the appropriate measures to be implemented. The security threat is real and ongoing. We do not have the time to spend on development of a consensus standard for hazardous materials transportation security.

D. Registration Certificates

Currently, each motor carrier transporting certain classes or divisions of hazardous materials is required to file with RSPA a registration statement and pay an annual fee (49 CFR part 107). A Certificate of Registration (certificate), which includes a U.S. DOT Hazmat Registration Number, is then issued by RSPA to the carrier. A carrier must display its registration number on a document carried on each motor vehicle, but need not maintain a copy of the certificate itself on each vehicle. The NPRM proposed to require each motor carrier registered with RSPA to maintain a copy of its current registration certificate on each motor vehicle used to transport hazardous materials. We suggested that the actual certificate could assist State and local law enforcement personnel to determine whether a carrier is a legitimate transporter of hazardous materials.

Commenters overwhelmingly oppose this proposal, primarily because the registration system as currently structured is not designed to make determinations as to the legitimacy of registrants. “[A] valid registration certificate is no indication that a transporter is ‘legitimate.’ It is not an endorsement of regulatory compliance. It is simply proof of payment.” (Institute of Makers of Explosives) Commenters also note that the registration system has no relevance to transportation security. “[T]he act of registering and obtaining a DOT registration certificate and number * * * does nothing to ensure that the