

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