

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