

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.S.C. 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,