

securely transport explosives and hazardous materials. TSA does not believe it is advisable to penalize former members of the military for actions that would not necessarily impact a civilian CDL holder's ability to obtain or keep a hazardous materials endorsement. Also, it is important to note that an individual may be convicted of a serious felony and not be dishonorably discharged from military service. For these reasons, TSA has concluded that a careful analysis of the facts underlying a dishonorable discharge is necessary before concluding that an individual should be disqualified for reasons of transportation security. Therefore, TSA will review the underlying records to determine what action gave rise to a dishonorable discharge and take appropriate action. TSA will issue a notice of threat assessment for any individual convicted of a serious felony, at least those already included in the rule as a disqualifying criminal offense. For others, TSA will assess whether the underlying activity bears on an individual's ability to perform CDL responsibilities.

Finally, TSA is using a definition of hazardous materials that includes explosives, which is based on DOT's definition, as required by the USA PATRIOT Act.<sup>17</sup> A detailed discussion of the manner in which explosives and hazardous materials are regulated by DOT and ATF is necessary to understand the scope and rationale of this rule.

The hazardous material regulations (HMR) are issued by the Research and Special Programs Administration (RSPA), an agency within DOT. Under the HMR, which are based on the internationally recognized United Nations (UN) 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.

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 ships 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 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 a different class of

<sup>17</sup> Paragraph (b) of Section 1012 describes hazardous materials as any material defined as a hazardous material by the Secretary of Transportation and any chemical or biological material or agency determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the U.S.