

order to renew or obtain authority to transport hazardous materials. See 49 CFR part 1572. If an individual has a criminal conviction for certain disqualifying offenses within prescribed time periods, he or she is not granted access to the secured area or granted authority to transport hazmat in commerce.

TSA is authorized to complete background checks on individuals in all modes of transportation and to issue identification media that capture the results of the background check. TSA is currently evaluating the need for and nature of background checks on transportation workers, in addition to those in the aviation and trucking industries, who are in a position to cause or control serious security-related events. TSA is taking a risk-based approach to security regulations so that the government and private sector can prioritize resources based on threat information, vulnerability assessments, and criticality determinations. TSA is engaged in such an analysis concerning background checks for transportation workers in the maritime and rail industries. TSA continues to evaluate the need for additional regulations concerning this population and potential threats, and may issue additional security requirements concerning railroad employees engaged in the transportation of hazmat. A comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. TSA evaluated the measures currently required under DOT hazmat and rail regulations, the nature of rail operations, and the security enhancements completed by the railroads, and has determined that, for the present, they adequately address the security concerns of which it is aware.

V. Transportation by Rail

FRA administers the Federal railroad safety laws (49 U.S.C. chapters 201–213), which encompass all areas of railroad safety (see 49 U.S.C. 20103), including security. The terrorist attacks of September 11 and subsequent indications of possible terrorist threats specifically directed at the railroad industry indicate the need to assess the security of hazmat shipments, including individuals in a position to have access to sensitive information regarding, or the ability to control the movement of, explosives and other hazmat. FRA has worked closely with TSA, the railroad industry, and RSPA on rail security issues since September 2001.

The nation's railroads have taken several voluntary steps to enhance

security since September 11, 2001. The Association of American Railroads (AAR) established a security task force immediately after the attacks. The task force created action teams to assess vulnerabilities in several critical areas: physical assets, information technology, chemicals and hazardous materials, defense shipments, train operations, and passenger security. AAR worked with chemical industry associations and security consultants to assess terrorism risks in these areas. This risk analysis provided the basis for the industry's security management plan, which was presented to DOT and TSA.

The security management plan, which is currently being implemented, includes a uniform system for communicating threat levels throughout the industry, progressively rigorous countermeasures to be taken depending upon the threat level, and a round-the-clock operations center linking railroad control centers with law enforcement agencies. Among the activities the industry is taking to implement the plan are increasing the awareness of employees about potential security threats, limiting publication of information about sensitive shipments, periodically testing security systems, using railroad police and private security guards to monitor critical infrastructure locations, restricting access to railroad facilities, using video surveillance of hazardous materials shipments in certain areas, conducting security evaluations of specific facilities, and the temporary rerouting or suspension of certain hazmat shipments in the event of a credible terrorist threat. These security enhancements undertaken by the major railroads have helped to reduce the risk that explosives or other hazardous materials can be used for terrorist purposes while in railroad possession.

On May 23, 2003, the General Accounting Office (GAO) issued a report titled "Rail Safety and Security—Some Actions Already Taken to Enhance Rail Security, but Risk-Based Plan Needed" (GAO-03-435). GAO found that, since September 11, 2001, the rail and chemical industries have taken steps to improve the security of rail shipments of hazardous materials. The report describes the rail industry's development and implementation of its security plan and actions taken thus far by DOT and TSA to address rail security issues. The report does not address the security issues related to railroad employees that are the subject of this notice, nor does it include any reason to question the determinations in this notice concerning the current need for further regulation to address the risk

posed by the transportation of explosives by rail by persons described under section 842(i).

GAO recommends that DOT and DHS work together to develop a risk-based plan specifically to address rail security, including timeframes for actions. As noted elsewhere in this notice, DOT and TSA are in the process of evaluating the need for additional Federal regulations to address rail transportation security. We agree that a comprehensive, risk-based approach will facilitate the development of standards that are narrowly tailored to suit the industry and the threat. Recently adopted regulations, such as the HM-232 and USA PATRIOT Act final rules, as well as initiatives currently in progress, incorporate a risk management approach to security regulation.

1. Process for Handling Hazardous Materials Via Rail

A discussion of the process by which explosives and other hazmat are transported by rail is necessary to analyze security risks and appropriate countermeasures. More than 75 percent of hazardous materials moving by railroad moves in bulk, most commonly in a tank car or covered hopper car. Hazardous materials moving by rail are loaded into a tank car, hopper car, boxcar, trailer, or intermodal container by the shipper (or the shipper's agent). The product is then delivered to the railroad for movement to its destination. Railroad employees do not load hazardous materials into rail cars or containers or unload them at their destination.

To arrange for the transportation of a hazardous materials package, a shipper will contact a railroad freight agent. At this time, the shipping description information—the contents and format of which is prescribed by the HMR—is passed along to the carrier, along with emergency response information, origin pickup point, destination, and the car reporting mark and number. The freight agent, or a shipping clerk, enters this information into the carrier's records, and orders are generated for pickup by either a switch or a road crew, depending on the origin location and its proximity to a terminal. The shipping information may be transmitted orally, but the regulations require a document from the shipper, sent either in hard copy or electronically. The shipper must certify that the materials to be shipped have been classified, packaged, and labeled appropriately and are in proper condition for transportation according to the applicable DOT standards.

The shipper must label non-bulk packages to properly disclose their