



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

NOV 20 2003

Mr. Kraig R. Naasz
President
The Fertilizer Institute
820 First Street, N.E., Suite 430
Washington, D.C. 20002

Dear Mr. Naasz:

This responds to an emailed inquiry from your organization concerning the applicability of the security plan requirements in Subpart I of Part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to agricultural retailers. Specifically, you ask whether an agricultural retailer is required to verify that a customer has a security plan.

The security plan requirements in Subpart I of Part 172 apply to persons who offer for transportation or transport certain hazardous materials in commerce. An agricultural retailer who sells agricultural products such as fertilizer or pesticides to a farmer is an offeror for purposes of the HMR and, thus, must develop and implement a security plan if it sells hazardous materials in the types and amounts listed in § 172.800(b). In accordance with § 172.802, the security plan must address personnel security, unauthorized access, and *en route* security.

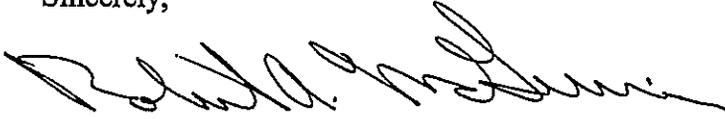
The regulations do not require an agricultural retailer to verify that its customers have a security plan nor do the regulations require the retailer to collect or review customer security plans. However, the retailer's security plan should indicate the measures it has taken to address *en route* security. For example, an agricultural retailer may want to suggest to his customers that they take certain precautions while transporting the hazardous materials from the retailer's facility to the customer's facility. Such precautions could include: (1) to the extent practical, minimizing transit time by going directly from the retailer to the destination; (2) to the extent practical, preventing unauthorized persons from gaining access to the shipment by monitoring the shipment during stops, locking the shipment inside the transport vehicle, securing the shipment to the transport vehicle, and/or securing closures on the container(s) or package(s); and (3) reporting suspicious incidents or events to local law enforcement officials and/or the Federal Bureau of Investigation.

The Research and Special Programs Administration has developed a fact sheet and a sample security plan (copies enclosed) to assist farmers to comply with the security plan requirements in Subpart I of Part 172. To address security issues associated with the transportation of

products to the customer's facility, an agricultural retailer may want to provide the customer with copies of the fact sheet and the sample security plan.

I hope this information is helpful. If you have additional questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McGuire". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert A. McGuire
Associate Administrator for Hazardous
Materials Safety

Enclosures

Gorsky, Susan

From: Pam Guffain [PGuffain@tfi.org]
Sent: Monday, November 17, 2003 10:14 AM
To: Gorsky, Susan
Subject: Per our discussion

Follow Up Flag: For Your Information
Flag Status: Flagged

Dear Susan,

Below you can read the ARA press release from Friday. Like you, TFI would have preferred to handle this issue differently. However, now that this has been released I feel it is very important to set the record straight so that retailers won't be crazy with this issue (if that is possible).

I would appreciate an official letter of interpretation regarding verification of security plans and that there is no "regulatory requirement" that retail dealers check, verify, collect, or anything else, farmer plans." You might suggest in the letter that retail dealers can simply hand their customer the DOT documents (fact sheet, generic plan, etc.) and suggest that if they don't have a plan that they may want to consider the DOT documents. It might also be helpful to mention something about legal liability (like since there isn't a regulatory requirement DOT would not use this in an enforcement).

Does this make sense? I would like to have the letter addressed to Kraig R. Naasz, President, The Fertilizer Institute, 820 First Street, N.E., Suite 430, Washington, D.C. 20002.

If you can email or fax it that would be wonderful.

Thanks,

Pam

Pam Guffain
Director, Government Relations
The Fertilizer Institute
820 First Street, N.E., Suite 430
Washington, D.C. 20002
202-515-2704 (direct)
202-962-0577 (fax)
202-257-3043 (cell)

-----Original Message-----

From: Alicia Fitzpatrick [mailto:alicia@aradc.org]
Sent: Friday, November 14, 2003 4:24 PM
Subject: ARA MEMBER ALERT

<<DOT Sample Farmer Security Plan.doc>> <<DOT Ag Security Flyer.pdf>>
<<DOT HAZMAT SECURITY brochure.pdf>>

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MEMBERSHIP ALERT!

Contact:
RELEASE
Alicia Fitzpatrick 202-457-0825
2003

FOR IMMEDIATE

November 14,

New DOT HAZMAT Transportation Rule:
Growers Now Need a Security Plan

As ARA has consistently reported to our members, the Department of Transportation (DOT) has implemented new Hazmat restrictions that were included in a final rule issued earlier this year (HM 232). The new DOT regulations took effect on September 25, 2003. According to DOT officials, growers who transport HAZMAT materials above certain weight and volume criteria will now need a security plan. In addition, growers may be required to place placards on their vehicles depending on the types and quantities of materials they are transporting. (See attached DOT documents.)

The interpretation of this rule covers transportation and shipping of Hazmat to include many pesticides and some common fertilizers that most retailers sell. For example a farmer transporting anhydrous ammonia (Division 2.2 with TIH hazard) or ammonium nitrate fertilizer (Division 5.1) that is more than 119 gallons in a single container OR more than 1,000 pounds in multiple containers in a single shipment must have a security plan and placard their vehicle.

In an exercise of caution, ARA strongly suggests that retailers of pesticides and fertilizers that are designated as HAZMAT, review this new rule in its entirety and consult with local counsel regarding the state law implications. Some issues to consider include potential establishment of procedures related to grower compliance with the new rule and potential liability related for failure to institute procedures.

Because this is an issue involving state law, which is different in each jurisdiction, ARA is unable to provide you with legal advice and the comments expressed in this Member Alert are limited to general commentary on the new regulation. However, attached is information from DOT regarding the applicability of the security plan requirements (FACT SHEET AND SAMPLE SECURITY PLAN) for growers. We also recommend that you review the final rule on HM 232 (<<http://www.tanktruck.net/pdf/hm%20232.pdf>>) and DOT's website for additional information. Important links to DOT's website regarding this issue are the following: general DOT web page on HAZMAT security at <http://hazmat.dot.gov/hmt_security.htm> and Frequently Asked Questions page at <<http://hazmat.dot.gov/pubtrain/Security%20Q%20&%20A.pdf>>.

If you have further questions call ARA at 202-457-0864.

The National Voice of the Ag Retailer

HAZARDOUS MATERIALS TRANSPORTATION SECURITY REQUIREMENTS FOR FARMERS, RANCHERS, AND PRODUCTION AGRICULTURAL OPERATIONS



Photos courtesy of USDA NRCS

Beginning September 25, 2003 agricultural producers who ship or transport certain hazardous materials in quantities that require placards must now develop and implement a transportation security plan. This new Federal Department of Transportation rule affects transportation of hazardous materials needed to support commercial activities like farming and ranching. Its aim is to deter terrorist and other illegal acts while at the same time limiting a producer's exposure to liability in the event that an illegal act occurs.

For many years diamond-shaped signs, called placards, have been required on vehicles transporting certain types and quantities of hazardous materials. Placards provide first-on-scene emergency responders with the information necessary to quickly assess an accident situation from a distance, reducing the possibility of someone approaching the accident site without wearing protective clothing or equipment. Fire fighters, police, and other responders can thus avoid unnecessary exposure to a dangerous, perhaps life-threatening, material. Placards indicate to emergency responders how to safely and appropriately handle the accident, mitigate the threat of environmental damage, and conduct life-saving operations. Examples of materials for which a placard is required include pesticides; fertilizers such as anhydrous ammonia or ammonium nitrate; fuels such as gasoline, diesel, and propane; and explosives such as dynamite and detonators.

The following chart lists examples of the types and quantities of hazardous materials that require a placard and, thus, a transportation security plan.

Material	Quantity	Placard
Dynamite (Division 1.1 explosive)	Any Amount	
Detonators (Division 1.4 explosive)	More than 1,000 lbs in a single shipment	
Propane (Division 2.1 material)	More than 119 gallons in a single container OR More than 1,000 pounds in multiple containers in a single shipment	Propane 
Anhydrous ammonia (Division 2.2 with TIH hazard)		 Anhydrous Ammonia
Gasoline (Class 3)		Gasoline 
Pesticides/herbicides that bear a DOT poison label (Division 6.1)		 Pesticides/ Herbicides
Ammonium nitrate fertilizer (Division 5.1)		Ammonium Nitrate Fertilizer 
Diesel fuel (Class 3)	More than 119 gallons in a single container	

If you do not ship or transport hazardous materials in amounts that require placards you do not need a security plan. Also, if suppliers deliver hazardous materials to your operation, it is their responsibility to have a plan.

If the security plan requirement applies your operation, the plan must include measures to address personnel, unauthorized access, and *en route* transportation issues.

Personnel Security If you use employees to pick up and transport placarded hazardous materials from your supplier to your farm, your security plan must include measures to confirm information provided by the employee on his/her job application or resume. Note that this requirement only applies to employees hired after September 25, 2003, who are involved in the actual shipment or transportation of the materials covered by the plan.

Unauthorized Access Your security plan must include measures to protect against unauthorized access by using locks or physical/visual observation. For example, if you stop on the way back to your farm for a snack or a meal, you should keep your vehicle in sight and/or lock or secure the material in the vehicle.

Security En Route Your security plan must include measures to ensure the security of the materials between the time you pick them up and the time you arrive at your farm. In this case, the most effective security measure would be to minimize the time that the shipment is in transit by going directly from your supplier to your farm.

Remember:

- ▶ Your plan can be tailored to your operation.
- ▶ Your plan will not be collected by or kept on file at State or Federal DOT offices.
- ▶ Your plan will be enforced by State or Federal DOT as part of the general enforcement program for the HAZMAT carrier and shipper community but *not as part of any roadside stop inspections.*

You may have a plan in place currently that meets these requirements, such as one drawn up in accordance with agribusiness guidelines issued by The Fertilizer Institute, the Agricultural Retailers Association, CropLife America, or other industry groups or associations, or a plan implementing safety and security measures for pesticides in accordance with Environmental Protection Agency regulations.



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For further information, contact the HAZARDOUS MATERIALS INFORMATION CENTER at 1 (800) HMR-45



TRANSPORTATION SECURITY EVALUATION & PLANNING FOR FARMERS, RANCHERS, & PRODUCTION AGRICULTURAL OPERATIONS

Background

Farmers, ranchers and other agricultural operations can better secure the safe transport of hazardous materials, deter terrorist and illegal acts involving hazardous materials, and reduce their own exposure to liability by developing and implementing security plans that conform to Department of Transportation (DOT) requirements in 49 CFR Part 172, Subpart I. Agricultural operations commonly use many materials that are potential targets for terrorism and illegal activities, including: explosives like dynamite or detonators; certain poisonous pesticides; fertilizers like anhydrous ammonia and ammonium nitrate; and fuels like gasoline, diesel, and propane.

Examples of Types and Quantities of Materials Requiring Transportation Security Plan (DOT Hazard Class Indicated in Parentheses)

Material	Quantity
Dynamite (Division 1.1 explosive)	Any amount
Detonators (Division 1.4 explosive)	More than 1,000 pounds in a single shipment
Propane (Division 2.1 material) Anhydrous ammonia (Division 2.2 with TIH hazard) Gasoline (Class 3) Ammonium nitrate fertilizer (Division 5.1) Pesticides or herbicides that bear a DOT poison label (Division 6.1)	More than 119 gallons in a single container OR More than 1,000 pounds in multiple containers in a single shipment
Diesel fuel (Class 3)	More than 119 gallons in a single container

To assist agricultural operations in assessing risk and transporting hazardous materials safely, this sample security plan contains three important components -- personnel security, unauthorized access, and security while in transit. Most importantly, the plan conforms to DOT security requirements (49 CFR Part 172, Subpart I) for persons who offer or transport hazardous materials.

Assessing Your Risk

Explosion and Fire. Hazardous materials that are explosive, flammable or combustible can be used to attack large groups of people, buildings and critical infrastructure. Examples include explosives and bulk quantities of gasoline, diesel fuel, or propane. In addition, bulk quantities of ammonium nitrate and ammonium nitrate fertilizers can be used to make explosives. For agricultural operations transporting these hazardous materials, the greatest security risk is that a shipment may be hijacked or stolen.

"Toxic by Inhalation" Hazards (TIH). TIH materials, either as gases or volatile liquids, can be

used to attack people in confined spaces such as buildings or subways. Bulk quantities present dangers to large areas and could affect a significant number of people. In agriculture, TIH includes the fertilizer anhydrous ammonia. For farmers transporting TIH materials, the greatest security risk is that a shipment may be hijacked or stolen or attacked while traveling in a populated area.

Poisonous Liquids or Solids. Materials with oral toxicity (i.e., poisonous if consumed) can be used to attack food or drinking water supplies. Also, liquids that are toxic via the inhalation of their vapors can be used to attack groups of people indoors or outdoors. In agriculture, certain pesticides are considered toxic and are labeled by DOT as "Poisons." For agricultural operations transporting toxic/poisonous materials, the greatest security risk is that a shipment may be hijacked or stolen or illegally released while traveling in a populated or vulnerable infrastructure area.

Hazardous Materials Transportation Security Plan for Agricultural Operations

Agricultural Operation Name: _____

Operation Contact Name Preparing Plan: _____

Town/Community of Operation: _____

Phone Number(s) of Operation & Contact(s): _____

Fully complete the following information based on this agricultural operation's transport of the hazardous materials:

This agricultural operation transport(s) the following materials for agricultural use in amounts that require placarding:

- Explosives

Any amount of:

- Dynamite

More than 1,000 pounds (total, if in multiple containers) in a single shipment of:

- Detonators/Blasting Agents

- Flammable/Combustible Liquids or Gases

More than 119 gallons in a single container OR More than 1,000 pounds in multiple containers in a single shipment of:

- Gasoline
- Propane/Liquefied Petroleum Gas
- Butane
- Ammonium nitrate fertilizers

More than 119 gallons in a single container of:

- Diesel Fuel
- Fuel Oil

- Toxic By Inhalation

More than 119 gallons in a single container OR More than 1,000 pounds in multiple containers in a single shipment of:

- Anhydrous Ammonia

- Poisonous/Toxic Solids or Liquids with DOT "Poison Label"

- Pesticides/Herbicides (List below)

Personnel Security

To the extent feasible and practical, references, employment history and immigration status will be checked for personnel hired after September 25, 2003, who will be responsible for transporting these listed hazardous materials from any supplier to this operation.

Personnel responsible for transporting the listed hazardous materials from any supplier to this agricultural operation will be instructed on how to adhere to this security plan.

Unauthorized Access

If it is necessary to stop during transportation of the listed hazardous materials, authorized personnel of this agricultural operation's (operation personnel) will to the extent practical prevent unauthorized persons from gaining access to the shipment by monitoring the shipment during the stop, locking the shipment inside the transport vehicle, securing the shipment to the transport vehicle, and/or securing closures on the container(s) or package(s).

If it is necessary to stop during transportation of the listed hazardous materials, operational personnel will check the vehicle and the shipment after the stop to make evaluate whether tampering or illegal activity has taken place.

Operation personnel will report suspicious incidents or events to local law enforcement officials and/or the FBI as soon as is practical, using the contact information supplied below.

Local Police:

Local Fire/Emergency Rescue/HazMat Response:

Nearest FBI Field office:

Security During Transport

Operation personnel will to the extent practical minimize transit time for the listed hazardous materials by going directly from the supplier to the operation.

Operation personnel will report suspicious incidents or events to local law enforcement officials or the FBI as soon as is practical, using the contact information supplied above.

For your records and personnel use, keep a copy of this plan in an accessible, but secure location at the agricultural operation.

Prepared By: _____ **Date:** _____

Revised/Edited/Reviewed by: _____ **Date:** _____