



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

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

FEB 27 2004

Mr. Jim Smith
President, Florida Petroleum Marketers and
Convenience Store Association
209 Office Plaza Drive
Tallahassee, Florida 32301

Dear Mr. Smith:

This responds to your email request for clarification of the hazardous materials transportation security requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you are concerned about potential conflicts involving local zoning regulations.

A facility owner should work with local zoning authorities when planning any physical changes to the facility, such as improved fencing or lighting, that the operator identifies as necessary to enhance the security of hazardous materials being prepared for transportation at the facility. We are confident that local zoning boards share our concern about the security of hazardous materials at facilities within their jurisdictions and will assist those facilities to identify and implement security enhancements.

The hazardous materials transportation security regulations are in Subpart I of Part 172 of the HMR. In accordance with § 172.800, each person who offers for transportation or transports in commerce one of more of the following hazardous materials must develop and implement a security plan:

- (1) A highway route-controlled quantity of a Class 7 (radioactive) material;
- (2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;
- (3) More than one L (1.06 qt) per package of a material poisonous by inhalation that meets the criteria for Hazard Zone A;
- (4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

- (5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class;
- (6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; and
- (7) A quantity of hazardous material that requires placarding under the provisions of subpart F of this part.

The security plan must include an assessment of possible transportation security risks for shipments of the covered hazardous materials and appropriate measures to address the assessed risks. At a minimum, the security plan must address personnel security, unauthorized access, and en route security issues (see § 172.802).

As noted above, the security plan requirements in the HMR apply to persons who offer and to persons who transport the listed hazardous materials in commerce. For a facility at which hazardous materials are manufactured, handled, or stored, the security plan must include measures to prevent unauthorized access to the listed hazardous materials during the time they are prepared for transportation. The HMR do not prescribe specific measures to prevent unauthorized access; an offeror must identify appropriate security measures based on such factors as the types and amounts of hazardous materials involved and the characteristics of the facility in question. The following list is intended as guidance to provide some examples of security measures that a facility may wish to consider as it develops a security plan:

- (1) Add security guards and increase off-hours patrols by security or law enforcement personnel.
- (2) Improve fencing around the facility. Check the adequacy of locks and other protective equipment. Consider equipping access gates with timed closure devices. Conduct frequent inspections.
- (3) Install additional lights, alarm systems, or surveillance cameras.
- (4) Restrict access to a single entry or gate.
- (5) Place limits on visitor access; require visitors to register and show photo identification and have someone accompany visitors at all times.
- (6) Require employees to display identification cards or badges.
- (7) Conduct security spot checks of personnel and vehicles.

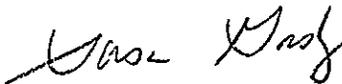
(8) Secure hazardous materials in locked buildings or fenced areas. Have a sign-out system for keys.

(9) Secure valves, manways, and other fixtures on transportation equipment when not in use. Lock all vehicle and delivery trailer doors when not in use. Secure all rail, truck, and barge containers when stored at your location. Use tamper-resistant or tamper-evident seals and locks on cargo compartment openings.

(10) Periodically inventory the quantity of hazardous materials you have on site in order to recognize if a theft has occurred.

I hope this information is helpful. Please contact me if you have additional questions.

Sincerely,



Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards

Gorsky, Susan

From: Jim Smith [Jim@fpma.org]
Sent: Wednesday, January 28, 2004 4:30 PM
To: Gorsky, Susan
Subject: Security of hazardous materials

Ms. Gorsky,

My name is Jim Smith and I am the President of the Florida Petroleum Marketers and Convenience Store Association. I received your contact information from a member, Steve DeLuca.

His issue, and no doubt the issue of others in similar situations, is trying to comply with federal guidelines for security of petroleum bulk plants and trucks. Every member of the petroleum industry both here in Florida and around the country realize the importance of compliance where hazardous materials are concerned. In his effort to do what he deemed necessary to secure his facility, Mr. DeLuca installed a new fence around his bulk plant. He clearly felt after a personal review and conversations with local law enforcement officials that the installation of a six foot high fence would add to his overall compliance effort. He however is now being charged a daily fine by his local government officials for installing a fence higher than four feet.

I realize that RSPA did not identify a specific height requirement for fences in the guidelines but the language used was clearly intended to provide the facility owner with some discretion for compliance. I believe if a facility owner thought he needed a ten foot high fence that too would be permissible under your guidelines.

What I would like for both Mr. DeLuca, and my other members as well, is a generic letter from RSPA addressing the necessity of facility operators doing everything possible to prevent a terrorist act using hazardous materials, and encouraging local governments to make reasonable adjustments to permissible fence heights where these products are stored. I will make your letter available to all of my members and also to local governments if they choose to include it in cases where variances are granted for fence construction.

Thank you for your consideration in this matter and should you choose to communicate via an alternative to e-mail my mailing address is FPMA 209 Office Plaza Drive Tallahassee, Fl. 32301. My fax is (850) 877- 5178 you have my e-mail address at the top of this correspondence and you may access our association web site at www.fpma.org.

Jim Smith