



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

MAR 1 1 2019

Mr. William Norris
Idaho Power Company
1221 West Idaho Street
Boise, ID 83702

Reference No. 18-0137

Dear Mr. Norris:

This letter is in response to your October 30, 2018, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to security requirements in Part 172. You cite a final rule entitled "Risk-Based Adjustment of Transportation Security Requirements" published on March 9, 2010 [75 FR 10973] under Docket No. PHMSA-06-35885 (HM-232F) that states risk management systems are intended to reduce potentially catastrophic consequences. You note that this language presents challenges when determining the appropriate measures to implement based on the assessed risk. Specifically, you ask whether it is the Pipeline and Hazardous Materials Safety Administration's intent to "prevent" or "protect against" theft of high security sensitive materials while in transportation as both terms are used in the final rule.

The HMR require that a security plan 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). However, the HMR do not distinguish between "preventing" incidents and "protecting against" incidents involving hazardous materials transportation. Therefore, a security plan is expected to address both preventative and protective measures.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

T. Glenn Foster
Chief, Regulatory Review, and Reinvention
Standards and Rulemaking Division

Andrews
18-0137

January, Ikeya CTR (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, November 01, 2018 10:22 AM
To: Hazmat Interps
Subject: FW: Form submission from: Contact Form

Hello Alice and Ikeya,

Below is a Request for Letter of Interpretation.

Thanks,

Jonathon, HMIC

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

From: DOT.gov CMS Notifications
Sent: Tuesday, October 30, 2018 10:36 AM
To: PHMSA Webmaster <PHMSAWebmaster@dot.gov>
Subject: Form submission from: Contact Form

Submitted on Tuesday, October 30, 2018 - 10:35 Submitted by anonymous user: 63.233.61.196 Submitted values are:

==Contact Information==

Name: William Norris
Professional Organization: Idaho Power Company
Business Email Address: bnorris@idahopower.com
Business Telephone Number: 2083882622
Business Fax Number:

==Message==

Type: Hazmat Safety
Please Enter Your Question/Comment:

I have a question regarding the intent of the regulations found in 49 CFR 172.800 and 802. Specifically, a question related to whether the "intent" of the HMR is to "prevent or protect against" theft of high security sensitive materials while in transportation.

I specifically draw attention to the March 9, 2010 Federal Register (Vol. 75, No. 45, Page 10988) whereby the text of the discussion speaks to the HMR system being "a risk management system" (column 1 first sentence) and goes on to say in column 2 1st sentence "...the HMR are intended to reduce the potentially catastrophic consequences..." This language could present challenges when trying to determine what measures may be appropriate to implement based on the assessed risk. In the

security industry the term "protect against" is categorically used to define the measures used to prohibit unauthorized access. Even the best and most advanced security measures cannot "prevent" someone from accessing the materials.

Below are excerpts from the page in reference:

"The security plan requirements in Subpart I of Part 172 of the HMR [Hazardous Materials Regulation] are intended to reduce the potentially catastrophic consequences, including adverse environmental consequences of a criminal or terrorist incident involving hazardous materials in transportation."

The FR goes on to say, "...include an assessment of possible transportation security risks and appropriate measures to address the assessed risks."

The word "prevention" is used in the following context within the FR, "The hazardous material regulatory system is a risk management system that is [prevention-oriented] and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release."

Two words/phrases from the previous paragraph do not correlate "prevention-oriented" and "reducing."

My specific question is, are these requirements designed to "prevent" or "protect against?"

Mailing Address:
1221 West Idaho St.
Boise, Idaho 83702

The results of this submission may be viewed at:
<https://www.phmsa.dot.gov/node/16716/submission/7391>