



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

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

JUL 29 2003

Mr. Michael Ritchie  
Minnesota Department of Transportation  
Office of Freight and Commercial Vehicle  
Operations  
1110 Centre Pointe Curve, MS.420  
Mendota Heights, MN 55120

Ref. No.: 03-0173

Dear Mr. Ritchie:

This responds to your request for clarification regarding the new security plans requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), as they apply to government agencies.

On March 25, 2003, a final rule was published in the **Federal Register** [68 FR 14510] entitled "Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials", establishing new requirements to enhance the security of hazardous materials transported in commerce. The final rule was effective March 25, 2003. Under the final rule, shippers and carriers of certain highly hazardous materials must develop and implement security plans, and assure that their employee training includes a security component. A security plan must be developed and implemented by September 25, 2003.

You indicated that the preamble (HM-232) states that shippers and carriers subject to the registration requirements in Part 107 of the HMR or who offer or transport select agents and toxins regulated by the CDC must develop and implement security plans. One of the State's county officials pointed out that government agencies are excepted from Part 107 registration requirements, and thus would be excepted from the new Subpart I of Part 172.

You have spoken to several specialists in this Office who indicated that the new requirements for Security Plans, Subpart I of Part 172, of the HMR apply to government agencies when they offer one or more of the materials covered in § 172.800(b) for transportation in commerce. You stated that many governmental agencies offer hazardous materials to commercial transporters, and that the definition of hazmat employer in § 171.8 includes government agencies and their employees when they cause hazardous material to be transported or shipped in commerce. Therefore, you asked questions, as follows:



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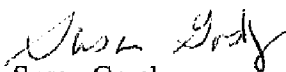
- Q1. If a government agency or Indian tribe offers any of the types or quantities of hazardous materials referenced in § 172.800(b)(1) through (7) to a commercial transporter, must that agency create and implement a security plan conforming to the requirements of Subpart I?
- A1. Yes. Each person who offers for transportation in commerce or transports in commerce one or more of the materials listed in § 172.800(b)(1) through (7) must develop and adhere to a security plan for hazardous materials that conforms to requirements of Subpart I of Part 172, to include a government agency or Indian tribe.
- Q2. If a government agency is a hazmat employer as defined, must they provide security awareness training to all hazmat employees as required in § 172.704(a)(4)?
- A2. Yes. No later than the date of the first scheduled recurrent training after March 25, 2003, and in no case later than March 24, 2006, each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. The training must also include a component covering how to recognize and respond to possible security threats. After March 25, 2003, a new hazmat employee must receive the security awareness training within 90 days after employment.
- Q3. If a government agency is required to create a security plan under the provisions of the new Subpart I of Part 172, must that agency provide in-depth security training as required by § 172.704(a)(5) by December 22, 2003?
- A3. Yes. A hazmat employee's in-depth security training, as prescribed in § 172.704(a)(5), concerning the security plan and implementation must be accomplished by December 22, 2003.
- Q4. Must all hazmat employees of a person required to have a security plan in accordance with Subpart I of Part 172 receive in-depth security training, or can the in-depth training be provided only to those employees that have access to the materials covered by the security plan?
- A4. Although a hazmat employer may decide to include all hazmat employees, the requirement for in-depth security training is limited to applicants for hazmat employee positions that involve access to or handling of the hazardous materials covered by the security plan. This would not include persons whose sole responsibility, for example, is preparing shipping documentation, or persons who manufacture, maintain, or requalify packagings.

For your information, as stated in the preamble, pg. 14515, first column, our intention in the NPRM was for those shipments that are listed as triggering the registration requirements in Subpart G of Part 107 to be subject to security plan requirements, not for every shipment transported by a registered

entity or every facility operated by a registered entity. This final rule clarifies that "persons who offer for transportation or transport any of the materials listed in Subpart G of Part 107 or a select agent or toxin regulated by the CDC" must develop and adhere to security plans applicable to the listed materials.

I hope this information is helpful. If we can be of further assistance, please contact us.

Sincerely,



Susan Gorsky,  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards

Engrum

§172.704

§172.800

Training/Security Plans  
03-0173

June 18, 2003

Mr. Edward Mazzulo  
Director, Office of Hazardous Materials Standards  
Research and Special Programs Administration  
USDOT  
DHM-10  
400 Seventh St. S.W.  
Washington, DC 20590-0001

Dear Mr. Mazzulo,

On March 25, 2003, RSPA issued *HM-232 Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials* as a final rule. This rule created the new Subpart I in 49 CFR Part 172, and revised the hazardous materials training requirements in Subpart H of Part 172. We would like clarification on the applicability of these new and revised regulations to government agencies.

49 CFR 172.800 (b) states that each person who offers for transportation in commerce, or transports in commerce one of the materials covered in §172.800 (b) (1) through (7), must develop and adhere to a security plan conforming to Subpart I. §171.8 defines "person" and that definition includes government agencies or Indian tribes that transport hazardous material to further a commercial enterprise, or offer hazardous materials for transportation in commerce. That definition also excludes governments that transport hazardous materials for a governmental purpose.

Many governmental agencies offer hazardous materials to commercial transporters. For example, a government agency may generate hazardous waste, and offer that waste to a commercial transporter for treatment, storage or disposal. A state, city, or county hospital may ship or offer agents or toxins regulated by the Centers for Disease Control to a commercial carrier for transport. A government agency may operate a central stores warehouse, and ship hazardous materials by commercial carriers to outlying facilities.

The definition of hazmat employer in §171.8 includes government agencies and their employees when they cause hazardous materials to be transported or shipped in commerce. The revised provisions of § 172.704 (a) require security awareness training and in-depth security training.

If a government agency or Indian tribe offers any of the types or quantities of hazardous materials referenced in § 172.800 (b) (1) through (7) to a commercial transporter, must that agency create and implement a security plan conforming to the requirements of Subpart I?

If a government agency is a hazmat employer as defined, must they provide security awareness training to all hazmat employees as required in §172.704 (a) (4)?

If a government agency is required to create a security plan under the provisions of the new 49 CFR Part 172 Subpart I, must that agency provide in-depth security training as required by §172.704 (a) (5) by December 22, 2003?

Must all hazmat employees of a person required to have a security plan by Subpart I received in-depth security training, or can the in-depth training be provided only to those employees that have access to the materials covered by the security plan?

Thank you for your attention to these questions. The September 25<sup>th</sup> compliance date is not far off, and your prompt response would be greatly appreciated so we can get information out to our state, local and Indian tribe partners.

Yours truly,

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