



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

AUG 11 2003

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

Mr. David Hiromura  
NRS Logistics  
10 Bank Street, Ste 1110  
White Plains, NY 10606

RefNo.: 03-0176

Dear Mr. Hiromura:

This responds to your July 18, 2003 letter and subsequent conversation with Ms. Susan Gorsky concerning hazardous materials transportation security requirements adopted in the final rule published March 25, 2003, under docket HM-232. Specifically, you ask how the security plan requirements established in the final rule apply to a person (overseas subcontractors) domiciled outside the United States.

Foreign-based entities must comply with all applicable HMR requirements when operating within the United States. Foreign entities that ship or transport hazardous materials in the United States in quantities listed in the HM-232 final rule must develop and implement security plans for those hazardous materials. Foreign entities, such as overseas subcontractors, that do not operate in the United States are not subject to the security plan requirements. Carriers are not required to verify whether a shipper has a security plan that conforms to the HM-232 requirements nor are shippers required to verify that a carrier has a security plan that conforms to the HM-232 requirements. At a minimum, however, a shipper should satisfy itself that its carrier has a security plan in place that covers the hazardous material to be transported.

As you note, in December 2002, the United Nations Committee of Experts on the Transport of Dangerous Goods amended the UN Recommendations on the Transport of Dangerous Goods to add a new Chapter 1.4 on security provisions. The UN Recommendations include requirements for security awareness training and development and implementation of security plans. The HM-232 final rule provides that security plans that conform to regulations or guidelines issued by international organizations may be used to satisfy the security plan requirements in Subpart I of Part 172 (see § 172.804).

I hope this information is helpful. Please contact us if you require additional assistance

Sincerely,

Susan Gorsky  
Senior Transportation Regulations Specialist  
Office of Hazardous Materials Standards



030176

172.802

Gorsky, Susan

From: david\_hiromura@nrsgroup.co.jp  
Sent: Friday, July 18, 2003 10:08 AM  
To: Gorsky, Susan  
Cc: mmorrisette@hmac.org  
Subject: HM-232

Referford  
\$172.802  
Security Plans  
03-0176

Just a follow up on my earlier inquiry to confirm that you have received my previous e-mail and to hopefully get some idea on when we can expect an interpretation from RSPA.

Thanks and have a nice weekend.

David Hiromura

----- Forwarded by david hiromura/USER/NYC/NRSGROUP on  
07/18/2003 10:06 AM -----

david hiromura  
07/09/2003 03:16 PM

To: susan.gorsky@rspa.dot.gov  
cc: mmorrisette@hmac.org  
Subject: HM-232

We are an NVOCC and come under the requirements for establishing a security plan under the above rule making. In order to meet the requirements of HM-232, it seems to require that any subcontracted warehouse, trucker, etc, needs to have their own security plan in place which provides equivalent security to that required by HM-232. This raises an issue for which we would like RSPA's guidance.

- 1) Domestic sub-contractors: I don't think we will have a problem here as US companies should be aware of new security requirements and if they are not, we will be able to find alternative service providers.
- 2) Overseas sub-contractors: This is an area of major concern. Overseas companies are not subject to US laws and I do not anticipate many will have security plans in place by 9/25/03. Unlike the US domestic market, there will not be alternative service providers available. When I spoke with you on the telephone several weeks ago, you stated that RSPA's concern began when goods are on the water heading to the US. If this is correct, we would like a written statement to that effect and if not, a clarification of RSPA's policy on this issue. We are aware that new international security regulations are being adopted in 2005, but that does not address the time period between 9/25/03 and when the international rules are adopted.

Similarly, we have issues with cargoes offered by shippers. The Final Rule in Supplementary Information III F states that persons subject to the registration requirements of subpart G of part 107 who offer or transport the any of the materials designated in the rulemaking are required to develop and implement a security plan. 107 subpart G excepts persons domiciled outside the US (i.e. foreign shippers) from the registration requirement; however, I cannot find any reference to subpart G in the wording of the new subpart I - Security Plans. If this is correct, then persons domiciled outside the US are required to implement security plans by 9/25/03. Can RSPA confirm if this is correct?

Will carriers be required to verify the existence of security plans by offerors who come under the new requirements? In the past, we were not required to verify that offerors of haz mats had registered with DOT, so if RSPA is consistent, they should be no requirement to verify the existence of security plans by offerors. Besides foreign offerors, we anticipate

there may be some domestic offerors who are unaware of the requirements of HM-232 and so do not have security plans in place.

Thank you for your response to these questions.

Regards,  
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