



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

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

MAR 24 2004

Mr. Dent Thompson
Vice President, Operations
Phoenix Air
100 Phoenix Air Drive, SW
Cartersville, Georgia 30120

Ref. No. 04-0065

Dear Mr. Thompson:

Your March 5, 2004 letter to Mr. Jackson Smith, Federal Aviation Administration Southern Region, has been referred to this office for response. In your letter, you assert that a representative of the Office of Hazardous Materials Standards, Research and Special Programs Administration, told you that air carriers are excepted from the security plan requirements in Subpart I of Part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180).

I want to apologize for any confusion that has resulted from your inquiry about the applicability of the security plan requirements to air transportation. The staff member who you spoke to was in error. The security plan requirements in Subpart I of Part 172 apply to any person who offers for transportation or transports in commerce one or more of the following hazardous materials:

- (1) A highway-route controlled quantity of a Class 7 material in a motor vehicle, rail car, or freight container;
- (2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material in a motor vehicle, rail car, or freight container;
- (3) More than one L (1.06 qt) of a material poisonous by inhalation that meets the criteria for Hazard Zone A;
- (4) A shipment 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 material for which placarding of a vehicle, rail car, or freight container is required under the provisions of Subpart F of Part 172;



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- (6) A select agent or toxin regulated by the Centers for Disease Control and Prevention; or
- (7) A quantity of hazardous materials that requires placarding under the provisions of Subpart F of Part 172.

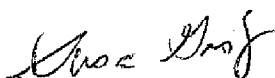
In effect, then, the security plan requirements apply to a shipper or carrier of a hazardous material in an amount that requires placarding and to select agents. As we stated in the preamble to the final rule that established the security plan requirements, using the placarding thresholds to trigger enhanced security requirements covers the materials that present the most significant security threats in transportation and provides a relatively straightforward way to distinguish materials that may present a significant security threat from those that do not.

The security plan requirements apply to the transportation of hazardous materials by all modes, including by air carrier. The requirements are triggered by the offering or transportation of a hazardous material in a quantity that requires placarding under Subpart F of Part 172 of the HMR, not by the absence or presence of a placard on a given shipment. Thus, for an air carrier transporting explosives, the HMR require the air carrier to develop and implement a security plan if the air carrier is transporting a shipment of explosives in an amount that would require placarding if transported by highway or rail. Thus, if you transport any quantity of a Division 1.1, 1.2, or 1.3 explosive, or more than 454 kg (1,001 pounds) of a Division 1.4, 1.5, or 1.6 explosive, you must have a security plan. Your exemption, DOT-E-8826, does not exempt you from the security plan requirements.

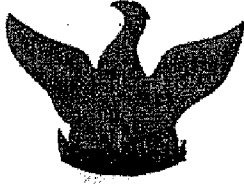
The HMR permit you to use a security plan that conforms to regulations issued by other Federal agencies to satisfy the security plan requirements in Subpart I of Part 172, provided the plan addresses the requirements specified in Subpart I. Therefore, you may use your approved Transportation Security Administration (TSA) 12-5 security program to meet your security plan obligations under the HMR. You must provide your employees who are responsible for implementing the TSA 12-5 security program with in-depth security training in accordance with § 172.704(a)(5) of the HMR.

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

Sincerely,



Susan Gorsky
Senior Transportation Regulations Specialist
Office of Hazardous Materials Standards



Phoenix Air

WORLDWIDE AIRCRAFT SERVICES

100 Phoenix Air Drive, S.W.
Cartersville, Georgia 30120

*Fax to
Bill Wilkinson
Gorsky
172-800
Security Plans
04-0065*

March 5, 2004

Mr. Jackson M. Smith
Manager
Security & Hazardous Material Division, ASO-700
Southern Region Office of Security & Hazardous Materials
P.O. Box 20636
Atlanta, GA 30320

Dear Mr. Jackson:

I am in receipt of your letter to me dated March 4, 2004 (copy attached). In reply to your request for a copy of Phoenix Air's Security Plan, Security Training Records and TSA Security Program, I respectfully have the following replies:

You requested a copy of the Phoenix Air Security Plan required by 49 CFR Part 172, Subpart I.

Per 172.800(2), a security plan is only required for motor vehicle, rail car or freight container. Aviation is not included in this requirement. I telephoned DOT RSPA Standards Division in Washington, D.C. today to confirm that aviation had not been added to this requirement. RSPA confirms that Phoenix Air is exempt from this requirement.

- 2. You requested copies of training records for the in-depth security training required by 49 CFR 172.704(a)(5).

Per 172.704(a)(5), the first sentence states that training is required for each hazmat employee of a person "required to have a security plan in accordance with subpart I of this part". As explained above, Phoenix Air is not required to have a security plan; therefore there are no training records.

- 3. You requested a copy of Phoenix Air's TSA security program.

Phoenix Air does have an approved TSA 12-5 Security Program, however, we were required to sign a document with TSA acknowledging that the Program is sensitive and confidential and may not be copied or given to anyone outside the Phoenix Air Security Department (including other agencies of the Federal Government). Today I telephone Mr. Alphonso Diaz Delcastillo, TSA Principal Inspector, and asked permission to send you a copy of our approved Program.

TELEPHONE:
770-387-2000

TOLL FREE:
800-334-5360

ADMIN. FAX:
770-386-9053

MAINT. FAX:
770-386-2275

PARTS:
770-387-9638

TELEX:
8713076 PHXA UW

Mr. Delcastillo told me that I may not give your office a copy of this document. You may contact him at 571-227-2208 for confirmation of this.

Although I have no documents to send you per your request, I can provide you with the following information:

Phoenix Air has continuously held our DOT Exemption DOT-E 8826 since 1982, authorizing Phoenix Air to transport by air all classes of explosives including those forbidden for air transport by 49 CFR and ICAO regulations.

Over the past 20 plus years, Phoenix Air has performed thousands of shipments without a single accident, incident, loss or spillage.

Phoenix Air has an extensive in-house training program, approved by the DOT and FAA. We have had FAA inspectors sit in and "audit" our training classes on many occasions. The Atlanta FSDO is very familiar with our level of training.

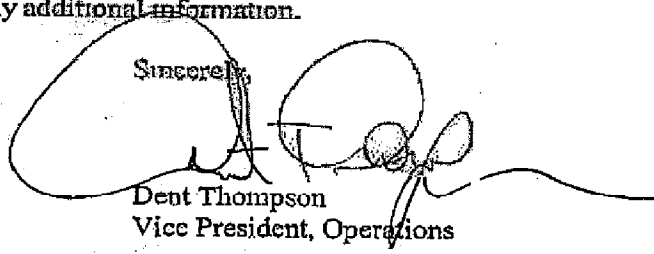
The Atlanta FAA CASO and DOT agreed in a letter to Phoenix Air dated April 7, 1986 that prior to each flight carrying explosives, Phoenix Air will fax an Explosives Movement Flight Report to the Atlanta CASO, detailing the route, times, description of explosives, etc. That is why your office receives these reports.

Phoenix Air is a DOD cleared facility and Phoenix Air pilots hold high-level U.S. DOD security clearances. Our level of security here for DOD work far exceeds the security requirements of 49 CFR 172.800 or the TSA 12-5 Security Program. We are frequently audited by the Defense Security Service (DSS) for security compliance. I therefore submit that Phoenix Air's security is extremely high and our employee training is extremely high.

Phoenix Air's TSA 12-5 Security Program is audited by the TSA. Our next audit is scheduled for March 15-17 when TSA Principal Security Inspector Timothy Neumann will be in the Atlanta area auditing all approved companies.

Please let me know if you need any additional information.

Sincerely,



Dent Thompson
Vice President, Operations