



Memorandum

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

FEB 10 2005

Date:

Reply to: Ref. No. 05-0020

Subject: INFORMATION: Request for Interpretation

Hattie L. Mitchell
From: Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Hazardous Materials Safety

To: William Quade
Chief, Hazardous Materials Division, MC-ECH
FMCSA

This responds to your e-mail message requesting confirmation of the security plan requirements in § 172.800. It is your understanding that a carrier with multiple terminals in a wide array of settings ranging from rural to urban, mountainous to plains, close to densely populated cities to remote locations, must develop a separate security plan for each location.

Your understanding is correct. A key component of a security plan is an assessment of possible transportation security risks for shipments of certain hazardous materials. These risks will vary from location to another. While the carrier may be able to develop some common elements in the security plan that apply to all locations, different locations and circumstances will necessitate different security measures; hence, each location must develop a security plan that addresses the vulnerabilities in that particular location.

I trust this satisfies your request.

Gorsky, Susan

From: Quade, William [william.quade@fmcsa.dot.gov]
Sent: Friday, January 14, 2005 2:19 PM
To: Gorsky, Susan <RSPA>
Subject: Request for Interpretation

Corbin
\$172.800
Security Plans
05-0020

Susan,

FMCSA recently completed a compliance review on a carrier that has over 100 terminals across the country. The terminals are in a wide variety of settings from rural to urban, from mountainous to plains, close to big cities and distant from any major population center. It is our understanding 172.800 would require each separate location to perform an assessment of security risks and develop a security plan that addresses the vulnerabilities discovered. Can you please confirm this view?

Thanks,
BQ

1/25/2005

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Sent: Friday, January 14, 2005 2:19 PM
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1/25/2005



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

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

NOV 20 2003

Mr. Kraig R. Naasz
President
The Fertilizer Institute
820 First Street, N.E., Suite 430
Washington, D.C. 20002

Dear Mr. Naasz:

This responds to an emailed inquiry from your organization concerning the applicability of the security plan requirements in Subpart I of Part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to agricultural retailers. Specifically, you ask whether an agricultural retailer is required to verify that a customer has a security plan.

The security plan requirements in Subpart I of Part 172 apply to persons who offer for transportation or transport certain hazardous materials in commerce. An agricultural retailer who sells agricultural products such as fertilizer or pesticides to a farmer is an offeror for purposes of the HMR and, thus, must develop and implement a security plan if it sells hazardous materials in the types and amounts listed in § 172.800(b). In accordance with § 172.802, the security plan must address personnel security, unauthorized access, and *en route* security.

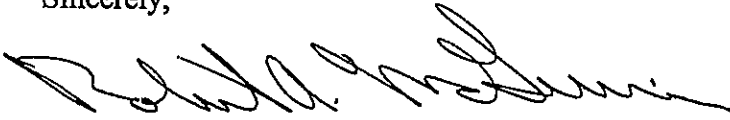
The regulations do not require an agricultural retailer to verify that its customers have a security plan nor do the regulations require the retailer to collect or review customer security plans. However, the retailer's security plan should indicate the measures it has taken to address *en route* security. For example, an agricultural retailer may want to suggest to his customers that they take certain precautions while transporting the hazardous materials from the retailer's facility to the customer's facility. Such precautions could include: (1) to the extent practical, minimizing transit time by going directly from the retailer to the destination; (2) to the extent practical, preventing unauthorized persons from gaining access to the shipment by monitoring the shipment during stops, locking the shipment inside the transport vehicle, securing the shipment to the transport vehicle, and/or securing closures on the container(s) or package(s); and (3) reporting suspicious incidents or events to local law enforcement officials and/or the Federal Bureau of Investigation.

The Research and Special Programs Administration has developed a fact sheet and a sample security plan (copies enclosed) to assist farmers to comply with the security plan requirements in Subpart I of Part 172. To address security issues associated with the transportation of

products to the customer's facility, an agricultural retailer may want to provide the customer with copies of the fact sheet and the sample security plan.

I hope this information is helpful. If you have additional questions, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. McGuire". The signature is fluid and cursive, with a prominent initial "R" and "M".

Robert A. McGuire
Associate Administrator for Hazardous
Materials Safety

Enclosures

Gorsky, Susan

From: Pam Guffain [PGuffain@tfi.org]
Sent: Monday, November 17, 2003 10:14 AM
To: Gorsky, Susan
Subject: Per our discussion

Follow Up Flag: For Your Information
Flag Status: Flagged

Dear Susan,

Below you can read the ARA press release from Friday. Like you, TFI would have preferred to handle this issue differently. However, now that this has been released I feel it is very important to set the record straight so that retailers won't be crazy with this issue (if that is possible).

I would appreciate an official letter of interpretation regarding verification of security plans and that there is no "regulatory requirement" that retail dealers check, verify, collect, or anything else, farmer plans." You might suggest in the letter that retail dealers can simply hand their customer the DOT documents (fact sheet, generic plan, etc.) and suggest that if they don't have a plan that they may want to consider the DOT documents. It might also be helpful to mention something about legal liability (like since there isn't a regulatory requirement DOT would not use this in an enforcement).

Does this make sense? I would like to have the letter addressed to Kraig R. Naasz, President, The Fertilizer Institute, 820 First Street, N.E., Suite 430, Washington, D.C. 20002.

If you can email or fax it that would be wonderful.

Thanks,

Pam

Pam Guffain
Director, Government Relations
The Fertilizer Institute
820 First Street, N.E., Suite 430
Washington, D.C. 20002
202-515-2704 (direct)
202-962-0577 (fax)
202-257-3043 (cell)

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

From: Alicia Fitzpatrick [mailto:alicia@aradc.org]
Sent: Friday, November 14, 2003 4:24 PM
Subject: ARA MEMBER ALERT

<<DOT Sample Farmer Security Plan.doc>> <<DOT Ag Security Flyer.pdf>>
<<DOT HAZMAT SECURITY brochure.pdf>>

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MEMBERSHIP ALERT!

Contact:
RELEASE
Alicia Fitzpatrick 202-457-0825
2003

FOR IMMEDIATE

November 14,

New DOT HAZMAT Transportation Rule:
Growers Now Need a Security Plan

As ARA has consistently reported to our members, the Department of Transportation (DOT) has implemented new Hazmat restrictions that were included in a final rule issued earlier this year (HM 232). The new DOT regulations took effect on September 25, 2003. According to DOT officials, growers who transport HAZMAT materials above certain weight and volume criteria will now need a security plan. In addition, growers may be required to place placards on their vehicles depending on the types and quantities of materials they are transporting. (See attached DOT documents.)

The interpretation of this rule covers transportation and shipping of Hazmat to include many pesticides and some common fertilizers that most retailers sell. For example a farmer transporting anhydrous ammonia (Division 2.2 with TIH hazard) or ammonium nitrate fertilizer (Division 5.1) that is more than 119 gallons in a single container OR more than 1,000 pounds in multiple containers in a single shipment must have a security plan and placard their vehicle.

In an exercise of caution, ARA strongly suggests that retailers of pesticides and fertilizers that are designated as HAZMAT, review this new rule in its entirety and consult with local counsel regarding the state law implications. Some issues to consider include potential establishment of procedures related to grower compliance with the new rule and potential liability related for failure to institute procedures.

Because this is an issue involving state law, which is different in each jurisdiction, ARA is unable to provide you with legal advice and the comments expressed in this Member Alert are limited to general commentary on the new regulation. However, attached is information from DOT regarding the applicability of the security plan requirements (FACT SHEET AND SAMPLE SECURITY PLAN) for growers. We also recommend that you review the final rule on HM 232 (<<http://www.tanktruck.net/pdf/hm%20232.pdf>>) and DOT's website for additional information. Important links to DOT's website regarding this issue are the following: general DOT web page on HAZMAT security at <http://hazmat.dot.gov/hmt_security.htm> and Frequently Asked Questions page at <<http://hazmat.dot.gov/pubtrain/Security%20Q%20&%20A.pdf>>.

If you have further questions call ARA at 202-457-0864.

The National Voice of the Ag Retailer

HAZARDOUS MATERIALS TRANSPORTATION SECURITY REQUIREMENTS FOR FARMERS, RANCHERS, AND PRODUCTION AGRICULTURAL OPERATIONS











Photos courtesy of USDA NRCS

Beginning September 25, 2003 agricultural producers who ship or transport certain hazardous materials in quantities that require placards must now develop and implement a transportation security plan. This new Federal Department of Transportation rule affects transportation of hazardous materials needed to support commercial activities like farming and ranching. Its aim is to deter terrorist and other illegal acts while at the same time limiting a producer's exposure to liability in the event that an illegal act occurs.

For many years diamond-shaped signs, called placards, have been required on vehicles transporting certain types and quantities of hazardous materials. Placards provide first-on-scene emergency responders with the information necessary to quickly assess an accident situation from a distance, reducing the possibility of someone approaching the accident site without wearing protective clothing or equipment. Fire fighters, police, and other responders can thus avoid unnecessary exposure to a dangerous, perhaps life-threatening, material. Placards indicate to emergency responders how to safely and appropriately handle the accident, mitigate the threat of environmental damage, and conduct life-saving operations. Examples of materials for which a placard is required include pesticides; fertilizers such as anhydrous ammonia or ammonium nitrate; fuels such as gasoline, diesel, and propane; and explosives such as dynamite and detonators.

The following chart lists examples of the types and quantities of hazardous materials that require a placard and, thus, a transportation security plan.

Material	Quantity	Placard
Dynamite (Division 1.1 explosive)	Any Amount	
Detonators (Division 1.4 explosive)	More than 1,000 lbs in a single shipment	
Propane (Division 2.1 material) Anhydrous ammonia (Division 2.2 with TIH hazard) Gasoline (Class 3) Pesticides/herbicides that bear a DOT poison label (Division 6.1) Ammonium nitrate fertilizer (Division 5.1)	More than 119 gallons in a single container OR More than 1,000 pounds in multiple containers in a single shipment	Propane  Anhydrous Ammonia  Gasoline  Pesticides/Herbicides  Ammonium Nitrate Fertilizer 
Diesel fuel (Class 3)	More than 119 gallons in a single container	

If you do not ship or transport hazardous materials in amounts that require placards you do not need a security plan. Also, if suppliers deliver hazardous materials to your operation, it is their responsibility to have a plan.

If the security plan requirement applies your operation, the plan must include measures to address personnel, unauthorized access, and *en route* transportation issues.

Personnel Security If you use employees to pick up and transport placarded hazardous materials from your supplier to your farm, your security plan must include measures to confirm information provided by the employee on his/her job application or resume. Note that this requirement only applies to employees hired after September 25, 2003, who are involved in the actual shipment or transportation of the materials covered by the plan.

Unauthorized Access Your security plan must include measures to protect against unauthorized access by using locks or physical/visual observation. For example, if you stop on the way back to your farm for a snack or a meal, you should keep your vehicle in sight and/or lock or secure the material in the vehicle.

Security En Route Your security plan must include measures to ensure the security of the materials between the time you pick them up and the time you arrive at your farm. In this case, the most effective security measure would be to minimize the time that the shipment is in transit by going directly from your supplier to your farm.

Remember:

- ▶ Your plan can be tailored to your operation.
- ▶ Your plan will not be collected by or kept on file at State or Federal DOT offices.
- ▶ Your plan will be enforced by State or Federal DOT as part of the general enforcement program for the HAZMAT carrier and shipper community but *not as part of any roadside stop inspections.*

You may have a plan in place currently that meets these requirements, such as one drawn up in accordance with agribusiness guidelines issued by The Fertilizer Institute, the Agricultural Retailers Association, CropLife America, or other industry groups or associations, or a plan implementing safety and security measures for pesticides in accordance with Environmental Protection Agency regulations.



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For further information, contact the HAZARDOUS MATERIALS INFORMATION CENTER at 1 (800) HMR-45