



U.S. Department of Transportation
**Pipeline and Hazardous Materials
Safety Administration**

1200 New Jersey Ave, SE
Washington, D.C. 20590

JUN - 9 2010

Mr. Dan Walters
Chairman
Chemical Sector Coordinating Council
1120 Nineteenth Street, NW, Suite 310
Washington, DC 20036

Ref. No. 10-0083

Dear Mr. Walters:

This responds to your April 14, 2010 request for clarification on the applicability of security plan requirements under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask if the en route security plan requirement in § 172.802(a)(3) requires a carrier to address threats that may arise during temporary post-accident storage incidental to the removal of covered materials from an accident site.

The security plan requirements apply to persons who offer for transportation or transport hazardous materials in the quantities and thresholds established by § 172.800(b). A security plan must cover personnel, unauthorized access, and *en route* security – that is, the security of a covered hazardous materials shipment from its origin to its destination, including shipments stored incidental to movement.

A carrier's security plan may continue to apply during an incident situation under certain circumstances. For example, the carrier's security plan would continue to apply in the event that an incident does not jeopardize the integrity of the package, but immobilizes the motor vehicle. Thus, a carrier's security plan must include measures to ensure the security of the vehicle until it is repaired or towed from the accident site and the security of any transfer or transloading operations for the hazardous materials being transported.

During an accident situation that involves a release of vehicle contents to the environment the originating carrier's security plan would apply up to the point where local first responders or remediation crews assume command of the incident. Leaks and spills must be remediated and any resulting waste materials must be re-offered for transportation. The remediation process often involves a new offeror, carrier, package, and security plan. The responsible party in

possession of a material that triggers the security plan requirements must have and implement a security plan as required by Part 172, Subpart I of the HMR.

I hope this information is helpful. If you need further assistance, please contact this Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Betts". The signature is fluid and cursive, with the first name "Charles" written in a larger, more prominent script than the last name "Betts".

Charles E. Betts
Chief, Standards Development
Office of Hazardous Materials Standards

Chemical Sector Coordinating Council

April 14, 2010

Dr. Magdy El-Sibaie
Associate Administrator
Pipeline and Hazardous Materials Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SW
Washington, DC 20590

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§ 172.802(a)(3)
Security Plans
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American Coatings Association

American Chemistry Council

American Petroleum Institute

Agricultural Retailers Association

Chemical Producers & Distributors
Association

The Chlorine Institute

CroLife America

Compressed Gas Association

The Fertilizer Institute

International Institute of Ammonia
Refrigeration

International Liquid Terminals Association

Institute of Makers of Explosives

National Association of Chemical
Distributors

National Petrochemical &
Refiners Association

Society of Chemical Manufacturers and
Affiliates

Re: Request for Interpretation

Dear Dr. El-Sibaie:

On behalf of the Chemical Sector Coordinating Council (CSCC)¹, I am writing to request a regulatory interpretation of the scope of 49 CFR 172.802(a)(3) as it pertains to shipments of security-sensitive materials that are accidentally released enroute to destination.

Rules promulgated by the Pipeline and Hazardous Materials Administration (PHMSA) require persons who offer or transport in commerce security-sensitive materials to develop and implement plans to address security risks related to the transportation of those materials. Among the components to be included in these security plans, PHMSA requires, at 49 CFR 172.802(a)(3), "measures to address the assessed security risk of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement."

There is no doubt that PHMSA's security plan requirements apply to shipments during the normal course of transportation. Occasionally, however, shipments of security-sensitive materials are involved in accidents while enroute to destination, and these accidents may also involve the release of security-sensitive materials. After any safety concerns have been addressed at the site of such accidents, threats to the security of these materials from intentional acts, such as theft, sabotage, or release, may remain until the materials are removed.

¹ The mission of the CSCC is to advance the physical and cyber security and emergency preparedness of the nation's chemical sector infrastructure. Membership in the CSCC is open to any industry association predominantly representing chemical sector businesses. The CSCC manages its activities consistent with Homeland Security Presidential Directive 7 and related authorities.

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The CSCC believes that PHMSA's security plan requirements for enroute security include addressing threats that may arise during temporary post-accident storage incidental to the removal of security-sensitive materials from the site. We are asking for an interpretation from your office as to whether we have understood this requirement correctly.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Dan Walters".

Dan Walters
Chairman