



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

APR - 7 2010

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

Ms. Erin N. Jarman
Environmental Scientist
URS Corporation
1600 Perimeter Park Dr., Suite 400
Morrisville, NC 27560

Ref. No. 10-0064

Dear Ms. Jarman:

This responds to your March 22, 2010 request for clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask for clarification of § 172.800(b) and our interpretation (Ref. No. 05-0066), regarding security plan applicability.

In the letter you reference, we state “under the HMR, facilities that receive hazardous materials are not required to have security plans.” You note that since applicability in § 172.800(b) has not changed, the clarification still applies. You are requesting confirmation that, despite new language adopted in a final rule published March 9, 2010, that revises the list of materials for which a security plan is required, facilities that receive hazardous materials are not required to have transportation security plans.

Section 172.800(b) requires each person who offers for transportation or transports in commerce one or more of the hazardous materials listed in § 172.800(b)(1) through (b)(7) to develop and implement a security plan. However, if your company only receives and uses the hazardous materials at its facility, you are not required to develop and implement a security plan under § 172.800(b). Note, however, that the facility may be subject to the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards (6 CFR Part 27).

I hope this answers your inquiry. If you need further assistance, please contact this Office.

Sincerely,

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



March 22, 2010

Boothe
§172.800
§172.802 (a)
Security Plans
10-0064

Mr. Edward T. Mazullo
Director, Office of Hazardous Materials Standards
U.S. DOT/PHMSA (PHH-10)
1200 New Jersey Avenue, SE East Building, 2nd Floor
Washington, DC 20590

Dear Mr. Mazullo:

I am writing to request confirmation that, despite language adopted in HM-232F (“Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements,” 75 FR 10974, published March 9, 2010) concerning the transportation risk assessment, that under the HMR, facilities that receive hazardous materials are not required to have security plans.

The following revision to the regulatory text for a transportation risk assessment (a component of the security plan) was incorporated into 49 CFR 172.802(a) in the final rule to HM-232F. (Note that this regulatory text was revised from the text that appeared in the proposed rule, 73 FR 52572, published September 9, 2008.)

The security plan must include an assessment of transportation security risks for shipments of the hazardous materials listed in 172.800, including site-specific or location-specific risks associated with facilities at which hazardous materials listed in 172.800 are prepared for transportation, stored, or **unloaded incidental to movement** and appropriate measures to address associated risks. *[Bolded text added.]*

In discussing the intent of this new regulatory text with Mr. Ben Supko of your staff, he stated that the phrase “unloaded incidental to movement” would apply to unloading activities that may occur to a hazardous material shipment while under an active shipping paper, such as a transfer from one transport vehicle to another at a transporter’s centralized location, or a transshipment (cross dock) at a facility en route to its final destination.

When reviewing the changes that were adopted in HM-232F, only very minor editorial changes were made to the applicability section in 49 CFR 172.800(b) [75 FR 10988]:

(b) *Applicability.* ~~By September 23, 2003,~~ **Each** person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a **transportation** security plan for hazardous materials that conforms to the requirements of this subpart. *[Additions noted by bold. Deletions noted by bold strikeouts.]*

A DOT interpretation letter (05-0066, April 3, 2005) states:

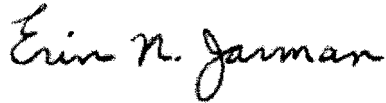
“Section 172.800(b) requires each person who offers for transportation or transports in commerce one of the hazardous materials listed in §§ 172.800(b)(1) through (b)(7) to develop and implement a security plan. Under the HMR, facilities that receive hazardous materials are not required to have security plans.”

Because applicability in section 172.800(b) has not changed, it would appear that the 05-0066 interpretation would still apply [although the hazardous material list has increased to (b)(16)].

I am writing to request confirmation that, despite this new language adopted in HM-232F concerning the transportation risk assessment in 172.802(a), that under the HMR, facilities that receive hazardous materials are not required to have transportation security plans.

Thanks you for consideration of this request.

Sincerely,



Erin N. Jarman
Environmental Scientist

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