

MEMORANDUM

DATE: April 9, 2003 (UPDATED 9-30-10) E03-06

TO: PMAA State Executives

FROM: Laura Tague

SUBJECT: DOT's Security Requirements for Offerors and Transporters of Hazardous Materials

On March 25, 2003, DOT's Research and Special Programs Administration (RSPA) issued its final rule on security requirements for transporters of hazardous materials. The rule amends 49 CFR 172.704 and adds 49 CFR 172.800.

Please note that employers are **immediately** required to train hazmat employees on Security Awareness Training. RSPA has developed a free CD-ROM which takes approximately one hour to complete to fulfill this requirement. The Hazardous Materials Security CD-ROM training module is now available for downloading from the Hazardous Materials Safety (HMS) web page at the following link: http://hazmat.dot.gov/hmt_security.htm Employers can also obtain copies by calling RSPA at 800-467-4922, ext. 3.

U.S. DOT HAZMAT Security Plans:

The U.S. DOT released a final rule that narrows the type of hazardous materials subject to written transportation security plans and clarifies certain requirements to security planning, training and documentation. DOT transportation security plans were first required in 2003 and originally applied to any company that transports placarded loads of hazardous materials including gasoline, distillates, or propane. The final rule narrowed security planning requirements to "high consequence" hazardous materials if stolen or used for terrorist purposes. Beginning October 1, 2010 the transportation security plan and training requirements no longer apply to distillates that are shipped as a flammable or combustible under the "Packing Group III" designation in the U.S. DOT hazardous material table at 49 CFR 172.101 (available at <http://www.phmsa.dot.gov/hazmat/library>.) **In other words, if your company transports distillates such as fuel oil, kerosene or diesel fuel but NOT gasoline or propane, then the U.S. DOT security plan and training requirements no longer apply. If your company transports gasoline or propane, the security plan and training requirements continue to apply.**

In addition to the above requirement, each hazmat employee must be trained on the company's security plan and its implementation. Keep in mind there are two types of training that must be done, each with different deadlines for implementation.

According to the agency, if violations are found, “appropriate penalty action will be initiated.” Baseline penalties have not yet been developed but will be published in a rule making in the near future.

Security Plans

Applicability

The security plan requirement applies to persons who offer for transportation or transport hazardous material (**Gasoline or Propane ONLY**), including:

- A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 3,500 gallons for liquids or gases;
- A quantity of hazardous material that requires placarding under current DOT regulations.

The security plan requirement applies to shipments of the hazardous materials and to facilities at which the hazardous materials are prepared for transportation or stored during transportation.

Security Plan Components

The rule requires persons subject to the security plan requirement to perform an assessment of the transportation security risks. RSPA has developed a security template to illustrate how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced. This template is available for free on RSPA’s web site at <http://hazmat.dot.gov/rmsef.htm>. Other risk assessment tools are equally valid since the rule does not require a specific one.

The security plan must contain three components. The first component of a security plan must include a method or methods for confirming information provided by applicants to perform jobs that involve access to or handling of hazardous materials covered by the plan. RSPA does not expect companies to confirm all of the information that a job applicant may provide as part of the application process. RSPA states that “Employers should make an effort to check information related to an applicant’s recent employment history, references, and citizenship status. In short, we expect companies to take reasonable and prudent measures to address personnel security issues.” In addition, efforts to confirm information must be consistent with applicable state and federal laws concerning employment practices and individual privacy.

A security plan must also include methods to address the possibility that unauthorized persons may attempt to gain access to hazardous materials or transport vehicles being prepared for transportation. Employers will have to define the universe of unauthorized persons to account for the nature of the facility and the type of activity that takes place there. An unauthorized person is any individual who is not authorized by the shipper or carrier to have access to the hazardous materials.

The third element of a security plan is a method or methods to address en route security risks. RSPA states that shippers are expected to work with carriers to address en route security risks. In some cases, a shipper and a carrier may have a joint security plan and in other cases, there may be two separate plans.

Other Requirements

Security plans that conform to other regulations of federal agencies are acceptable to be used to satisfy RSPA's security plan requirement, so long as it includes the requirements set forth by RSPA.

Public Availability

Generally, RSPA will not collect or retain security plans. Inspectors will review the existing plan on site and usually not take copies with them or require companies to submit them.

Security Plan Recordkeeping

The plan must be in writing and must be retained for as long as it remains in effect. Copies of the plan must be available to the employees who are responsible for implementing it, consistent with personnel security clearance, and a demonstrated need to know. The plan must be revised and updated as necessary to reflect changing circumstances.

Training

Current DOT regulations, 49 CFR 172.704, require employees to be trained to be able to recognize hazardous materials; to be knowledgeable about specific requirements of the regulations; and knowledgeable about emergency response information, self-protection measures, and accident prevention methods. New employees must receive this training within 90 days after employment and recurrent training every three years.

The new rule requires employers to provide two types of additional security training. The first training, called "Security Awareness Training," must occur no later than the date of the first rescheduled training after March 25, 2003 and in no case later than March 24, 2006. In other words, the rule permits the general Security Awareness Training to be completed within the employee's 3-year retraining schedule. However, like current requirements, after March 25, 2003, each new employee must receive this training within 90 days.

The Security Awareness Training requirement states that each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component on how to recognize and respond to possible security threats. To assist employers in Security Awareness Training, RSPA has developed a "Hazardous Materials Transportation Security Awareness Module" CD-ROM. Information to order this CD-ROM is previously stated at the beginning of this memo.

The second type of training, termed "In-depth Training," must be conducted by December 22, 2003, or three months after the deadline to develop a security plan. By this date, each hazmat employee of a company required to have a security plan must be trained on the plan and its implementation. This training must include company security objectives, specific security procedures, employee responsibilities, actions to take in case of a security breach, and the organizational security structure. This training must also be done every three years, but unlike

the more general Security Awareness Training, the rule does not allow an employer to wait until the recurrent training to occur.

Recordkeeping Requirements

Since these two security training requirements are simply amendments to the current regulations, the training is subject to the current training recordkeeping and testing requirements.

Summary of Important Deadlines

March 25, 2003: Each employer must train each hazmat employee in “Security Awareness Training” as described previously. This training must be completed by March 24, 2006. This training can occur during a recurrent hazmat training course for existing employees or 90 days after employment for new employees.

September 25, 2003: Each employer who offers or transports hazardous materials must develop and adhere to a written security plan.

December 22, 2003: Each hazmat employee of a business required to have a security plan must receive “In-depth Training” on the elements of the security plan.

March 24, 2006: Every hazmat employee must receive Security Awareness Training as described above.

Conclusion

Attached to this memo is the actual regulatory text to assist you in devising a security plan and training requirements. RSPA has stated that the new regulations are intentionally vague and unspecific. RSPA states that this was done to allow employers maximum flexibility in developing a security plan and training programs.

Finally, RSPA has stated that these regulations are only the first of what will be more rules to be developed to address security issues. PMAA will actively work with the agency, as we did with this rule, to make sure that particularly onerous proposals that are too costly and/or do not enhance security will not be adopted by the agency.