

Frequently Asked Questions

Security Plans

1. Who is required to develop and implement a security plan?

Under the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180), you must develop and implement a security plan if you offer for transportation or transport the following types and quantities of hazardous materials:

- ◆ A hazardous material in an amount that must be placarded in accordance with Subpart F of Part 172 of the HMR;
- ◆ A hazardous material 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; or
- ◆ A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR Part 73.

2. What components must be included in a security plan?

A security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials covered by the plan and appropriate measures to address the assessed risks. At a minimum, a security plan must include the following elements:

- ◆ **Personnel security.** Measures to confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials covered by the security plan.
- ◆ **Unauthorized access.** Measures to address the possibility that unauthorized persons may gain access to the hazardous materials covered by the security plan or to transport conveyances being prepared for transportation of the hazardous materials covered by the security plan.
- ◆ **En route security.** Measures to address the security risks of shipments of hazardous materials covered by the security plan en route from origin to destination, including shipments stored incidental to movement.

3. Does RSPA have to approve my security plan?

No. Do not submit your security plan to RSPA for approval. DOT inspection personnel will ask to see your security plan if they conduct a compliance review at your facility, so the plan must be readily accessible.

4. I receive hazardous materials at my facility, but I do not ship or transport them or otherwise handle them for further transportation. Must I develop a hazardous materials transportation security plan?

No. The hazardous materials transportation security plan requirement applies only to persons who offer for transportation or transport hazardous materials in commerce.

5. I ship or transport different types of hazardous materials. Some shipments require placarding under the HMR and some do not. Must my security plan address all the hazardous materials I ship or transport?

No. Your security plan must cover the hazardous materials listed in § 172.800(b) (see question 1 above). Hazardous materials not listed need not be included in your security plan.

6. I transport Class 9 materials. Must they be covered by my security plan?

A person who offers or transports a Class 9 material 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 must develop and implement a security plan. For shipments in lesser amounts, including when Class 9 placards are required for international transportation, a security plan is not required.

7. I ship hazardous materials in accordance with the IMDG Code as permitted by § 171.12(b) of the HMR. If I placard my freight container in accordance with IMDG requirements, even though

the HMR do not require a placard for the same shipment, must I develop a hazardous materials transportation security plan?

No. If a placard is not required under the HMR, the security plan requirements do not apply to the shipment, even if a placard is required by the IMDG Code.

8. I am excepted from registration under 49 CFR Part 107, Subpart G. Must I have a security plan?

Persons excepted from the registration requirements are not excepted from the security plan regulation. Thus, if you are a Federal or non-Federal government entity, a person domiciled outside the United States, or a farmer (as defined in § 171.8 of the HMR) and you offer for transportation or transport in commerce hazardous materials in the types and quantities listed in § 172.800(b), you must develop and implement a security plan.

9. I ship hazardous materials into the United States from overseas. Must I develop a hazardous materials transportation security plan?

Yes. Foreign-based entities must comply with all applicable HMR requirements when operating within the United States. Foreign entities that ship or transport hazardous materials into or in the United States of the types and quantities listed in § 172.800(b) must develop and implement security plans for those hazardous materials.

In December 2002, the United Nations Committee of Experts on the Transport of Dangerous Goods amended the UN Recommendations on the Transport of Dangerous Goods to add a new Chapter 1.4 on security provisions. The UN Recommendations include requirements for security awareness training and development and implementation of security plans. The HMR provide that security plans that conform to regulations or guidelines issued by international organizations may be used to satisfy the security plan requirements in Subpart I of Part 172 (see § 172.804).

10. I ship empty rail tank cars back to the shipper. The empty cars contain residues of hazardous materials and so must be placarded under the

HMR. Must I develop a transportation security plan for these empty cars?

Yes. Shipments that require placards in accordance with Subpart F of Part 172 of the HMR must be covered by a security plan. However, as part of the security risk assessment you perform as the first step to developing your security plan, you may determine that empty rail cars do not pose a significant security risk in transportation. In that event, your security plan for the empty rail cars may be minimal. In addition, you may want to talk to the original shipper of the rail tank car to see whether the shipper's security plan addresses security issues posed by residue shipments. Similarly, you may want to talk to the rail carrier to see whether the carrier's security plan addresses residue shipments.

11. Section 172.802(a)(2) of the HMR requires employers subject to the security plan regulation to confirm information provided by job applicants hired for positions that involve access to and handling of hazardous materials covered by the security plan. If circumstances make it impossible to verify an applicant's prior employment history, may an employer still hire the individual? Does an employer have an obligation to document in writing the results of its efforts to confirm information provided by a prospective employee?

Section 172.802(a)(2) requires an employer who is subject to the security plan regulation to implement measures to confirm information provided by applicants who are hired for positions that involve access to and handling of hazardous materials covered by the security plan. The requirement is flexible. An employer may use its discretion to determine the information that will be checked as part of the application process and whether and to what extent its inability to confirm certain information will affect hiring decisions. Thus, if an employer is unable to confirm information about an applicant's recent employment history, but is satisfied based on other information that an applicant does not pose a security risk, then the employer is not precluded from hiring the applicant. An employer must include the measures it has implemented to confirm information provided by applicants in its written security plan, but an employer need not document the results of its efforts to confirm information for specific applicants.

12. Regulations developed by the Transportation Security Administration and the Federal Motor Carrier Safety Administration to implement the USA PATRIOT Act will ensure that all drivers possessing a current hazardous materials endorsement to their commercial driver's license have successfully completed a Federal background check. If an employer's security plan includes a procedure to verify a prospective driver's hazardous materials endorsement, does that satisfy the employer's obligation to confirm information provided by job applicants under § 172.802(a)(2)?

Yes. This would satisfy the employer's obligation for the drivers that are employed. However, there may be other employees not subject to the USA PATRIOT Act background check requirements for whom other measures may need to be taken.

13. Many trucking companies utilize leased workers provided by a third-party agent to assist with operations during peak freight periods. The individuals may perform work for the motor carrier on only a few days each year and are not hired as employees of the motor carrier. Must a motor carrier confirm background information for these leased workers?

If the leased workers utilized by the motor carrier will have access to or handle hazardous materials covered by a motor carrier's security plan, then the leased workers must be covered by the security plan. It is the responsibility of the motor carrier to ensure that the requirements of its security plan concerning personnel security and security training are met. For leased workers, the motor carrier and the third-party agent who provides the leased workers must decide the question of who will confirm background information provided by job applicants.

14. Must I complete background checks for my current employees?

No. The requirement to confirm information provided by job applicants hired for positions that involve access to and handling of hazardous materials covered by the security plan applies to employees hired after September 25, 2003.

15. To comply with the personnel security provisions of § 172.802(a)(1), must I perform or arrange for the performance of a criminal background check for prospective employees?

No. Your security plan must include measures to confirm information provided by job applicants that you hire for positions that involve access to or handling of hazardous materials covered by the plan. Such measures are those that a prudent employer likely already performs, such as contacting previous employers or references provided by the applicant.

16. I am a freight forwarder. Must I develop a hazardous materials transportation security plan?

The security plan regulations apply to each person who offers for transportation in commerce or transports in commerce a hazardous material listed in § 172.800(b). When a freight forwarder performs offeror functions that are subject to the HMR, the freight forwarder must develop and implement a security plan that covers security risks associated with the functions he performs. For example, if you are involved with decisions concerning the actual transportation of a hazardous material, including shipping dates, routes, and choice of carrier, then you must have a security plan that addresses those operations. Such a security plan would address personnel security for employees who may have access to sensitive information and measures to protect information that could compromise the security of a hazardous materials shipment. If you arrange for the transportation of hazardous materials subject to the security plan requirement, your security plan should indicate the measures you have taken to address en route security that are appropriate for the mode of transportation selected.

17. To what extent must a shipper determine that a carrier's security plan is adequate?

You are not required to determine that your carrier's security plan conforms in all respects to the requirements in Subpart I of Part 172 of the HMR. However, you should work with your carrier to address en route security issues for the hazardous materials the carrier will be transporting on your behalf. In some cases, you and your carrier may

decide to develop a joint plan; in others, you and your carrier may have separate plans. A shipper's security plan should indicate the measures it has taken to address en route security, such as coordination with the carrier to determine that its security plan covers en route security risks associated with the shipment.

18. Must a carrier provide copies of its security plan to the shippers on whose behalf the carrier transports hazardous materials?

No. The security provisions in Subpart I of Part 172 of the HMR do not require a carrier to provide a copy of its security plan to shippers. Indeed, distribution of a carrier's security plan to persons outside the company could compromise the security of the shipments the carrier transports. Shippers and carriers should work together to address en route security risks of the hazardous materials the carrier will be transporting.

Training

1. Who must receive security awareness training?

All hazmat employees (as defined in § 171.8 of the HMR) must receive training that provides an awareness of the security risks associated with hazardous materials transportation and methods to enhance hazardous materials transportation security. The training must be provided at the employee's first scheduled recurrent training after March 25, 2003.

2. My company repairs, modifies, reconditions, and tests packagings. We perform no other function subject to the requirements of the regulations. Must I provide my hazmat employees with security awareness training?

Yes. Everyone who is involved in the transportation of hazardous materials should be aware of security issues associated with such transportation. All employees should know that certain people may ask questions or seek to acquire information that could be used to target hazardous materials for criminal or terrorist acts. Further, persons who manufacture or repair packagings should be aware of potential sabotage or other actions that could be directed at their operations. Security awareness training may be tailored to the specific responsibilities of a hazardous materials employee and should be commensurate to

19. If my security plan states that I will only do business with carriers that have a security plan, will I be in violation of the HMR if I use a carrier that does not have a security plan?

Section 172.800(b) requires persons who offer for transportation in commerce and persons who transport in commerce to develop and adhere to a security plan that covers the materials listed in that paragraph. If your security plan includes provisions that you have not, in fact, implemented, then you could be found to be in violation of the HMR. For example, if your plan addresses the en route security risks associated with the hazardous materials you ship by stating that you will only use carriers that have security plans, you could be cited for not adhering to your security plan if you use a carrier that does not have a security plan.

the security risks that an employee may encounter – training for employees who manufacture or repair packagings may differ in length and coverage from training for employees who operate commercial motor vehicles.

3. Do the in-depth security training requirements related to the requirements of a company's security plan apply to all hazmat employees or only to those hazmat employees whose job functions involve access to and handling of the materials covered by the plan?

The in-depth security training under § 172.704(a)(5) is required only for hazmat employees who handle or perform regulated functions related to the transportation of the materials listed in § 172.800(b) or who are responsible for implementing the security plan. These hazmat employees must receive in-depth training on the specific portions of the plan for which they are responsible, including specific security procedures, employee responsibilities, and actions to be taken in the event of a security breach.

