



U.S. Department
of Transportation

**Pipeline and
Hazardous Materials Safety
Administration**

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

MAR 16 2007

Mr. Jonathan Ward
Risk Manager
Cornerstone Systems, Inc.
5101 Wheelis Drive, Suite 300
Memphis, TN 38117

Ref. No. 07-0035

Dear Mr. Ward:

This responds to your February 7, 2007 e-mail, requesting clarification of the security plan requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). In your e-mail, you state your company arranges for the transportation of hazardous materials with qualified motor carriers at the request of your customers. Your customers consist of customs brokers, freight forwarders, and third-party logistics companies. You state that you require your customers to sign a document verifying they are in compliance with the registration, security plan, and training requirements of the HMR. You state that many of your customers refuse to sign this document because they are not required to have a security plan. You ask whether custom brokers, freight forwarders, and third-party logistics companies are required to have a security plan in accordance with 49 CFR Part 172, Subpart I.

As required by § 172.800, each person who offers for transportation or transports in commerce one or more of the hazardous materials specified in § 172.800(b) of the HMR must develop and adhere to a security plan addressing personnel, unauthorized access, and en route security. If a broker, freight forwarder, or agent meets the definition of a "person who offers or offeror" in § 171.8 for one or more of the hazardous materials listed in § 172.800(b), then the broker, freight forwarder, or agent must develop and implement a security plan covering the security risks associated with the functions he or she performs.

As defined in § 171.8, a "person who offers or offeror" is any person who does either or both of the following: (1) performs, or is responsible for performing, any pre-transportation function required under the HMR for transportation of a hazardous material in commerce; or (2) tenders or makes the hazardous material available to a carrier for transportation in commerce.

Pre-transportation functions are functions specified in the HMR under § 171.8 that are required to assure the safe transportation of a hazardous material in commerce, and include:

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous material packaging, including a bulk packaging.

171.8
172.800



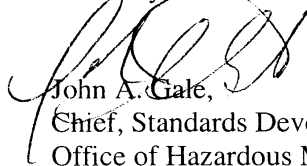
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- (4) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.
- (5) Marking a package to indicate that it contains a hazardous material.
- (6) Labeling a package to indicate that it contains a hazardous material.
- (7) Preparing a shipping paper.
- (8) Providing and maintaining emergency response information.
- (9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.
- (10) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.
- (11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.
- (12) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.
- (13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.
- (14) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

If a broker, freight forwarder, or agent performs one or more pre-transportation functions to prepare a hazardous materials shipment for transportation in commerce, then the broker, freight forwarder, or agent is an offeror under the HMR and is subject to all applicable regulatory requirements, including the security plan requirements. A third party logistics company or broker who contracts with a carrier to transport a shipment on behalf of the original shipper is not considered an offeror for purposes of the HMR unless it also performs one or more pre-transportation functions to prepare the shipment for transportation in commerce.

I hope this information is helpful.

Sincerely,



John A. Gale,
Chief, Standards Development
Office of Hazardous Materials Standards

From: Jonathan Ward [jward@cornerstone-systems.com]
Sent: Wednesday, February 07, 2007 3:53 PM
To: INFOCNTR <PHMSA>
Subject: Haz-Mat Security Plan Compliance



Foster
\$ 172.704
\$ 172.800
\$ 172.804
Security Plans /
Training
07-0035

Ed Mazullo
U.S. Department of Transportation
Pipeline and Hazardous Materials Safety Administration
Office of Hazardous Materials Safety
400 7th St., S.W.
Washington, DC 20590

I am in the need of a formal written answer/response to the following situation:
Cornerstone Systems, Inc is a transportation property broker based in Memphis, TN. We arrange for the transportation of hazardous materials with qualified motor carriers at the request of our customers.

An on going problem we have is that a few of our customers (Customs Brokers, Freight Forwarders, and 3-PL) offer us hazardous materials shipments to handle for them. I present them with a document that we require them to sign off on stating they have a Haz-Mat Security Plan and are compliant with the regulations, 49 CFR §107.608; § 172.701-704; § 172.800-804. Many of these refuse to sign the document stating that they do not have to have a Haz-Mat Security Plan because they do not handle the freight. Most of these shipments are imports and are cleared through Customs for delivery into the United States. Without the signed document I do not allow Cornerstone Systems to handle this customer's haz-mat freight. Some of the Customs Brokers have said they are not subject to such regulations and will pass the freight to any other party who will arrange for the transportation.

In the past I have provided them with the copies of the CFR which shows they are required to have a plan and they simply refuse to acknowledge the requirement.

Are Customs Brokers, Freight Forwarders, and 3-PL's subject to this regulation?

If you have any questions, please contact me by email at jward@cornerstone-systems.com or by calling 800-278-7677 ext 289.

Thank you and waiting for your response.

Jonathan Ward
Risk Manager

Jonathan Ward

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