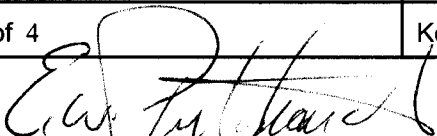




# Hazardous Materials Guidance

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Revision: Original	49 CFR Section(s) Affected: 172.704, and new 172.800, 172.802, and 172.804
Page: 1 of 4	Key Words: Security, Training, Plans
<b>Approved:</b> 	

**Summary:** This Hazardous Materials Guidance discusses the requirements for hazardous materials security plans, training, and background checks required by the Research and Special Programs Administration’s final rule in docket HM-232. This Guidance also states the FRA’s “phased-in” enforcement policy for the new regulations.

**Discussion:** On March 25, 2003, RSPA issued a final rule on transportation security designed to establish new requirements to enhance the security of hazardous materials transported in commerce.

**Sections affected:** With the issuance of HM-232, sections of the CFR have been added or changed:

- Part 172, Subpart H, **Training**, has a new § 174.704(a)(4) & (5), and an amended paragraph (b), and
- Part 172, Subpart I, **Security Plans**, has been added, beginning with 49 CFR § 174.800.

**49 CFR § 172.704(a)(4)** has been added to require **Security Awareness Training**. Between March 25, 2003, and March 24, 2006, 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 covering recognition and response to possible security threats.

After March 25, 2003, each new hazmat employee must receive security awareness training within 90 days after employment. Recurrent training will also be required during the three year cycle as required for hazardous materials recurrent training.

Another new section, **49 CFR § 172.704(a)(5)**, covers in-depth security training. This in-depth security training requires that each hazmat employee of a person [company] must be trained concerning the security plan and its implementation. This training must include company security objectives, specific security procedures, employee responsibilities, action to take in the event of a security breach, and the organization’s security structure.

Paragraph (b) has been changed to include “security” training in addition to hazardous materials training. Training conducted by employers to comply with the hazard communication programs required by OSHA and EPA or training conducted by employers to comply with security training programs required by other Federal or international agencies **may be used** to satisfy the training requirements in paragraph (a).

A new **Subpart I, Security Plans**, has been added beginning with § 172.800

Under Paragraph (b), offering or transporting any of the following will trigger the requirement for a security plan:

- a highway route controlled quantity of a Class 7 (radioactive) material;
- more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or container;
- more than one liter (1.06 qt) per package of a PIH, Hazard Zone A;
- a bulk packaging having a capacity equal to or greater than 13,248 liter (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;
- a shipment in other than a bulk packaging of 2,268 kg (5,000 lbs) gross weight or more of one class of hazmat for which placarding of a vehicle, rail car, or container is required under Subpart F;
- an agent or toxin regulated by the CDC under 42 CFR Part 73; or,
- a quantity of hazardous materials that requires placarding under the provisions of subpart F of the part.

**Components of a security plan must include** an assessment of possible transportation security risks for shipments of hazardous materials and the appropriate measures to address the identified risks. The specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a plan must include:

- *Personnel security.* Information provided by job applicants hired to become hazmat employees must be confirmed using a system consistent with applicable Federal and state laws, requirements of employment practices, and individual privacy.
- *Unauthorized access.* The plan must address measures to reduce the assessed risk that unauthorized persons may gain access to the hazmat covered by the security plan.
- *En route security.* The plan must address measures to assess security risks of shipments covered by the plan from origin to destination including storage incidental to movement.

The plan must be in writing and must be retained for as long as it remains in effect. Copies of the plan or applicable sections must be available to the employees who are responsible for implementing it. The plan must be revised and updated as necessary to reflect changing circumstances.

**Questions and answers:**

Q1. Is a security plan required for Class 9 materials when in international transportation?

A1. A class 9 placard is required under international regulations but not under domestic regulations. If the placard is not required under domestic regulations and does not meet the criteria of the placarding provision, a security plan would not be required even if part of the transportation is by rail. However, if the class 9 is in a bulk package a security plan is required even if it is a residue class 9. The bulk packaging requirement is triggered by the *capacity* of the bulk package and not the *quantity* of material contained in the package.

Q2. Are Canadian crews entering the United States required to be trained on hazardous materials security awareness and familiarization?

A2. Yes, just as Canadian crews are subject to all other FRA regulations, they are subject to the security regulations as well and must be trained.

Q3. If a shipper facility is not in operation at night but a railroad crew comes in to switch the plant, who is responsible for security if it is the railroad crew that opens the gate and creates the possibility of unauthorized access?

A3. The shipper is responsible for plant security and the security plan should address this issue. Shippers are encouraged to work with the rail carriers concerning mutual security issues.

Q4. Does a consignee that receives a hazardous material, unloads it, cleans and purges the car, and offers only the cleaned and purged tank car need a security plan?

A4. No. Paragraph b (Applicability) states that “...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 security plans...” This clause excludes a consignee that purges a car or stores a car prior to unloading. A placarded residue car would still trigger the requirement to have a security plan.

Q5. Does a tank car repair facility that receives a residue tank car, repairs the car, then releases the residue car need to develop and implement a security plan?

A5. Yes. It is the fact that the tank car facility is releasing a bulk package that still contains a hazardous material that triggers the need for a security plan, not the quantity of hazardous material in the package.

Q6. May security plans be removed from a plant for inspection and returned to the plant the following day or by registered mail?

A6. As a general matter, no. In responding to RSPA's rulemaking proposal, several commenters expressed concern about the possibility that security plans might become publically available. One major railroad stated, "It is critical that carrier and shipper plans remain confidential; not subject to public disclosure and Freedom of Information Act requests." Commenters were particularly concerned about plans that might be obtained by enforcement personnel during a compliance inspection. Generally, FRA will not collect or retain security plans. With regard to security plans, our enforcement focus during compliance inspection is to ensure that companies have developed a security plan that addresses each of the three specific requirements. Inspectors will review the existing plan on site and generally will not take copies with them or require the companies to submit security plans.

In the rare instances that FRA enforcement personnel identify a need to collect a copy of a security plan, or if a company voluntarily submits a security plan, FRA will analyze all applicable laws and Freedom of Information Act exemptions to determine whether the information or portions of information in the security plan can be withheld from release. Prior to submission of a security plan to FRA in these unusual instances, companies should follow the procedures described in both 49 CFR 105.30 (because the rule was promulgated by RSPA) and 209.11 (because the rule is being enforced by FRA) for requesting confidentiality. Under those procedures, a company should identify and mark the information it believes is confidential and explain why. FRA will then determine whether the information may be released or protected under the law. Inspectors and Specialists should refer these matters to Headquarters for coordination with the Office of chief Counsel.

**Activity Reporting:** Railroad safety inspectors, railroad safety specialists, and state participants should record inspection activities concerning review of security plans using the inspection task code 172I in the RISPC program. Each plan constitutes a separate unit and the total units should be recorded. In addition, inspection activities concerning security training should be recorded using the inspection task code 172X in the RISPC program. Each training record (employee record) reviewed constitutes a separate unit and the total units should be recorded. Both of these inspection tasks are appropriate for the eight location codes. If the HM training records are inspected at the same time as security training records, codes 172H and 172X should both be used. Because it is FRA's policy to examine security plans at the inspection site, the appropriate location code should reflect the city and state where the actual inspection occurred.

**Enforcement Policy:** RSPA's website (<http://hazmat.dot.gov>) contains additional guidance for persons seeking to comply with the new hazardous materials security requirements. While, as described above, several aspects of the security regulation are now effective, FRA recommends that its inspectors concentrate on educating companies and personnel affected by the new regulations, rather than initiating civil penalty actions. This is in line with previous enforcement policies adopted after other significant changes to the regulations.