HAZARDOUS MATERIALS GUIDANCE

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Summary:

This Hazardous Materials Guidance (HMG) discusses FRA inspection and enforcement requirements for hazardous materials security plans and security training required by Title 49 Code of Federal Regulations (CFR) part 172, Subparts H and I.

General Overview of Security Plan

FRA does not view a security plan as an unchanging document. Consistent with the requirements of 49 CFR § 172.800, a security plan must include "an assessment of possible transportation security risks" and "appropriate measures to address those assessed risks." The regulation contemplates that security threat levels and risks may vary over time, as will the measures taken to mitigate those varying risks. Security plans will vary from facility to facility, and should be considered "living documents," subject to review and updating as security risks change. Security plans must be reviewed annually and revised and/or updated as necessary to reflect changing circumstances.

FRA recognizes that an entity's full corporate-security plan may be made up of an overall broad-scope plan and one or more smaller-scope plans relevant to security risks at individual operating facilities. Portions of an entity's full corporate plan might not be relevant to a particular operating facility, especially the required vulnerability assessments, or there may be modal specific differences. For example, if a corporation elects to handle personnel security on a unified basis, there may be no need for the operating facility to have at its location any portion of the security plan related to that issue. On the other hand, if a corporation elects to make the details of its risk assessment part of the "master" plan, the operating facility's security plan must contain the threat level evaluation/risk assessment details that are behind the working-level implementing details applicable to the operating facility. That said, the person or entity in charge of the entire security plan must demonstrate detailed knowledge of the plan and be able to indicate where the required elements are located within the plan itself.

Paragraph (c) of § 172.802 requires copies of an entity's security plan, or portions of that plan, to be available to the employees who are responsible for implementing it. FRA recognizes that in many cases, only key carrier or facility officials will have access to an organization's entire security plan. In these cases, the in-depth security training required by § 172.704(a)(5) is only required for those employees who are responsible for implementing the plan. The intent is that through their supervisory or leadership status they can notify employees of any operational/security changes, as defined in their plan.

Security plans for both shippers and carriers, and the underlying risk assessments required under Subpart I, are considered Sensitive Security Information and must be handled in accordance with 49 CFR parts 15 and 1520 respectively. As a result, FRA's policy is that inspectors and/or specialists will generally not copy, collect or otherwise retain any part of a regulated entity's security plan. In rare instances, an inspector or specialist may need to make a copy of a portion of a security plan to prove a violation. FRA personnel will only request to copy the relevant portion of the organization's security plan. Additionally, prior to requesting a copy of any part of a security plan, an inspector should refer the issue to his or her regional specialist who will coordinate with a headquarters (HQ) HM specialist and the Office of Chief Counsel to reach a decision as to its necessity for the violation and similarly, a HQ HM specialist seeking to make a copy of should coordinate with the Office of Chief Counsel.

Inspections of Security Plans for Class I Railroads:

Generally, regional and headquarters FRA hazardous materials specialists jointly inspect all Class I railroad security plans required under 49 CFR part 172, Subpart I. This is done to streamline the process and prevent burdening railroads with redundant information requests from FRA officials.

However, on Class I railroads inspectors **can and should** inspect divisional/regional security plans at the Class I carriers' Division Offices (assuming a railroad maintains a division/regional security plan at the particular inspection location). When seeking to review employee security training records, inspectors should obtain the names of the relevant employees and then make a formal request for the employee security training records in coordination with the regional specialist and HQ HM specialist responsible for security. The HQ Specialist will forward the formal request for records to the applicable railroad.

Inspections of Security Plans for Non-Class I Railroads:

Regional inspectors will inspect security plans of non-Class I railroads (regional and short-line railroads) operating in their territories to determine compliance with 49 CFR part 172, Subparts H and I.

If a non-Class I railroad operates in more than one FRA region, the involved Regions should, to the extent possible, coordinate the inspection of that carrier's security plan and involve one or more inspectors from each of the regions. This allows all affected regions the opportunity to view the plan and to ensure that a more thorough inspection is conducted. Where possible, FRA will endeavor to have at least two inspectors inspect any non-class I railroad's security

plan when that carrier operates within a single region. Any questions or concerns related to a non-class I railroad security inspection should be forwarded to the regional specialist and HQ HM Specialist responsible for security to be resolved.

Inspections of Security Plans at Offeror Facilities:

Security inspections at offerors' facilities may differ from those conducted at railroads, but the hazardous materials regulations require offerors' plans to include all the elements identified in § 172.802 (i.e., personnel security, unauthorized access, and enroute security). One approach offerors may take to incorporate "enroute" security into their plans is to outline the discussions and coordinated steps they have taken with the railroads transporting their cargo to ensure en-route security. Examples of enroute security elements that may be incorporated into an offeror's plan include, but are not limited to: electronic or manned monitoring of their rail entry and exit points, shared or jointly laced locks on rail entry gates, and/or rail personnel sign-in sheets.

Private Track Considerations:

In the case of a lessee that holds a valid private track agreement with a railroad and the leased track meets § 171.8's definition of "private track", any railroad cars on that track are subject to the security plan requirements if the commodity on the track meets the applicability requirements of § 172.800(b). In the case of private track, compliance with the security plan regulations are the responsibility of the person who offers the hazardous material into transportation from the private track (typically the lessee); however, the lessee may establish a mutual written agreement to adopt and apply the railroad's security plan, or portions thereof, to satisfy this requirement.

Additional Considerations during Elevated Threat Levels at Carrier Properties:

During elevated threat levels, depending on the specific requirements of a railroad's security plan, inspectors may see enhanced security measures over and above the carrier's normal security procedures. For example, inspectors may see heightened security measures such as employees and contractors displaying identification badges. (Note: contractor's identification badges may or may not be issued by the carrier.)

When threat levels escalate, an inspector may verify that carrier officials are following the changing protocols in their security plan. For example, if an inspector observes employees displaying their company identification badges that are not normally displayed during lower threat levels, an inspector may ask the carrier official if this display is required by the carrier's security plan. If this is confirmed, and an inspector later observes employees not displaying their badges, then the inspector may respond with appropriate enforcement action.

Questions or concerns about security plans on Class I railroads should be directed to the HQ hazardous materials specialist responsible for security oversight who will coordinate with the appropriate railroad official(s) to resolve any questions or concerns FRA field personnel have.

Additional Security Requirements and Training Issues:

The rail routing regulation (49 CFR § 172.820, *Additional planning requirements for transportation by rail*) requires railroads to annually compile traffic data on the security-sensitive materials (SSM) that they carry. SSMs include:

- Poison Inhalation Hazard materials in bulk packaging;
- More than 5,000 pounds in a single carload of Division 1.1, 1.2, or 1.3 explosive materials;
- A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in 49 CFR § 173.403;

Carriers are also required to compile the data for high-hazard flammable trains (HHFT), defined as a single train carrying 20 or more tank cars of a Class 3 flammable liquid in a continuous block, or a single train carrying 35 or more loaded tank cars of a Class 3 flammable liquid throughout the consist. Although class 3 liquids in HHFTs are not considered SSMs, the traffic data and route analysis requirements described below apply to trains meeting these criteria.

49 CFR § 172.820

Section 172.820 requires carriers to analyze the safety and security risks along rail routes over which they transport SSMs and HHFTs and to assess all alternative routes over which they have authority to operate. At a minimum, in conducting the required risk analysis, carriers must consider the 27 identified risk factors listed in Appendix D to 49 CFR Part 172. These factors are as follows:

1. Volume of hazardous material transported;
2. Rail traffic density;
3. Trip length for route;
4. Presence and characteristics of railroad facilities;
5. Track type, class, and maintenance schedule;
6. Track grade and curvature;
7. Presence or absence of signals and train control systems along the route ("dark" versus signaled territory);
8. Presence or absence of wayside hazard detectors;
9. Number and types of grade crossings;
10. Single versus double track territory;
11. Frequency and location of track turnouts;
12. Proximity to iconic targets;
13. Environmentally-sensitive or significant areas;
14. Population density along the route;
15. Venues along the route (stations, events, places of congregation);

16. Emergency response capability along the route;
17. Areas of high consequence along the route, including high consequence targets as defined in § 172.820(c);
18. Presence of passenger traffic along route (shared track);
19. Speed of train operations;
20. Proximity to en-route storage or repair facilities;
21. Known threats, including any non-public threat scenarios provided by the Department of Homeland Security or the Department of Transportation for carrier use in the development of the route assessment;
22. Measures in place to address apparent safety and security risks;
23. Availability of practicable alternative routes;
24. Past incidents;
25. Overall times in transit;
26. Training and skill level of crews; and
27. Impact on rail network traffic and congestion. Using the results of this route analysis, carriers are required to transport SSMs and HHFTs over the routes posing the least overall safety and security risk.

Carriers can develop their own route analysis methodology based on the regulation and/or use a system developed by another company for this purpose. Presently, there are two known rail industry-wide routing analysis systems, the Rail Corridor Risk Management System (RCRMS) and the Hazmat Transportation Analytical Risk Model (H-TRAM). RCRMS is used by most Class I and some larger Class II and III rail carriers. H-TRAM is mainly used by Class III rail carriers. Each uses the 27 prescribed factors to weigh safety and security impacts.

No matter how a carrier conducts its route analysis, it must be able to demonstrate compliance with the rule (i.e., be able to explain and demonstrate how the carrier conducts the required analysis, know what systems and other information are used to perform the analysis, access all appropriate information, generate associated mapping and reports, explain decisions made, demonstrate use of analysis, and take corrective action if necessary). For Class II and III (short line) carriers that are part of a rail conglomerate, the address on the company's DOT Hazardous Materials Registration is where FRA expects to be able to view security plans and routing analysis.

Activity Reporting:

Railroad safety inspectors, railroad safety specialists, and participating state inspectors should record inspection activities concerning review of security plans using the inspection task code 172I in the Railroad Inspection System for Personal Computers (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 172H in the RISPC program. Each training record (employee record) reviewed constitutes a separate unit and the total units should be recorded. Because it is FRA's policy to examine security plans at designated locations, the specific location of the inspection should reflect the city and state where the actual inspection occurred.

Additional Resources:

The Pipeline and Hazardous Materials Safety Administration's website contains additional guidance for persons seeking to comply with the hazardous materials security plan and training requirements. Inspectors should conduct inspections applicable to the guidelines in this HMG document and consult their regional specialist if questions arise.
https://www.fra.dot.gov/eLib/Details/L00921