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## Companies That Offer Certain Hazardous Materials for Shipment Must Implement Department of Transportation Security Plan by September 25, 2003

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On March 25, 2003, the Department of Transportation promulgated final regulations establishing new requirements applicable to companies that offer certain hazardous materials for shipment (68 Fed.Reg. 14510). The regulations set September 25, 2003 as the deadline for companies subject to the rule to have in place "security plans" designed to enhance the security of hazardous materials in transportation. In addition, the companies must ensure that their employee training plans include a security component, and that certain employees receive training regarding the security plan and its implementation by December 22, 2003. This *Environmental Alert* summarizes the applicability of the regulations and outlines the steps that covered companies must take in order to comply with the new requirements.

### ***Applicability***

The March 25, 2003 regulations revise existing Department of Transportation (DOT) requirements as part of DOT's Hazardous Materials Regulations (49 CFR Part 172); in addition, they create a new Subpart I that establishes requirements for security plans. The new regulations apply to all persons who offer for transportation or transport in commerce one or more of the hazardous materials specified in the regulations. Among the listed categories that are covered by the regulations are:

- shipments of hazardous materials in bulk packaging with a capacity of greater than 3,500 gallons (liquids) or 468 cubic feet (solids); and
- any quantity of a hazardous material that requires placarding under DOT regulations at 49 CFR Part 172, Subpart F.

Any person offering for shipment hazardous materials meeting one or more of the above criteria is subject to the security plan and training requirements described below.

### ***Security Plan Requirements***

A company subject to the security plan requirements must develop and implement a security plan that is to "address security risks related to the transportation" of the hazardous material(s) in question. The plan must be developed and implemented by **September 25, 2003**; it must be in writing and retained for as long as the requirements apply. It also must be revised and updated as necessary to reflect current circumstances, and must be available to all employees that are responsible for implementing it.

The security plan must contain an assessment of the potential risks associated with transportation of the hazardous materials, as well as an enumeration of measures that can be implemented to address the identified risks. Each security plan must contain, at a minimum, three separate components:

1. ***Personnel Security:*** The security plan must include procedures that allow the company to confirm certain information provided by job applicants. This provision is limited to applicants for positions that involve access to and handling of the hazardous materials that are the subject of the security plan. DOT believes that these new security procedures should include, at a minimum, efforts to check information relating to recent employment history, references and citizenship status. Confirmation of additional information is required if it is reasonable and prudent to do so for purposes of assessing personnel security issues. Efforts to confirm such information must comply with federal and state laws concerning employment practices and individual privacy.
2. ***Unauthorized Access at the Company's Facility:*** The security plan must also assess the risk that "unauthorized persons" might try to gain access to the hazardous materials or the vehicles that will be used in the transportation of the materials. Unauthorized persons include any person not authorized by the shipper or the transporter to have access to the

materials and/or the transport vehicle. The security plan must contain provisions for addressing each identified risk associated with unauthorized access.

3. **Risks En Route:** Security risks that may arise during transportation of the materials from the point of origin to the ultimate destination also must be assessed and addressed. Significantly, the regulations impose this obligation on both the person offering the materials for shipment and on the transporter. While DOT recognizes that transporters will shoulder the main responsibility for addressing en route security concerns, companies offering such materials for shipment must work with the transporters to develop appropriate plan elements. The regulations provide that this requirement can be satisfied by either a joint plan developed and implemented by both the shipper and the carrier or by two separate plans, depending on the circumstances.

### ***Training Requirements***

The regulations also revise and supplement the requirements for hazmat employee training at 49 CFR §172.704. Any hazmat employee that receives hazmat training must receive training in "security awareness"--including the security risks associated with the transportation of the hazardous materials and the measures implemented to address those risks. In addition, the training must include information on how to recognize and respond to potential security threats. These requirements apply regardless of whether the company is subject to the security plan requirements, and are effective immediately for all new employees (must be completed within 90 days of hiring). For current employees, the appropriate training must be included in the next scheduled recurrent training (but no later than March 24, 2006). Additional in-depth security training is required for all hazmat employees of any company required to have a security plan. The training must focus on the security plan itself and the manner in which the company implements the security plan. General guidance from DOT indicates that the training should include company security objectives, the responsibilities of employees, actions recommended in the event of a security breach and the structure of the organization's security plans.

In recognition of the fact that most companies already have in place training programs to meet other federal and state regulatory requirements (i.e.,

OSHA/EPA HazCom training), the regulations permit a company to use those training programs to satisfy the new DOT training requirements, provided that the training includes the security issues identified in the new regulations.

### ***DOT Inspection and Enforcement***

DOT has indicated that it expects to commence inspections to determine compliance with these new requirements immediately upon expiration of the transition period (i.e., September 25, 2003). DOT's efforts will focus on the existence of and substance of the written security plans, the manner in which the companies have implemented the written plans and the records documenting compliance with the new training requirements. It is likely that an inspection will consist primarily of on-site review of available records--the plan itself and the training records. DOT also has indicated that it expects to initiate "appropriate" penalty actions where violations of the requirements are discovered; DOT is developing a civil penalty policy that will establish baseline penalties for violations of these requirements.

### ***Compliance Strategy for Companies that Ship Hazardous Materials***

DOT has estimated that over 42,000 companies will be subject to the security plan regulatory requirement. If your company offers hazardous materials for transport, you need to evaluate whether the materials fall into the categories covered by this rule. If you are covered by the rule, you must have the written security plan in place no later than September 25, 2003. You also must evaluate whether your existing training programs meet the new requirements with respect to transportation security; that obligation exists whether or not your company is subject to the security plan requirements. Although the regulations do not require it, DOT also expects that shippers will, at a minimum, verify that the carrier that will be transporting the materials has a satisfactory security plan in place, and that, in their estimation, the plan is adequate to address the potential security risks posed by the materials that are to be transported.

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