



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Transportation/Hazardous Materials: August 15th U.S. Pipeline and Hazardous Materials Safety Administration Clarifying Security Plan Requirements

09/12/2017

The United States Pipeline and Hazardous Materials Safety Administration (“PHMSA”) addressed in an August 15th letter the Hazardous Materials Regulations (“HMR”) security plan requirements.

PHMSA was responding to two questions posed in a February 21st letter from Golder Associates, Inc. (“GAI”).

The HMR regulations applicable to security plan requirements are found in Part 172, Subpart I.

GAI first asked whether the company is required to develop and adhere to a transportation security plan for hazardous materials if the employees only unload large bulk quantities of a Class 3 (flammable liquid) Packing Group (PG) II material while the carrier is present. It clarifies that the company does not offer for transport or act as carrier of the hazardous materials in a quantity that would require a security plan.

PHMSA answers in the negative.

The agency notes:

If the Class 3, PG II material is unloaded from a bulk package in the presence of the carrier, then the requirement to develop and implement a transportation security plan under § 172.800 would apply. If the private carrier has left the consignee’s unloading area or the common or contract carrier has departed the consignee’s property, then the requirement to develop and implement the same transportation security plan would not apply.

PHMSA states in support of this conclusion, that:

The requirement to develop and implement a security plan applies to persons who offer for transportation or transport the hazardous materials specified in § 172.800 of HMR. Section 171.8 defines “transportation/transport” as the movement of property and loading, unloading, or storage incidental to that movement. However, pursuant to § 171.1(d)(2), hazardous materials that are unloaded from a transport vehicle or bulk packaging following delivery of a shipment by the carrier to the consignee are not considered to be in transportation in commerce and are not subject to the requirement of the HRM, if:

1) they are unloaded by the consignee's own employees following the departure of the carrier's personnel, or

2) in the event a private carrier is used, that carrier has departed the unloading area.

GIA also asked if a company that only unloads hazardous materials in the quantities listed and defined in § 172.800(b) must have a security plan.

PHMSA answers this question affirmatively stating:

Persons that perform the pre-transportation or transportation functions in § 171.1(b) or (c) are subject to § 172.800(b).

[A copy of the PHMSA letter can be downloaded here.](#)