

of the hazardous materials listed in subpart G of 49 CFR part 107 or select agent or toxin regulated by CDC is stored incidental to the movement of the hazardous material(s) in commerce. As indicated above, for purposes of this final rule, "storage incidental to movement" is storage that takes place between the time that a hazardous material is offered for transportation to a carrier and the time it reaches its destination. The security plan requirement applies only to shipments of the specified hazardous materials and to facilities at which the specified hazardous materials are prepared for transportation or stored during transportation.

Security plan components. A security plan must address risks related to the transportation of hazardous materials in commerce. Thus, this final rule requires persons subject to the security plan requirement to perform an assessment of the transportation security risks associated with the materials they handle. As we stated in the preamble to the NPRM, we have developed a security template to illustrate how risk management methodology can be used to identify points in the transportation process where security procedures should be enhanced within the context of an overall risk management strategy. The security template is posted on our website at <http://hazmat.dot.gov/rmsef.htm>. Other risk assessment tools are equally valid, however. This final rule does not require persons subject to the security plan requirement to use a specific risk assessment tool to meet the risk assessment requirement.

Using risk assessment methodology, a company will select an appropriate level of detail for its security plan based on the assessed risks identified for such material or materials. Factors that may be considered are the type or types of materials transported, the quantity of material transported, the area from or to which the material is shipped, and the mode of transportation used.

A security plan must include a method or methods for confirming information provided by applicants for jobs that involve access to or handling of the hazardous materials covered by the plan. In response to commenters' concerns, we revised this aspect of the security plan to substitute the term "confirm" for the term "verify." Commenters are concerned that the standard implied by the term "verify" may be impossible to meet. In addition, this final rule requires employers to confirm information provided by job applicants who are hired to perform jobs that involve access to or handling of the hazardous materials covered by the

plan. Read literally, the NPRM language would have required employers to confirm information provided by all job applicants.

Also in response to commenters, we have added language to indicate those persons to whom the requirement applies. Some commenters suggest that we should specify that the requirement applies to hazmat employees, as defined in § 171.8 of the HMR. We do not believe that this is necessary, although an employer may decide to include all hazmat employees. The requirement in this final rule is limited to applicants for hazmat employee positions that involve access to or handling of the hazardous materials covered by the security plan. We do not believe it necessary to include persons whose sole responsibility is preparing shipping documentation, for example, nor do we believe it necessary to include persons who manufacture, maintain, or requalify packages.

We do not expect companies to confirm all of the information that a job applicant may provide as part of the application process. However, employers should make an effort to check information related to an applicant's recent employment history, references, and citizenship status. In short, we expect companies to take reasonable and prudent measures to address personnel security issues. In response to commenters, in this final rule we added a requirement that efforts to confirm information provided by job applicants must be consistent with applicable Federal and State laws concerning employment practices and individual privacy.

A security plan must also include methods to address the possibility that unauthorized persons may attempt to gain access to hazardous materials or transport vehicles being prepared for transportation. Some commenters suggest that we include a definition of "unauthorized persons" in this final rule. The term "unauthorized persons" as used in this final rule includes persons who are not employed by the company or members of the general public, unless such persons are specifically authorized by the company to have access to hazardous materials or transport vehicles being prepared for transportation. Beyond these persons, however, each entity to whom the security plan requirement applies will need to define the universe of unauthorized persons to account for the nature of the facility and the type of activity that takes place there. An unauthorized person is any person who is not authorized by the shipper or carrier to have access to hazardous

materials or transport conveyances being prepared for transportation.

The third element of a security plan is a method or methods to address en route security risks. As noted above, commenters express a number of concerns about this provision of the NPRM. Many commenters address the shared responsibility of shippers and carriers for reducing security risks related to the transportation of hazardous materials in commerce. In particular, some commenters suggest that "[r]esponsibility for the security of a shipment in transit should in the final analysis rest with the transporter. The shipper does not ultimately determine the routes for movement of cargo or the locations for incidental stops or storage. This responsibility appropriately rests with the carrier." (Boeing Company) Other commenters agree that en route security should primarily be the responsibility of the carrier. "[T]o a great extent, shippers must rely on the carriers to generate en route security plans. This may mean that in some cases there would be two separate plans instead of a joint shipper and carrier plan. * * * [We] believe that shippers and carriers should have the flexibility to determine the best way to address en route security." (American Chemistry Council) Other commenters suggest that the proposal places "too much emphasis on the shipper and recipient, and effectively absolves the transporter of responsibility for security. The carrier has control of the HM for the majority of any shipment, and should also bear the responsibility for ensuring an adequate safety plan and implementation of same." (CF Industries)

We agree that a hazardous materials transporter's security plan will address en route security issues in some detail. However, we do not agree that shippers need not address this aspect of transportation security. As one commenter suggests, "[C]arrier 'security plans' must involve considerable input from the shipper community. It is the shipper who has best access to information relative to the hazardous properties of the commodity. It is the shipper who controls: Carrier selection and order entry; loading; time and method of dispatch; and, destination." (National Tank Truck Carriers) At the same time, we recognize that "the carrier has the best information relative to the route taken and the security along that route. This includes driving time, route deviations, and rest stop selection." (American Chemistry Council) We expect shippers to work with carriers to address en route security risks of the materials covered