

by their security plans. In some cases, a shipper and carrier may have a joint plan; in others, a shipper and carrier may have two separate security plans. This final rule provides shippers and carriers with the flexibility necessary to determine the best methods for addressing en route security issues.

A number of commenters object to the NPRM language that a security plan should include a system for verifying that a carrier has an on-going transportation security program. "In effect, this aspect of the proposal would require that customers of carriers take an active role in ensuring that carriers are in compliance with the security plan requirements proposed by RSPA. In effect, RSPA is deputizing offerors of hazmat to police their carrier's compliance efforts." (International Sanitary Supply Association) We are not requiring shippers to compel compliance by carriers. At a minimum, however, a shipper should satisfy itself that the carrier that will be transporting its material has a security plan in place that adequately addresses the assessed security risks of the material to be transported, including risks related to storage of the material during transportation.

*Relationship to other requirements.* The NPRM included a provision permitting security plans that conform to regulations of other Federal or international agencies to be used to satisfy the requirement proposed for the HMR. All commenters support this provision. Several suggest that we specify that plans that conform to requirements of the Department of Defense or the Nuclear Regulatory Commission are acceptable. We do not think it is necessary to specifically list in the regulation Federal or international agencies that have now or may in the future impose security plan requirements on persons who handle hazardous materials. A security plan that conforms to regulations issued by any other Federal agency is acceptable, so long as it includes the requirements for security plans in this final rule. Other commenters request that we include plans developed by industry associations, such as the American Chemistry Council or the Association of American Railroads. Certainly, we expect that many companies will develop security plans using guidance and recommendations developed by the industry. In fact, we encourage companies to take advantage of existing guidance, model security plans, and the like when developing security plans tailored to their own operations. This includes industry-developed protocols or guidelines and recommendations

issued by other Federal or international agencies. This provision is modified in this final rule to clarify that regulations, protocols, guidelines, or standards developed by other Federal agencies, international organizations, or industry are acceptable, provided such regulations or guidelines address the specific security vulnerabilities of the company.

We note in this regard that, while a security plan developed in conformance with regulations issued by another Federal agency may suffice to meet the requirements of this final rule, the reverse is not necessarily true. For example, air cargo security requirements promulgated by TSA are more stringent than the security requirements in this final rule. Similarly, requirements promulgated by NRC to address the transportation security of radioactive materials may be more stringent than the requirements in this final rule. Shippers and carriers should be aware that they may be subject to additional, more stringent security requirements promulgated by other Federal agencies, depending on the materials they transport and the mode of transportation.

*Availability to the public.* Several commenters express concern about the possibility that security plans may become publicly available. "It is critical that carrier and shipper plans remain confidential; not subject to public disclosure and Freedom of Information Act requests." (CSX Transportation) Commenters are particularly concerned about plans that may be obtained by enforcement personnel during a compliance inspection.

Generally, RSPA will not collect or retain security plans. With regard to security plans, our enforcement focus during the compliance inspection is to ensure that companies have developed a security plan. Inspectors will review the existing plan on site and generally will not take copies with them or require companies to submit security plans.

In the rare instance that RSPA enforcement personnel identify a need to collect a copy of a security plan, or if a company voluntarily submits a copy of its security plan, we 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 DOT in these unusual instances, companies should follow the procedures described in 49 CFR 105.30 for requesting confidentiality. Under those procedures, a company should identify and mark the

information it believes is confidential and explain why. We will then determine whether the information may be released or protected under the law.

*Timing of implementation.*

Commenters are concerned that the final rule provide sufficient time for development and implementation of security plans. The NPRM did not specify a transition period. We agree that a transition period is necessary. Therefore, in this final rule, we provide persons subject to the security plan requirement 6 months from the effective date of the final rule to develop and implement security plans.

*G. Training*

The HMR currently require hazmat employees to be trained so they are: (1) Familiar with the general provisions of the HMR and can recognize and identify hazardous materials; (2) knowledgeable about specific HMR requirements applicable to functions performed; and (3) knowledgeable about emergency response information, self-protection measures, and accident prevention methods. A hazmat employee is one who directly affects hazardous materials transportation safety (§ 171.8). Hazmat employers must ensure that their hazmat employees are trained. For new employees, training must be completed within 90 days after employment or a change in job function. All hazmat employees must receive recurrent training every three years.

The safety training provided by hazmat employers may include the physical security of hazardous materials and ways to prevent vandalism and theft. However, such training may not be adequate to meet current threats. Because many hazardous materials transported in commerce may potentially be used as weapons of mass destruction or weapons of convenience, it is critical to the assurance of public safety that training for persons who offer and transport hazardous materials in commerce include a security component. Therefore, in the May 2, 2002 NPRM, we proposed to add a provision to § 172.704 to require the training of each hazmat employee to include a security component. We proposed that hazmat employees of persons required to have a security plan must be trained in the plan's specifics. In addition, we proposed that all hazmat employees must receive training that provides an awareness of the security issues associated with hazardous materials transportation and possible methods to enhance transportation security. As proposed in the NPRM, all hazmat employees would be required to