



**U.S. Department of Homeland Security
U.S. Department of Transportation**



**RECOMMENDED SECURITY ACTION ITEMS FOR THE
RAIL TRANSPORTATION OF TOXIC INHALATION HAZARD MATERIALS**

SUPPLEMENT NO. 2, ISSUED FEBRUARY 12, 2007

This document contains further guidance on a recommended security action item for the rail transportation of materials poisonous by inhalation, commonly referred to as Toxic Inhalation Hazard (TIH)¹ materials. Adoption of this guidance is voluntary. Movement of large quantities of TIH materials by rail in proximity to population centers warrants special consideration and attention. These materials have the potential of causing significant numbers of fatalities and injuries if intentionally released in an urban environment.

On June 23, 2006, the Department of Homeland Security and the Department of Transportation issued 24 recommended security action items. On November 21, 2006, the Departments issued three additional recommended security action items. The security action items are divided into three categories 1) system security; 2) access control; and, 3) en-route security. Under the category of access control, it was recommended that the freight rail industry establish procedures for background checks for contractor employees with unmonitored access to company-designated critical infrastructure. This supplemental issuance provides further guidance on the recommended scope and procedures for voluntarily conducted background checks.

¹ Under the Hazardous Materials Regulations (49 CFR 171-180), TIH materials are gases or liquids that are known or presumed on the basis of tests to be so toxic to humans as to pose a hazard to health in the event of a release during transportation. See 49 CFR 171.8, 173.115, and 173.132.

I. Introduction

The Department of Homeland Security (DHS) and the Department of Transportation (DOT) are concerned about the risk posed the transportation by rail of bulk TIH materials in High Threat Urban Areas. Our intention is to work with the freight rail industry to develop and implement security initiatives that will measurably reduce the risk and enhance the security of bulk Toxic Inhalation Hazards moved by rail in High Threat Urban Areas. On June 23, 2006, under Access Control Security Practices, paragraph 15, we recommended that the industry:

15. . . . Establish procedures for background checks . . . for contractor employees with unmonitored access to company-designated critical infrastructure.

This document provides specific recommendations on such background checks. These recommendations do not alter, limit, or conflict with State or Federal statutory protections², or regulations, orders, and directives of DHS, DOT or any other the governmental agency.

II. Criminal History Checks

Many stakeholders may use criminal background checks to assess the suitability of their employees for positions. To the extent that a stakeholder chooses to do so for employees with unmonitored access to company-designated critical infrastructure, they should consider using the federally established list of disqualifying crimes applicable to hazmat drivers and transportation workers at ports (see 49 CFR 1572.103).³

A. Redress Procedures

The industry should consider establishing a vigorous internal redress process for adversely affected applicants and personnel, including an appeal and waiver process similar to the system established for hazmat drivers and transportation workers at ports (see 49 CFR part 1515).

An appeal process would be designed to provide an applicant or personnel with the opportunity to show that he or she does not have a disqualifying conviction, by correcting outdated underlying court records or proving mistaken identity.

² For instance, employee protections codified at 49 U.S.C. 20109 that prohibit discrimination or retaliation of rail employees who file a complaint against a railroad or refuse to work due to hazardous conditions remain in full force and effect.

³ See 72 FR 3492 (January 25, 2007), as corrected by 72 FR 5632 (February 7, 2007)

A waiver process would be designed to provide an applicant or personnel with the opportunity to be hired or continue employment by demonstrating rehabilitation or facts surrounding a conviction that mitigate security concerns. The industry should consider permitting an applicant or personnel to submit information pertaining to any of the following:

1. Circumstances of the disqualifying offense;
2. Restitution made;
3. Letters of reference from clergy, employers, probation/parole officers; and
4. Other factors the individual believes bear on his or her good character.

The industry may elect to incorporate the redress process into the disciplinary procedures already used by railroads as part of its management/labor relations.

III. Social Security Number Verification

In addition, the industry should consider using the Social Security Number Verification System (SSNVS) that the Social Security Administration (SSA) makes available to all employers. Employers can verify that current employee names and social security numbers match the SSA's records, which reduces the likelihood that an individual who has adopted a false identity and difficult to thoroughly vet is part of the workforce.

IV. Immigration Status

The industry should also consider using the Systematic Alien Verification for Entitlements (SAVE) database to determine a non-citizen's immigration status. SAVE is an intergovernmental information-sharing service for agencies and employers to use to ensure that an applicant has lawful presence in the United States. SAVE is nationally accessible and contains selected immigration status information on approximately 50 million individual non-citizens.⁴

⁴ For information on accessing SAVE, contact: Director, SAVE Program, USCIS SAVE Program, Douglas Development Building, 2nd Floor, 20 Massachusetts Ave., NW, Washington, DC 20529.