



September 22, 2009

The Honorable James L. Oberstar
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable John L. Mica
Transportation and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

Re: Statement for the record on the Committee hearing entitled “Concerns with Hazardous Materials Safety in the U.S.: Is PHMSA Performing its Mission?” and the Staff Summary of Subject Matter.

Dear Mr. Chairman and Representative Mica:

DGAC is a non-profit educational organization that promotes hazmat transportation safety by providing classroom training, seminars and conferences, and participation in domestic and international regulatory activities in its promotion of not only safe, but also efficient transportation of hazardous materials/dangerous goods in commerce. We hereby provide our perspective on the issues discussed at the hearing and request that this statement be included in the official record of the hearing.

Concern Over the Characterization that PHMSA is too Cozy with Industry. We are concerned about what appeared to be a major premise of the hearing that PHMSA is too cozy with industry. DGAC members are engaged in shipping and transporting hazardous materials or otherwise involved in supporting the safe transport of hazardous materials. As safety professionals, DGAC members are committed to promoting hazmat transportation safety in the United States and around the world. As such, our members share a common safety goal with the PHMSA Hazmat Program.

Government and industry working cooperatively to achieve our common safety objective has long been recognized as the most effective approach. Past PHMSA Administrators, including former Deputy Secretary of Transportation Vice Admiral Thomas Barrett, upon recognition of a wide diversity of hazardous materials and transportation practices, have noted the need for PHMSA to take advantage of the wealth of knowledge available to them through industry. As an illustration of how industry and government both benefit from working collaboratively, DGAC and PHMSA recently cooperated in the development and distribution of a pamphlet entitled “What You Should Know: A Guide to Developing a Hazardous Materials Training Program.” And last year, in recognition of regulatory deficiencies, we submitted a petition for rulemaking to PHMSA for new hazardous materials safety regulations applicable to the loading and unloading of railway tank cars and cargo tank motor vehicles. The attached petition was based on the collective broad experience of our members in addressing the loading and unloading of a

wide range of hazardous materials. The proposal also takes into account the recommendations of the National Transportation Safety Board based on several of its accident investigations as well as informally obtained NTSB staff recommendations. All of our dealings with PHMSA can and should be characterized as having been conducted on a professional level with each organization respecting the other's responsibilities.

Why are Special Permits and Approvals Necessary? In the United States, no person may offer for transportation or transport a hazardous material in commerce except in accordance with DOT's Hazardous Materials Regulations (HMR). Consequently, special permits are essential to innovation and technological advancement. As new technologies are developed by both industry and government agencies (e.g., DOD, NASA), it is often the case that the applicable regulations serve as impediments to the advancement of such technologies. The Special Permits Program allows these technologies to evolve without having to await the development of new regulatory amendments which can sometimes take years to develop. In other instances the technologies are of such specialized use that regulatory changes are not justified.

On a number of occasions during the hearing, special permits were represented as being exceptions to the regulations as if safety was compromised. We consider this a mischaracterization and are concerned about potential impacts on a program critical in numerous areas of national interest such as development of alternative energy sources, agriculture, space exploration, and defense. The United States Government is the holder of more special permits than any other entity, and also the holder of more approvals than industry combined.

Special permits are required to provide at least an equivalent level of safety as compared to the regulations they supplant. They often provide an even higher level. An example is a special permit (understood to be SP-14167) described by DOT's Inspector General. It authorizes a thicker, higher puncture resistant rail tank car than that specified in the regulations for the transport of chlorine. A University of Illinois study found that this tank car design reduces the probability of a release by 60 to 70 percent when compared to tank cars required at the time the special permit was issued. Further, contrary to the IG's remarks which suggest a lack of documentary evidence supporting the determination of an equivalent level of safety, extensive analysis was done in issuing this special permit. The special permit on bulk mix trucks also noted by the IG is another example. It provides a practical means of eliminating the need to transport large quantities of explosives to mining and construction sites nationwide by permitting far safer materials to be transported in a single vehicle so that the materials can be mixed to produce explosives at the point of their use. In permitting this practice, overall risk is substantially reduced from both the safety and security perspectives.

Criticisms of another special permit (understood to be SP- 11110) described at the hearing also seem unjustified. The materials this special permit authorizes to be transported in inaccessible cargo holds of cargo aircraft are materials characterized as posing a low level of hazard. Paint in small cans is likely the most common material covered. We would note that unlike the HMR, international regulations on the transport of dangerous goods by air that are issued by the International Civil Aviation Organization permit these materials, as well as many others, to be transported in inaccessible cargo aircraft holds. In effect the special permit allows something that is common practice throughout the rest of the world. We are unaware of significant safety concerns arising from this practice.

Approvals are also vital to the accomplishment of PHMSA's safety program. In most cases, when a regulation calls for an approval, it would be an affirmation of compliance with a process or procedure. The most predominate approval process relates to the testing and classification of explosives. It provides PHMSA an opportunity to conduct final reviews of proposed explosive classifications prior to their introduction into commerce. The majority of explosives approvals are issued to the Department of Defense after the subject explosives have been tested under the oversight of the DOD Explosives Safety Board. Commercial explosives are similarly tested by third party laboratories, including university facilities and the Canadian government test laboratory. Only those explosives that have been successfully tested in accordance with DOT's regulations are submitted to PHMSA for approval. The approval issued by DOT is the final step of a lengthy process. With this procedure in mind, it is no wonder the percentage of requests DOT approves is so high and supports our view that the criticism of PHMSA's high approval percentage is without merit.

PHMSA's Effectiveness. Finally, the Summary of Subject Matter report portrays a bleak picture of PHMSA's performance and suggests the agency is broken. Our experience has been quite the opposite in that we find the agency to be far more effective than many other agencies. The summary fails to note the large amount of work accomplished by a relatively small but efficient staff and this agency has been without an Administrator, Deputy Administrator, and Chief Counsel for more than eight months. In saying this, we agree that improvements in several of the program elements are desirable and, if as anticipated, new resources are provided, their correct allocation to address real safety issues will require serious deliberations. For example, if additional personnel are employed to improve data collection and analyses, will safety benefit significantly from such an allocation? While there is always opportunity for improvement, we believe the safety record for hazardous materials transportation to good. We note that even if PHMSA's fatality data showing 137 hazmat fatalities over a ten year period by all modes of transportation were to understate the actual number by 50%, it would still be far below the more than four hundred thousand fatalities on our highways during the same period. Considering the vast amount of hazardous material that is transported to support our economy---more than one million shipments in transit each day---, this suggests the agency is managing one of the most effective safety programs in the Department.

The Dangerous Goods Advisory Council (DGAC) appreciates the opportunity to provide its comments on the hearing and the report related thereto.

Sincerely,



Mike Morrissette
President



Dangerous Goods Advisory Council

Suite 740 ♦ 1100 H Street NW ♦ Washington DC 20005 ♦ 202/289-4550 ♦ Fax 202/289-4074 ♦ www.dgac.org

November 19, 2007

Dr. Ted Willke
Associate Administrator for
Hazardous Materials Safety
Pipeline & Hazardous Materials Safety Administration
U.S. Department of Transportation
Washington, DC 20590

Re: Petition for rulemaking; hazardous materials transportation, loading, unloading and storage incidental to transportation

Dear Dr. Willke:

The Dangerous Goods Advisory Council (DGAC), in accordance with §106.95 of the hazardous materials regulations (HMR), hereby petitions for the adoption of a new Subpart J in 49 CFR Part 172, to establish requirements for loading, unloading, and storage incidental to transportation. We believe safety in transportation, as that term is defined in 49 U.S. Code 5102 and 49 CFR 171.8, compels adoption of nationally uniform new requirements applicable to these operations.

INTRODUCTION

DGAC is a non-profit educational organization that promotes hazmat transportation safety by providing classroom training, seminars and conferences, and participation in domestic and international regulatory activities in its promotion of not only safe, but also efficient transportation of hazardous materials/dangerous goods in commerce. Our members include shippers and carriers engaged in loading and unloading operations.

BACKGROUND AND JUSTIFICATION

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) recent review of reported serious incidents confirms that at least one quarter, and possibly as much as one half, of those incidents were associated with loading and unloading operations involving bulk packagings (i.e., those having a capacity greater than 3000 liters). As noted at PHMSA's June 14, 2007, public work shop on this subject, the National Transportation Safety Board (NTSB) and the Chemical Safety Board (CSB) investigations demonstrate a need for regulation in this area and workshop attendees and comments to the docket support the need for responsive PHMSA rulemaking action.

While the HMR currently include some provisions applicable to these activities, they are not sufficiently comprehensive, particularly when operations are conducted outside the presence of the transporting carrier. For example, hazmat employee training, including function specific training on unloading procedures, would not be required if the work of unloading were performed by a person outside the presence of the transporting carrier. The current HMR provide few

specifics pertaining to the *processes* of loading and unloading, and planning needed for their execution, regardless of who performs those actions. In addition, the relationship between the bulk transportation equipment to be loaded or unloaded, and the fixed facilities and appurtenances used in transferring materials, is not addressed. This is in contrast to the “systems approach” provided by US Coast Guard regulations governing bulk transportation of hazardous materials by water which provide for safe and secure transportation and safe and secure loading, unloading and temporary storage.

A number of helpful industry practices have been developed to address these issues, but there is no requirement in the HMR compelling any person to follow such standards or practices. We believe national regulations setting out uniform and consistent requirements could best remedy current deficiencies evidenced by the high number of incidents reported.

To this end, we petition PHMSA to adopt requirements in a new Subpart J in Part 172 as shown in the attachment. Similar to existing Subparts H and I on hazmat employee training and security plans, the proposal is performance based. While establishing new requirements and clarifying regulatory obligations, it would allow the regulated industry sufficient flexibility to accommodate differences in products, sites, and operations.

In conclusion, we believe adoption of the attached requirements would enhance safety and security in transportation, clarify responsibilities, and provide for viable federal enforcement. We believe such a rule change would respond effectively to the incident record as well as to the recommendations and findings of the NTSB and the CSB. In the process of developing this petition for rulemaking, we have communicated directly with other organizations in an enterprise approach to enhancing transportation safety.

We do not consider a proposed rule change consistent with this petition to constitute a major rulemaking, as that term is defined. The majority of companies represented by our organization and those consulted have some provisions in place similar to the requirements we propose. To the extent costs may be incurred, we believe the expected reduction in incidents during loading, unloading, and related storage would justify those costs.

Please contact us directly if you have any questions on this petition for rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Michael Morrisette". The signature is written in a cursive, slightly slanted style.

Michael Morrisette
President

Attachment

Attachment

DGAC petitions PHMSA to adopt the following new requirements:

Subpart J –Loading, Unloading, and Incidental Storage Requirements for Hazardous Materials in Bulk Packagings

§172.900 (a) *General requirements.* This section applies to loading, unloading, and storage incidental to transportation of a hazardous material in a packaging having a capacity greater than 3000 liters.

- (1) The offeror, consignee, or transloading facility operator shall assure that loading, unloading, or storage is performed in accordance with the provisions of this section.
- (2) The operational procedures described in §172.901 and §172.902 shall be –
 - (A) written and updated as necessary; and
 - (B) available and provided upon request to each hazmat employee performing a loading or unloading function.

§172.901 *Operational procedures for loading and unloading.* The offeror, consignee, or transloading facility operator shall have operational procedures for loading or unloading that are based on safety and security analyses.

(a) Standards, protocols or guidelines issued by federal agencies or industry organizations (e.g., AAR Pamphlet 34 for rail tank car loading and unloading operations) may be used to satisfy the requirements in this section.

(b) Operational procedures shall, as appropriate, take into account the following:

- (1) Designation of hazmat employees responsible for each aspect of the loading or unloading operation and attendance or monitoring of the operation.
- (2) Protective equipment appropriate to the material being handled.
- (3) Information on the hazards of the material to be loaded or unloaded, including measures to be taken relevant to the loading and unloading operations such as the control of temperature or pressure and the maximum filling limit.
- (4) Conditions specific to the transfer location that could affect safety, including access control, lighting, ignition sources and physical obstructions.
- (5) Measures to be taken to ensure the security of the transfer facility.
- (6) Means of communication.
- (7) Means of control and monitoring of conditions, including temperature of the lading and pressure of the containment vessel.
- (8) Provisions for periodic testing and inspection of cargo transfer equipment.
- (9) Pretransfer procedures, including –
 - (A) identification and verification of the material to be transferred;
 - (B) inspection of the transport unit and transfer area for safety and security purposes;
 - (C) securement of the transport unit against movement;
 - (D) grounding and bonding of the transport unit;
 - (E) inspection of transfer equipment, including hoses and valves, for condition, suitability to handle the material, and unexpired test dates;
 - (F) inspection of connections;
 - (G) identification and verification of the piping path, equipment lineups and operational sequencing;
 - (H) confirmation of communication methods, equipment, procedures and signals;
 - (I) spill containment; and
 - (J) identification of equipment and special operating procedures for emission control systems.

- (10) Transfer procedures, including –
 - (A) initiating and controlling the lading flow;
 - (B) monitoring temperature of the lading and pressure of the containment vessel;
 - (C) monitoring filling limits; and
 - (D) terminating lading flow.
- (11) Post-transfer procedures, including –
 - (A) evacuation of the transfer system and depressurization of the containment vessel;
 - (B) disconnection of the transfer system; and
 - (C) inspection and securement of transport unit fittings, closures, markings and placards.
- (12) Emergency procedures, including –
 - (A) identification of emergency response equipment and individuals authorized in its use;
 - (B) incident response;
 - (C) use of emergency shut-down systems; and
 - (D) emergency communication and spill reporting.

§172.902 *Operational procedures for storage.* The offeror, consignee, or transloading facility operator with control and custody of the package in storage incidental to movement shall have procedures, as appropriate, to –

- (1) monitor for leaks and releases;
- (2) ensure the safe condition of the lading and the package; and
- (3) address security concerns.

§172.903 Employees engaged in loading and unloading operations subject to this Subpart shall be qualified on the procedures commensurate with their responsibilities and shall follow them in the performance of their duties.

§172.904 Special Requirements for Chlorine

For chlorine unloading operations emergency shut-off systems that comply with Chlorine Institute Pamphlet 57 or equivalent must be in use.

Amend §173.30 to read as follows:

§173.30 Loading and unloading of transport units

A person who is subject to the loading and unloading regulations in this subchapter must load or unload hazardous materials into or from a transport vehicle or vessel in conformance with procedures required in Subpart J of part 172, as applicable, and with applicable loading and unloading requirements of parts 174, 175, 176, and 177 of this subchapter.

Note: As an alternative for consideration, it may be possible to incorporate proposed Subchapter J requirements in a revised and expanded §173.30.