



October 16, 2006

Docket Management System  
US Department of Transportation  
400 7th St. SW  
Nassif Building, Room PL-402  
Washington, DC 20590-0001

**Re: HM-208F Comments on Docket No. PHMSA – 2006-25589 (HM-208F); Hazardous Materials Transportation; Registration and Fee Assessment Program; Notice of Proposed Rulemaking**

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.

DGAC supports the registration of hazardous materials shippers and carriers as an appropriate means to identify the regulated community and believes that the \$25 processing fee is reasonable to accomplish this objective. DGAC supports efforts to enable communities to plan for hazardous materials incidents and to train emergency responders, and is in the forefront of training initiatives. However, DGAC no longer believes that the Hazardous Materials Emergency Preparedness (HMEP) program is best positioned to accomplish these planning and training objectives. DGAC members assist directly in community emergency planning. TransCAER is but one example of how the industry supports emergency response training. In addition, members already pay millions of dollars directly to states through state-imposed hazmat fees. Moreover, other sources of federal assistance are available to states that eclipse the amount that could be provided through the HMEP.

While the SAFETEA-LU amendment makes available a limit of \$28,333,000, PHMSA is under no obligation to fund the HMEP program at the full amount. DGAC does not consider it prudent to fund the program at the full funding level absent well documented needs and a credible oversight policy.

DGAC also believes that PHMSA should consider certain potential economies in administering the HMEP program. In particular, DGAC questions the continuing need to fund planning grants to the level anticipated. DGAC expects that grants already provided have accomplished the planning necessary in areas with considerable exposure to hazardous materials. Since the HMEP was implemented, planning needs often demand a regional view. The HMEP is limited in what assistance it can direct to regional planning since 75 percent of the funds are passed directly to localities. A more effective use of HMEP would be for training of emergency responders. However, PHMSA has not chosen to exercise its discretion to shift all new monies to training.

State and local governments often subject industry to additional fees to support emergency response. PHMSA should take these fees into account in distributing HMEP funds. In this respect DGAC notes that PHMSA has the authority to identify and take into account fees collected by state and local governments. PHMSA should initiate a program to collect this information and use it in allocating HMEP funds.

DGAC objects to the allocation of \$4 million to non-profit hazmat employee organizations. While this program was to be a direct benefit to industry, this program does not have industry support. Based on the experience of DGAC members, the training provided to instructors and subsequently to employees through these programs is not open to observation by the management of companies who employ the individuals targeted for training. This places companies in the untenable situation of not being able to control the content of training provided their employees while they remain responsible for employee safety and that of the public in relation to their operations. In addition, the SAFETEA-LU amendment allows some of this money to go directly toward employee training while not relieving hazmat employers of their obligation to train. PHMSA has not explained how and for what purpose it plans to use the \$4 million. Until the public understands how this allocation is to be used and how, if at all, it benefits hazmat employees, this allocation should not be made.

DGAC opposes the proposed approach of requiring that the full burden of the increased funding level should rest on the shoulders of large businesses. PHMSA's analysis suggesting that large companies pose the greatest risk is purely conjecture. PHMSA should consider a more objective means of deciding how the fees should be allocated, perhaps through statistically sound use of incident data.

An analysis of available data shows that, PHMSA will accumulate a surplus if the fee level is raised to the proposed level. DGAC recalls that accumulation of a surplus has proven problematic in the past. PHMSA should at a minimum reduce fees so as to avoid this situation.

The Dangerous Goods Advisory Council (DGAC) appreciates the opportunity to comments on the HM-208F NPRM.

Sincerely,

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

Michael Morrissette  
President