



December 21, 2006

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

Re: HM-232F Comments on Docket No. PHMSA – 06-25885 (HM-232F); Hazardous Materials: Revision of Requirements for Security Plans; Advance 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 appreciates the opportunity to offer comments on HM-232F. Though not reflected in the notice, we also have previously advocated to PHMSA that they streamline the list of materials. While DGAC understands the circumstances at the time HM-232 was originally promulgated did not allow for detailed consideration of what substances warranted the development of a security plan, we fully support consideration at this time when a more reasoned assessment can be made. DGAC believes certain substances on the current list do not pose a security risk and we believe compliance costs can legitimately be reduced by a streamlining of the list without compromising security.

While agreeing to the appropriateness of applying security requirements to certain hazardous materials, DGAC notes that there are a number of factors that discourage the use of hazardous materials in transportation as a weapon of mass destruction. While their relevance varies according to the material under consideration, factors include:

Some hazardous materials in transportation are readily available by other means. If materials are readily available through legitimate means, terrorists will in all probability prefer this approach over attack or theft from a transport unit which could lead to early identification.

The manner in which hazardous materials are packaged for transportation often does not lend itself to use as a WMD. Materials in non bulk packages are subdivided into many small quantities. Materials in small packages do not lend themselves to rapid release in an attack.

Terrorist are not normally opportunists and try to plan events carefully. Use of a hazardous material in transportation as a WMD introduces considerable uncertainty into the planning. The timing of shipments and the routes taken are not always predictable.

DGAC believes security requirements for hazardous materials should be risk based and appropriate for the vulnerabilities hazardous materials in transportation pose in comparison to other security risks faced by our society.

With respect to the questions raised in the HM-232 F notice, DGAC offers the following responses:

(1) What is the best basic approach to security plans? Is the current approach correct or should security plans be required only for hazardous materials in threshold quantities that are known to pose significant security risks?

DGAC supports the current approach whereby the shipper or carrier determines the appropriate measures to include in a security plan, including the possibility of deciding that a material does not pose a significant security risk. There is too much variation in the types, quantities and form of hazardous materials to take any more prescriptive approach.

However, we believe the current list captures too many substances that do not pose any significant security risk causing many companies to unnecessarily prepare plans of little or no benefit. We believe that security can be enhanced by narrowing the list and more closely focusing on those materials for which security measures are justified.

DGAC favors closer alignment with the UN Indicative List. DGAC participated in the development of the list and notes that the UN Indicative List was also prepared under time constraints. There are groups of materials on this list that also warrant further consideration. Only those substances that could be used in credible scenarios should ultimately be retained on the list. DGAC offers the following comments on the UN List:

Desensitized explosives. As a condition of classification, desensitized explosives are subject to a 30 minute bonfire test to demonstrate they do not detonate in fire conditions. These materials would require processing to separate the primary explosive from the diluent material. Considering the separation process may pose safety hazards in the final stages of separation and primary explosives can be obtained by blending of commercially available materials, it is questionable whether theft of these materials and processing to produce a primary explosive for purposes of a subsequent attack is credible. We do not believe this group should be retained.

Division 6.2. We believe the current requirement to require a security plan for select agents is more appropriate.

Class 8 corrosive substances. Except for Class 8 materials posing a severe inhalation hazard, it is difficult to see how these materials could be used in a high consequence event. Class 8 materials posing an inhalation hazard risk should be captured through criteria for Division 6.1. DGAC recommends that other substances in this group not be retained.

(2) Are there ways to lessen the burdens of security plan requirements on companies with minimal security risks?

DGAC believes the burden can most effectively be reduced through a narrowing of the list of materials requiring the preparation of a security plan, recognizing that even in a narrower list will capture some materials posing minimal security risk.

Having to treat all Hazmat Security Plans as Security Sensitive Information places an additional administrative burden on holders of security plans. While DGAC has written to TSA and DOT to

narrow the applicability of SSI requirements final interpretations clarifying applicability have not been received. Copies of DGAC and TSA/DOT correspondence are attached. Clarification on the applicability of SSI requirements could potentially provide some relief from the SSI requirements.

(3) Should baseline security requirements or guidelines be established when security plans are not required?

Clarification relating to some of the factors noted in our response to question 4 would be helpful.

(4) What factors should be considered in determining whether security risks of a specific hazardous material or class of hazardous materials are significant enough to require preparation of a security plan?

Factors should include:

1. The level of threat that should trigger precautionary security measures. As suggested by the UN text, security measures should preclude high consequence events.
2. The likelihood that a scenario involving hazmat in transportation will be effective. Many of the scenarios prove to have a low likelihood of “success” when more closely evaluated.
3. Whether the material is in a bulk or non bulk package. Non bulk packages would be far more difficult to use in a WMD attack. In general, we support the thresholds included in the UN Indicative List. Rather than the UN limits of 3000kg/3000l, we propose a single limit of 3000 liters consistent with the upper limit for IBCs.
4. Whether a material can be acquired or manufactured easily.

(5) What role should Packing Groups play in determining the need for security plans?

Packing Groups play an important role in that they convey the danger level a material poses. The greater the danger level the more severe a possible event. We believe the UN Indicative List makes correct use of packing groups.

(6) How should the quantities of hazardous materials transported be considered when determining whether a security plan is required?

Only quantities that pose concern for a high consequence incident (i.e., an incident that may “produce serious consequences such as mass casualties or mass destruction”) in credible scenarios should be considered. The availability of the materials to the general public should be taken into account. For example, requiring security plans for flammable liquids packaged in non bulk packagings when gasoline is so readily available makes little sense. Terrorists will use the easiest means available in acquiring hazmat. DGAC recommends using the quantity limits used in the UN Indicative List.

(7) Does easy availability of a hazardous material in specific quantities outside of transportation play a role in determining whether a security plan should be required?

Yes. In general, security plans should not be required for quantities of materials that can easily be acquired commercially or produced from materials easily acquired through commercial means.

(8) Should uniform security plan requirements apply across all modes of transportation or should the triggering criteria (hazardous class and quantity) be mode-specific?

While the degree of security vulnerability a material may pose could vary according to the mode of transport, we believe a uniform multimodal approach should be taken. PHMSA should recognize that the precautions taken in relation to a specified quantity of a material could vary according to the mode of transport as well as other factors.

(9) What factors should be considered when determining whether specific hazardous materials, classes or quantities thereof, should be excepted from security plan requirements?

See our response to question 4 above.

(10) How should the determination of transportation security risk account for specific hazardous materials or classes of materials that by themselves do not pose a security risk, but that could present a security risk in combination with other materials?

Generally this should not be taken into account as it over complicates the system and the overall risk is reduced when another material is required. Many materials that could be used in a WMD can be produced from materials available for retail sale or in unsophisticated chemistry laboratories. In most cases it is unlikely that hazardous materials will be stolen from a transport unit for subsequent processing with other materials to produce a WMD.

(11) What compliance or enforcement issues should be considered as we re-assess current security plan requirements?

PHMSA should prioritize enforcement based on risk.

(12) Should company size or geographic location (e.g., specific region of the country or urban or rural) play a role in determining whether a security plan is required?

No. The content of security plans may vary according to geographic location but the applicability of security plan requirements should not.

(13) Does the Government need to provide more information on the specific security concerns that cause the need for preparation of a security plan for certain hazardous materials to assist in security plan preparation?

The information provided in the original rulemaking docket is sufficient. As specific security related threats become known, the government should continue to communicate this information through the ISAC (HSIN) system already established.

(14) Should the Government maintain an evolving list of hazardous materials for which security plans are required based on changing threats and scenarios?

We recommend narrowly defining the list of materials requiring a security plan and updating the list as appropriate through notice and comment.

The Dangerous Goods Advisory Council (DGAC) appreciates the opportunity to comments on the HM-232F ANPRM.

Sincerely,

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

Michael Morrisette
President