



Driving Trucking's Success

June 14, 2005

Office of Hazardous Materials Standards
Pipeline & Hazardous Materials Safety Administration
Attn: DHM-10, U.S. Department of Transportation
401 Seventh Street, SW
Washington, DC 20590-0001

*Via Overnight Mail &
Electronic Docket*

RE: Petition for Rulemaking -- Security Sensitive Hazardous Materials

Pursuant to 49 C.F.R. § 106.95, the American Trucking Associations, Inc. (ATA) submits this petition for rulemaking to create a new subset of hazardous materials to be deemed “security sensitive hazardous materials.” As discussed in more detail herein, we are asking the Pipeline and Hazardous Materials Safety Administration (PHMSA) to create a distinction between hazardous materials that present a significant security risk while in transportation and the vast majority of hazardous materials that pose no significant security risk in transportation. We envision that transportation of this security sensitive subset of hazardous materials will subject motor carriers and shippers to additional security requirements, while transportation of other hazardous materials would not trigger security requirements.

ATA is a national trade association representing the interests of the trucking industry.¹ ATA supports efforts and programs that improve the safety and security of motor carrier operations while helping to ensure that trucking companies meet the needs of the American economy efficiently. We believe that the revisions to the Hazardous Materials Regulations proposed herein will result in the secure transportation of hazardous materials that could be attractive to terrorists, while ensuring that the trucking industry is not burdened unnecessarily by the application of security regulations to materials that do not pose a significant security risk.

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

INTRODUCTION

For decades the U.S. Department of Transportation (DOT) has done an admirable job promulgating regulations that ensure the safe transportation of hazardous materials under conditions normally incident to transportation. These regulations are intended to prevent the accidental release of hazardous materials in transportation. The events of September 11, 2001, however, have forever altered the way we view the transportation of hazardous materials. We no longer have the luxury of focusing solely upon the accidental release of these materials and we must now view certain hazardous materials as potential instruments of terror.

Indeed, this paradigm shift has already prompted the DOT to issue regulations dealing with the security of hazardous materials in transportation. PHMSA proposed and codified the first hazardous materials transportation security rules under docket HM-232.² This rulemaking requires motor carriers transporting placarded quantities of hazardous materials to conduct vulnerability assessments of their operations and to enact written security plans to address the secure transportation of these hazardous materials.³ The HM-232 rulemaking also requires motor carriers to provide both security awareness training and in-depth security training to their hazardous materials employees.⁴

In enacting security regulations, however, it is critical to distinguish those hazardous materials that are capable of being converted into a weapon rapidly (“weaponizable”) from hazardous materials that pose no significant security risk. The failure to distinguish between these types of hazardous materials will result in the overregulation of the trucking industry and will impose unjustified economic costs on the U.S. economy.⁵ For example, the requirement to develop detailed hazardous materials security plans and provide in-depth security training often applies to motor carriers that transport hazardous materials that would not be attractive to a terrorist. DOT is well aware that certain explosives could be used to take down a building; however, placarded explosives also include a large shipment of airbag components or display fireworks, which are not weaponizable and pose no significant security risk. Similarly, the transportation of a tanker full of liquefied natural gas may pose security concerns that are not present in the transportation of 5 drums of paint. While each of these materials requires placarding, they are not all weaponizable. Whether a particular hazardous material is attractive to a terrorist is a function of the type of material and the quantity being shipped.

² In 2005, the DOT was reorganized to create the Pipeline and Hazardous Materials Safety Administration, which has assumed the hazardous materials transportation regulatory responsibilities previously delegated to the Research and Special Programs Administration (RSPA). HM-232 was originally promulgated by RSPA.

³ See 49 C.F.R. § 172.800(b)(7).

⁴ See 49 C.F.R. §§ 172.704(a)(4); 172.704(a)(5).

⁵ It is very common for a “full service” motor carrier to refuse to transport certain types of hazardous materials, even though they have registered with PHMSA to transport hazardous materials.

DISCUSSION

The primary purpose of this petition is to create a regulatory mechanism that allows DOT and DHS to promulgate security regulations applicable to the transportation of hazardous materials that pose significant security risks, without increasing the costs of transporting the vast majority of hazardous materials that are not weaponizable. At the conclusion of this process there should be an easy method for shippers, carriers and government regulators to know whether a particular hazardous material will trigger additional security requirements. To accomplish this goal, we believe that PHMSA should promulgate a regulation that lists the hazardous materials and the quantities that trigger security concerns. Once this is done, PHMSA could revise HM-232 to require in-depth security training and written hazardous materials security plans for those motor carriers that handle the types and quantities of hazardous materials that meet the security sensitive threshold. Similarly, security rules could be tailored to impact those carriers and shippers that are handling security sensitive hazardous materials above the threshold quantities of concern.

While we are confident that this proposal is meritorious, the task of determining the list of hazardous materials and the applicable threshold quantities that trigger security concerns is not a simple task. The remainder of this petition discusses the substances and threshold quantities that DOT should designate as “security sensitive:”

I. FMCSA Security Permit List

On June 30, 2004, FMCSA promulgated a final rule implementing a Congressional mandate to require new federal permits for motor carriers that transport certain types of highly hazardous materials.⁶ This rule establishes minimum qualifications for carriers seeking to transport these materials and requires these carriers to meet certain performance standards when transporting these materials. The materials triggering this permit requirement and the threshold quantities established for each are set forth below:

- *Radioactive Materials*--A highway route-controlled quantity of Class 7 materials.
- *Explosives*--More than 25 kg (55 pounds) of a Division 1.1, 1.2 or 1.3 material, or an amount of a Division 1.5 material requiring a placard under 49 CFR part 172, subpart F.
- *Toxic-by-Inhalation (Division 2.3 and 6.1) Materials*--Hazard Zone A materials in a packaging with a capacity greater than 1 liter (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119

⁶ See 69 *Federal Register* 39350 (June 30, 2004) *codified at* 49 C.F.R § 385.403.

gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons.

- *Liquefied natural Gas* -- A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.⁷

ATA supports the use of this subset of hazardous materials and the prescribed quantities as the starting point for the suggested subset of security sensitive hazardous materials.

II. UN Model Regulations

In addition to the materials set forth in Section I, PHMSA may wish to consider establishing threshold quantities for the hazardous materials that correspond to the United Nations list of “high consequence dangerous goods.” The UN Subcommittee on the Transportation of Dangerous Goods defines high consequence dangerous goods as “those which have the potential for misuse in a terrorist incident and which may, as a result, produce serious consequences such as mass casualties or mass destruction.”⁸ The UN Model Regulations, Thirteenth Revised Edition, sets forth a list of “high consequence dangerous goods” at Table 1.4.1. Borrowing from this list with some minor additions and excluding the materials addressed in the federal permit discussed above, we recommend that PHMSA consider the following materials for inclusion as security sensitive hazardous materials:

Hazard Class	Threshold Quantity
Division 2.1 flammable gases	Bulk
Class 3 flammable liquids (PG I and II) ⁹	Bulk
Class 3 and Division 4.1 desensitized explosives	To be Determined
Division 4.2 goods of packing group I	Bulk
Division 4.3 goods of packing group I	Bulk
Division 5.1 oxidizing liquids of packing group I	Bulk
Division 5.1 perchlorates, ammonium nitrate and ammonium nitrate fertilizers	Bulk
Division 6.2 infectious substances of Category A	To be Determined
“Select Agents” (42 CFR pt 73)	Any Quantity
Class 8 corrosive substances of packing group I	Bulk
NOTE: For the purposes of this table, “Bulk” means transported in quantities greater than 3,500 gallons or 5,000 pounds.	

⁷ *Id.*

⁸ United Nations, *Recommendations on Model Regulations on the Transport of Dangerous Goods*, Thirteenth Edition, Table 1.4.1 (<http://www.unece.org/trans/danger/danger.htm>).

⁹ Note, we do not recommend that PHMSA include the transportation of gasoline in the list of security sensitive hazardous materials. Due to its ubiquitous nature, the location of retail establishments, and the relatively short duration and distances of gasoline tanker delivery routes, the transportation of gasoline should not be listed as a security sensitive hazardous material.

CONCLUSION

The need for regulations to ensure the secure transportation of certain hazardous materials is clear. Equally clear is the need to ensure that these regulations apply only to those shipments that actually pose a security risk in transportation. Unfortunately, the existing safety regulations do not lend themselves to this task. PHMSA's use of the existing placarding regulations to trigger additional security requirements, results in overregulation and the imposition of unnecessary costs upon shippers and motor carriers that transport hazardous materials that pose no security risk.

For these reasons, ATA asks PHMSA to immediately begin the process of establishing security thresholds for the substances described herein. ATA further requests that PHMSA amend the security plan and security training requirements to make clear that they apply only to those carriers transporting security sensitive hazardous materials in excess of the newly established threshold quantities.

If you have any questions concerning the matters raised in this petition, please contact the undersigned at (703) 838-1910.

Respectfully submitted,



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