

RICHARD P. SCHWEITZER, P.L.L.C.

Attorney at Law

1776 K Street, NW ■ Suite 800 ■ Washington, DC 20006
Phone: (202) 223-3040 Fax: (202) 223-3041
www.rpslegal.com

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Docket Operations
U.S. Department of Transportation
West Building, Ground Floor
Room W12-140
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1220 New Jersey Avenue, S.E.
Washington, D.C. 20590

**Re: Docket No. PHMSA-06-25885 (HM-232F); Hazardous Materials: Risk-Based
Adjustment of Transportation Security Plan Requirements**

Dear Sir or Madam:

The Gases and Welding Distributors Association, Inc. (“GAWDA”) submits these comments in favor of the proposed rule to modify the list and threshold amounts for certain hazardous materials for which a transportation security plan is currently required and to object to that proposed rule that requires route specific analyses. HM-232F; 73 *Federal Register* 52558 (September 9, 2008).

GAWDA is a national trade association representing the interests of some 600 distributors of compressed and cryogenic gases and related supplies and equipment in the United States and Canada. GAWDA members also include some 300 manufacturers of gases and suppliers of other goods and services to the industry.

These distributor members of GAWDA fill, store, handle and transport medical and industrial gases in compressed and liquid form in cylinder and bulk distribution. Thus, all of GAWDA’s distributor member companies are subject to the Hazardous Materials Regulations as both offerors and transporters of hazardous materials, and therefore all of those distributor members are subject to the security plan requirements set out in 49 CFR §§ 172.800 *et seq.*

Division 2.1 and 2.2 Gases

Virtually all of the distributor members of GAWDA handle and transport division 2.1 flammable and division 2.2 nonflammable gases—each of these categories of products will be affected by the changes proposed. Under the proposal, a security plan would not be needed for less than 3,000 L in a single packaging of division 2.1 gases; no security plan would be needed for any quantity of division 2.2 gases except for oxygen and those products with a subsidiary division 5.1 oxidizer hazard; and no security plan would be needed for less than 3,000 L in a single packaging of oxygen and any 5.1 hazard gases.

GAWDA supports each of these changes. The stated purpose of the HM-232F security plan rule is “to address security risks related to the transportation of hazardous materials in commerce.” 49 CFR § 172.800(a). In the notice of proposed rulemaking, PHMSA has indicated those characteristics of regulated materials that would most likely create concerns from a security standpoint, *i.e.*, those materials most likely to be used as weapons of mass destruction: (1) explosion and fire hazards; (2) Poison Inhalation Hazards; (3) poison liquids or solids; (4) infectious substances; (5) radioactive materials; and (6) other materials that can be mixed to create explosions, intensified burning, and toxic effects or used as precursor chemicals in the manufacture of more dangerous substances. *73 Federal Register* at 52562. Neither 2.1 or 2.2 gases pose any of these hazards at quantities below the threshold amounts (3,000 L) considered in the proposed rule.

GAWDA members typically distribute non-toxic, non-flammable gases such as argon, nitrogen, helium and carbon dioxide in cylinders and sometimes in bulk transportation. These division 2.2 products pose two safety risks. First, if they are released into an enclosed area they will displace oxygen and may cause asphyxiation. Second, the contents are under pressure and may cause injury if discharged from their container rapidly and without caution. (If converted to liquid form the products also pose a cryogenic burning hazard.) But none of these products may be used in a manner to cause explosions, fires, poisoning or other massive injuries, and therefore they are properly excluded from the security plan requirements.

GAWDA members also typically distribute oxygen (division 2.2) and other gases with properties of an oxidizer (division 5.1). In addition to being under pressure, although not themselves flammable these products may accelerate combustion. But a cylinder of oxygen or other oxidizer of less than 3,000 L capacity will present only a limited flash fire—not the type of conflagration that would be sought by one considering a terrorist or other mass criminal act. Moreover, when these materials are contained in packaging individually containing less than 3000 L, it would simply be impractical to attempt to weaponize a sufficient quantity of cylinders containing oxidizing gases to create a scenario of mass destruction.

Similarly, for division 2.1 flammable gases, a container of less than 3,000 L could generate a significant fire, but would not be sufficiently destructive to be attractive to those planning a terrorist attack. Further, all division 2.1 and 2.2 gases are legally available in the market place and have many industrial uses, so it is not necessary for a terrorist to attempt to steal these materials—they may be readily purchased from any distributor. Thus, a security plan would likely not be effective in keeping these products out of the hands of terrorists in any event.

Moreover, the proposed changes for division 2.1 flammable gases would be consistent with the current bulk transport thresholds for security requirements for 2.1 gases under the United Nations Model Regulations on the Transport of Dangerous Goods. This consistency will facilitate compliance for the international transportation of flammable gases and reduce costs for shippers and carriers handling such materials in international commerce.

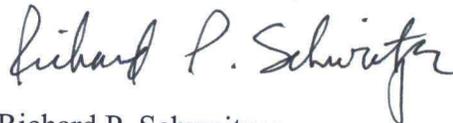
Route Specific Analyses

Finally, GAWDA opposes the proposed language to include in all security plans a written risk assessment that includes "an assessment of specific risks that exist on specific routes or in specific locations." 73 *Federal Register* at 52567. The existing security plan regulations require motor carriers to assess *en route* security, without making written assessments of particular routes. GAWDA continues to support the general requirement to address en route security, but a change to require distributors to address specific risks on specific routes is simply unworkable for GAWDA distributors.

GAWDA distributors send out delivery trucks that make an average of 10-15 stops each day. They do not deliver to the same customers each day, and therefore the routes vary each day depending on which customer has ordered what products. Moreover, most of these trucks have radio or cell phone communication with the dispatch so that routes may be adjusted for late requests for product delivery (or pickup of empty cylinders) after the truck has left the fill plant. Thus, a requirement to assess specific risks on specific routes would require the distributor to assess the risks for virtually every street in its entire distribution area.

En route security is an important component to a security plan. Addressing situations such as stopping to refuel or driver rest periods in a general fashion is appropriate; however, it is unreasonable to expect a distributor to address specific risks on specific routes when the pick-up and delivery locations, refueling locations, rest areas and type of product transported change from day-to-day.

Respectfully submitted,



Richard P. Schweitzer
General Counsel

Gases and Welding Distributors Association, Inc.
100 N. 20th Street, 4th Floor
Philadelphia, Pennsylvania 19103-3484