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Shell Chemicals

September 29, 2004

Docket Management System
U.S. Department of Transportation
400 Seventh Street, SW
Nassif Building
Room PL-401
Washington, DC 20590-001

RSPA-04-18730-19

RE: DOT Docket No. RSPA –04-18730; Hazardous Materials: Enhancing Rail Transportation Security for Toxic Inhalation Hazard Materials

The following Shell Chemical comments are in response to DOT's request for comments regarding Enhancing Rail Transportation Security for TIH materials.

Throughout this discussion it should be remembered that, in addition to the required DOT/RSPA communication requirements, the tank cars addressed in this rulemaking are also subject to the Haz-Com requirements of OSHA. While the OSHA Haz-Com requirements do not explicitly apply to materials in transportation, there is no efficient way that these requirements can be met in both the consignor and consignee workplaces unless the required labels accompany the materials while they are in transportation. Any action taken in this rule should recognize and address these requirements.

Security Plans

1. What methodology was used to develop your security plan?

Did you rely in whole or in part on guidance material provided by DOT or the industry (e.g., the American Chemistry Council, the Chlorine Institute, the Association of American Railroads)?

The Security Plan template was based on:

- *RSPA/guidance*
- *American Trucking Association guidance*
- *AAR/ACC Guidance*

How helpful were the materials you utilized?

Quite helpful

Should DOT/DHS work with the industry to develop model security plans or ``best practices'' for shippers and transporters of TIH materials?

This might be a workable concept if it could be done without the restrictions of the Administrative Procedures Act.

3. Does your security plan include ``layered'' measures that are tied to specific threat levels?
The framework of Shell's plan is not layered and tied to specific threat levels. . However, Security at our facilities where products are loaded are tied to both the DHAS TAWS and the USCG MARSEC Levels.

How are these implemented?
Changes in the TAWS are directed by Corporate Security. Changes in the MARSEC are directed by the USCG COTP.
What difficulties have you experienced in developing such ``layered'' measures?
The implementation of layered security measures at fixed facilities has proven relatively easy, however, the development and implementation of similar layered measures to implement on en-route shipments has proven more difficult as we have more complex issues to contend with, ie. Non Shell owned cars, multiple carriers, unscheduled delays, etc. We continue to work on the en route parts of our plan.

Would more definitive guidance from DOT/DHS be helpful?
More definitive guidance may be useful. Performance based guidance is preferred as opposed to detailed standards.

4. Have you assessed the effectiveness of different types of security measures implemented as part of your security plan?
Shell has assessed the effectiveness of specific security measures. It is an evolutionary process. We continue to review the effectiveness of the plan.

5. Would it be useful if DOT/DHS provided general guidelines or standards for security measures that would normally be expected for TIH shipments while allowing tailoring for individual circumstances or operational environments?
General guidelines may be worthwhile in order to:

- *Establish the priorities for threat assessment;*
- *Level the playing field throughout the industry;*

However, strict standards could establish a one-size-fits-all plan that lacks flexibility and may be inappropriate for certain products and transport operations. Shell supports a performance-based approach with a common format rather than detailed standards or guidelines.

What would be the impact of requiring company certification that these guidelines or required standards are achieved?
Shell could only certify compliance to guidelines or standards pertaining to operations within our facilities or those relating to the Shell railcars being used. The railroads would have to provide such certification for

transit and incidental storage and the receiver for operations at or near the destination. Because there are many different commercial arrangements possible for shipments, including those that are, by contract, originated from third party origins, a comprehensive certification process would be extremely difficult to institute and maintain. The administrative burden of such a certification process would be prohibitively expensive.

6. Should DOT/DHS require submission of security plans for TIH shipments by rail for review and approval to ensure that the plans are adequate?

Shell does not support the submittal of Security Plans to DOT/DHS for approval. Submittal would prove of little value as the ability to classify and protect these documents from FOIA and other sunshine types laws remains in question unless specifically addressed.. DOT/DHS should have the right to review for completeness, but not the ability to determine the qualification of risk or vulnerability. Currently the CII Act provides protection to voluntarily submitted information only. Distribution of Security Plans should be limited to those having a "need to know".

Identification of Materials and Hazard Communication

1.Should identifying marks, such as distinctive paint colors or patterns and company names, be prohibited?

*In some cases identifying mark, such as the name of the shipper or the company placing the material in transportation, are a great help to emergency responders in the event of an incident. So long as there is a recognized safety benefit, we would prefer to allow these identifying or confirmatory markings to remain on the tank car. If there is no safety value added by the marking, we could support removal of these markings. We would **not** support a requirement mandating cars be painted a certain color.*

What would be the practical impact of such a prohibition?

Any requirement that would mandate a change in tank car markings, regulatory or otherwise, would increase shipper costs, and disrupt supply to consumers due to downtime for paint change/modification.

2. If placards and other identifying marks are removed from rail tank cars transporting TIH materials, are there alternative operational procedures or systems that could simply and effectively communicate the hazards of the material to emergency response personnel and transport workers?

Shell is not aware of any other system that is:

- *Simple;*
- *Well understood throughout the logistics and emergency response communities;*
- *Universal in scope; and*
- *Relatively inexpensive to implement and maintain*

The existing system allows emergency responders to assess a situation from a standoff distance, in most weather conditions and operating environments and is within the budgetary reach of even small fire departments and law enforcement agencies.

An alternative system should have these attributes

What security benefits would be associated with each?
It would appear that the principal security benefits to be gained from implementation of a system other than the existing methods of communication (placarding and marking) would be to reduce the visibility of the tank car to prevent its use as a target of opportunity. A second benefit might be to remove information that would confirm that a planned attack has indeed identified the target tank car. However, the benefit would have to be weighed against the safety issues.

3. If alternative procedures or systems are considered that would allow removal of placards and other identifying marks from rail tank cars transporting TIH materials, what should the criteria be for balancing safety and security considerations and demonstrating that these procedures and systems are viable, practical, and workable?
See responses in number 2 above.

Do these systems have the potential to be used maliciously to identify shipments and locations for attack?
Any system, once known and understood, can be used to maliciously identify shipments. In this case, efforts must be made to balance the need for safety vs. security. Efforts should be focused on the disruption of attack planning.

6. Placards depict a hazard type. There is a wide range of materials that may be identified with a similar placard, yet not all of the materials will pose the same security risk. Should DOT/DHS consider the removal of more specific identifying marks on rail tanks cars carrying TIH materials, but leave placards in place?
Shell generally opposes removal of information that communicates the hazard of the material to transport workers and emergency response personnel; however, we could support removal of the "inhalation hazard" marking and the TIH specific placards in favor of the Class 6.1, Packing Group I and II placard if there is a demonstrable improvement in security as a result.

What are the implications for emergency responders of such an approach?
There would be some reduction in the specificity of the information immediately communicated. The information in the emergency response information required to accompany the shipment and the shipping paper description would provide the information formerly conveyed by the" inhalation hazard" marking and the TIH specific placards.
On the other hand, removing the marking and the specific TIH placards would promote harmony in the conveyance of hazard information internationally.

7. Placards are part of an internationally recognized system for communicating the hazards of specific materials in transportation. What are the potential impacts on international transportation of TIH materials of a change to U.S. requirements for communicating the TIH hazard?

The benefit would be harmonization of the regulations between the US, Canada, and Mexico, if the US requirement for marking "TIH" on the car and the use of the TIH placard were eliminated.

Temporary Storage of TIH Materials in Rail Tank Cars

1.Are current security requirements applicable to the temporary storage of TIH materials sufficient?
It is Shell's opinion that in transit storage of tank cars containing TIH materials represents the greatest opportunity for unauthorized access and tampering. Additional measures may need to be taken to provide for better security for locations in which these tank cars are stored.

If not, what additional requirements should be considered?
A variety of measures are available including fencing, lighting, attendance by security personnel, electronic surveillance and monitoring, signaling and alarm systems and sensors.
Storage of TIH products should not be consolidated in only a select few sites / yards. This could increase the transit time for loaded TIH railcars, as sites selected may not be along the normal typical routing.

2. Should DOT/DHS consider limits on the amount of TIH materials that may be stored temporarily in a single location?
No – Limits on storage would place a burden on certain locations and disrupt their operational processes.

If so, how should such a limit be derived?
NO

Should a limit take into consideration the type and location of facility at which the materials are stored and the security features in place at the facility?
A limit would cause a huge administrative burden and disrupt seasonal manufacturing processes and batch processes.

How would such an aggregation limit affect the transportation of TIH materials, including transportation costs?
Since the aggregation limit would include shipments made by others, there is no way for an individual shipper to assess the impact or costs. The railroads would have to take the aggregate data and make such an assessment. How any such costs are shared or passed through would be the subject of commercial negotiations.

3. Should DOT/DHS consider limits on the length of time that TIH materials could be stored temporarily in a single location?
Same answer as #2 above

Any of these aggregations of time and quantity limitations would have an enormous impact on the supply systems for these materials. In addition, many of these measures have the potential for shifting risk from one jurisdiction to others that may or may not be as capable of handling those risks.

4.Should DOT/DHS develop specific criteria for facilities at which TIH materials may be stored temporarily (e.g., fencing, lighting, restricted access, security personnel, remote monitoring, and the like)?
Shell considers this to be a railroad issue.

Communication and Tracking

5.Do or should shippers continuously monitor TIH rail car locations while they are in transportation?
Shell has the ability to query the movement of the cars and can take proactive measures with the railroads.

How do rail shippers and carriers currently address problems associated with missing or undelivered shipments?
Same comment as number 5

Should DOT/DHS mandate pre-shipment coordination among shippers, carriers, and consignees?
Shell favors the development of new technology but opposes prescriptive implementation of any one technology. Shell believes most elements of a tracking system are already in place and used by the railroads. RSPA should work with the railroads for any needed supplements to the existing tracking systems.

Should DOT/DHS mandate a reporting or notification system for TIH chemical shipments that are not delivered within an agreed-upon timeframe?
Same comment as above

Could such a reporting or notification system be integrated into current industry programs and practices for handling overdue shipments?
See above response.

We will be glad to provide any additional information we can in support of our comments in this matter. Please contact David Mashinski at 713-241-6436 or by e-mail at david.mashinski@shell.com

Sincerely,

David Mashinski

David Mashinski