

BEFORE THE
DEPARTMENT OF HOMELAND SECURITY

DOCKET ID DHS-2012-0061:
Information Collection Request; Chemical Facility Anti-Terrorism Standards
Personnel Surety Program

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (AAR),¹ on behalf of itself and its member railroads, submits the following comments in response to DHS's information request pertaining to the proposed Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program. With this information request, DHS proposes a new requirement for vetting "unescorted visitors with access to restricted areas or critical assets at high-risk chemical facilities" against Federal terrorist watch list databases.

AAR strongly opposes the application of the CFATS Personnel Surety Program to railroads. It is unnecessary, particularly in light of the security requirements already imposed by the Transportation Security Administration (TSA) on railroads, which apply to railroad employees who transport hazardous materials / rail security sensitive materials (RSSM) to chemical facilities.

In 2007, DHS decided not to apply the CFATS program to rail transportation:

Regulating chemicals in the railroad system is a complex issue, and DHS continues to evaluate it. TSA is the lead component within DHS for the security of transportation facilities and has initiated some recent efforts to address rail security, including Voluntary Agreements with the rail industry and a Notice of Proposed Rulemaking on Rail Transportation Security. See 71 FR 76852 (December 21, 2006). With respect to chemical security, certain aspects of Section 550 and TSA's authorities are concurrent

¹ AAR is a trade association whose membership includes freight railroads that operate 82 percent of the line-haul

and overlapping. DHS is working, and will continue to work, with its components, including TSA, to determine whether DHS will include railroad facilities in its chemical security program. DHS presently does not plan to screen railroad facilities for inclusion in the Section 550 regulatory program, and therefore DHS will not request that railroads complete the Top-Screen risk assessment methodology.²

The sound rationale underlying the Department's determination to exempt railroads in 2007 pertains even more strongly today.

As part of comprehensive security plans, railroads already perform background checks on their employees to ensure they are able to provide secure transport of hazardous materials, including chemicals. TSA, the lead agency for railroad security, has relied on these background checks as the foundation for its overall approach to ensuring the secure handling of hazardous materials, including chemicals. These measures include the issuance of 27 voluntary security action items in 2006 and the promulgation of the Rail Transportation Security Rule³ in November 2008.

Under both the action items and the regulation, railroad employees consistently demonstrate their reliability in accomplishing the safe and secure delivery of hazardous materials, including chemicals covered by this information collection request. In effect for more than 4 years now, the relevant regulatory requirements, in brief summary, consist of the following:

- appointment by each freight railroad of a primary and an alternate rail security coordinator at the corporate level, accessible to government officials 24 hours a day – 7 days per week;
- reporting details on the location, content, and shipping information for rail cars transporting RSSM on strict time standards – within 5 minutes for a single car, within 30 minutes for multiple cars, if requested by TSA;
- immediate reporting of “significant security concerns” to the Transportation Security Operations Center (TSOC);
- physical security inspections of rail cars transporting RSSM that will enter one or more designated “High Threat Urban Areas” during transport; and

² 72 Fed. Reg. 17,688, 17,698, 17,699 (April 9, 2007).

³ 49 C.F.R. Part 1580.

- maintaining and documenting secure chain-of-custody throughout transportation by positive handoff of rail cars transporting RSSM.

TSA relies on railroad employees to ensure its requirements for secure transport of hazardous materials, including chemicals, are met. These employees are well trained on safety and security procedures. Furthermore, as noted above, railroads have established vetting programs for these employees.

Oversight through the appointed rail security coordinators ensures continuity and sustained effectiveness. Regular, often daily, interaction occurs with TSA officials to ensure timely awareness of threats or indicators of security concerns. The rail industry maintains a security information network that consults and coordinates with Federal security components and produces analyses of matters relevant to rail security, advisories on security concerns, and, if necessary, immediate alerts to imminent threats or serious security-related incidents. These materials inform decision-making under well-developed security plans, which apply increasingly stringent protective measures based on the level of threat, as well as recurring security training and awareness efforts.

Designated by Presidential directive as the Sector Specific Agency for transportation security, TSA has determined that its railroad security program is highly effective, reporting that risk associated with transport of RSSM – which includes chemicals – has decreased over 98 percent, as measured against a 2006 baseline. There is every reason to believe that this high level of security will continue in the rail industry. The scope of screening of railroad employees is properly assessed by TSA, in consultation with the industry through the Rail Sector Coordinating Council, the forum established for such purposes.

Thus, there is no risk-based justification for the extensive disruptions, costs, and administrative burdens entailed in requiring potentially thousands of railroad employees to undergo background screening under any of the cited options for the proposed DHS Personnel Surety Program simply because they enter a chemical facility for the limited purpose of doing what they are entrusted to do

now – to pick-up or deliver rail cars transporting chemicals following procedures established by TSA.

Accordingly, AAR requests that DHS maintain the approach taken when the CFATS Final Rule was promulgated in 2007 and exempt railroads from this program.