



CIAC Submission on the
Transportation of Dangerous Goods by Rail Security
Regulations

Submission to Transport Canada
July 24, 2017



**CHEMISTRY INDUSTRY
ASSOCIATION OF CANADA**



Responsible Care®
Our commitment to sustainability.

July 24, 2017

Via Email

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Transport Canada

Re: *Transportation of Dangerous Goods by Rail Security Regulations* as published in the *Canada Gazette*, Part I on June 24, 2017

Introduction

The Chemistry Industry Association of Canada (CIAC) is pleased to have the opportunity to submit its comments and recommendations on the *Transportation of Dangerous Goods by Rail Security Regulations* as published in the *Canada Gazette*, Part I on June 24, 2017.

CIAC is the voice of Canada's \$53 billion chemistry sector. We represent the interests of Canada's leading chemistry companies – from petrochemical, inorganic and specialty chemical producers, to bio-based manufacturers and chemistry-related technology and R&D companies. Canada's chemistry industry employs 87,500 Canadians directly, and supports another 525,000 jobs in the Canadian economy.

CIAC members produce goods that are needed everywhere; they are essential to Canada's economy and our quality of life. Among them, hundreds of dangerous goods are also manufactured and shipped across Canada daily. More than 70 per cent of the products shipped by CIAC members move by rail.

Safety is a top priority for Canada's chemistry industry, both at plant sites and along transportation routes. During the past 25 years, CIAC members have invested hundreds of millions of dollars in transportation-related research and upgrades; and have set the gold standard for transportation safety through the TRANSCAER® (Transportation Community Awareness and Emergency Response) and TEAP® III (Transportation Emergency Assistance Program) initiatives. Canada's chemistry industry goes above and beyond what is required by Canadian laws related to the transportation of chemical products, including dangerous goods.

As part of our commitment to Responsible Care® – the Association's United Nations recognized sustainability initiative - CIAC verifies that each of its members and transportation partners is meeting Responsible Care's stringent safety standards, by requiring independent, public verifications of these companies every three years. Verification reports are publicly available at www.canadianchemistry.ca/responsiblecare.

Comments on the proposed *Transportation of Dangerous Goods by Rail Security Regulations*

CIAC supports Transport Canada's mission to promote a safe, secure, efficient and environmentally responsible transportation system and fundamentally agrees with the importance of security in the safe transportation of dangerous goods. Additionally, CIAC supports measures to enhance alignment between Canadian and U.S. regulations that facilitate the movement of dangerous goods by rail across the border and would not want to see the level of confidence in the security of the Canadian rail transportation system negatively impact trade. CIAC values the flexible versus one-size-fits-all approach promoted within the proposed regulations and

appreciates that regulated entities are intended to have the flexibility to develop and implement security measures that are commensurate with their individual risk profiles and operational environments.

After reviewing the proposed *Transportation of Dangerous Goods by Rail Regulations* published in the *Canada Gazette*, Part I on June 24, 2017 following are the areas/factors CIAC recommend be considered, clarified, or updated. These comments will focus on the importance of language and the definition of consignor, timelines for implementation, harmonization issues, and general issues relating to clarification of expectations and awareness.

Definition of Consignor and Clarification of Expectations

During preliminary consultations regarding these regulations the terminology employed was “shippers” and “carriers” and in the proposed regulations it is “rail carriers” and “rail consignors.” The TDG regulations define a consignor as: a **person** in Canada who

- **(a)** is named in a **shipping document** as the consignor;
- **(b)** **imports** or who will **import dangerous goods** into Canada; or
- **(c)** if paragraphs (a) and (b) do not apply, has possession of **dangerous goods** immediately before they are **in transport**. (**expéditeur**)

CIAC has noted concerns with using this definition of consignor to meet the anticipated expectations of the regulations. For example, there are instances where CIAC members are the importer of record for products but never actually have the product in their possession or on their site. In this instance, it is unclear what their, or potentially their customers', expectations would be for security awareness or security plan creation and training.

Timelines for Implementation

In previous consultations the timelines for implementation were staggered between shippers and carrier but it seems as if this has been accelerated in the current proposal. In the proposed regulations consignors have 12-months before all requirements come into force. In previous discussion it was noted that, “The effective date of this provision would be harmonized with the safety training cycle to reduce industry costs (i.e. training would be required within three years of the regulations coming into force.”

While CIAC members are diligent regarding security and safety issues and are meeting many of these through participation in trusted trader programs such as Canada’s Partners in Protection and the US Customs-Trade Partnership Against Terrorism it is the creation and training of all necessary personnel on individual security plans that could be challenging. CIAC would also like to confirm that if members are participating in these programs they would also automatically be recognized as meeting the proposed Canadian requirements. If that is the case, a listing of acceptable programs would be helpful for companies.

Transport Canada has noted there will be guidance materials developed to help support the awareness training and security plan requirements. It was also noted, that the cost to industry would be minimal as these programs already exist in the U.S. or from industry associations. CIAC is seeking clarification on if using existing materials such as the [U.S. DOT’s online training module](#) would meet the requirements for security awareness training. If not, it would be beneficial for Transport Canada to create a parallel tool. Additionally, further details regarding when the Transport Canada guidance materials will be available would be appreciated.

Harmonization Issues and Volume Thresholds

In the industrial chemicals sector, there is approximately \$14.5 billion of product exported from Canada to the United States annually. As was recognized in the proposal, enhanced alignment between Canadian and U.S. regulations that facilitate the movement of dangerous goods by rail across the border are important and CIAC would not want to see the level of confidence in the security of the Canadian rail transportation system negatively impact trade. CIAC and its members support the flexible approach taken for meeting the requirements while also recognizing the importance of being able to develop and implement security measures that are commensurate with individual risk profiles and operational environments.

While these measures are moving toward closer alignment with the U.S. requirements, in the U.S. security regulations are already in place for all modes. As Transport Canada is implementing these requirements uniquely for the transportation of dangerous goods by rail we recommend reviewing the threshold requirements in Schedule 1. Given the volumes of product typically moved by rail a 3,000L baseline appears to be very low. It is additionally recommended to ensure that the language in the Schedule and regulations are explicitly clear that the requirements are only for rail as the same 3,000L could also move by another mode. CIAC recommends working with industry to determine an appropriate minimum threshold and would offer an initial recommendation of a minimum 10,000L threshold replace the 3,000L. It should be noted that the 3,000L threshold would likely inadvertently capture many residue cars as well.

Furthermore, it would be beneficial to clarify if there are exemptions for packaged goods that in overall volume could exceed the low 3,000L limit currently being captured. It would also be helpful to add clarification regarding if there is the intention, in some cases, to limit the requirements to bulk shipments as is the case in the U.S. which in [49-CFR table](#) states, “large bulk quantity” refers to a quantity greater than 3,000 kg (6,614 pounds) for solids or 3,000 liters (792 gallons) for liquids and gases in a single packaging such as a cargo tank motor vehicle, portable tank, tank car, or other bulk container.”

Finally, regarding harmonization and the listing of security-sensitive dangerous goods identified in Schedule 1, there are cases where specific UN numbers are referred to in the proposed Canadian regulations. In the U.S. regulations, specific UN numbers are not used which may cause confusion or divergence between the requirements.

Regulatory Text and Location of Regulations

CIAC found the regulatory text challenging to interpret regarding the expectations for consignors compared to carriers. This was in part due to the actual term carrier and consignor not appearing together and only noting in Part 5 regarding when the amendments come into force that carrier will be replaced with “consignor or carrier” in various parts of the regulation. The table included in the Executive Summary to the proposed regulatory text is helpful in addressing this if this text must remain in its current form.

Furthermore, it is recommended the wording surrounding which individuals require security awareness and plan training be revised and clarified. In its current form, it could be interpreted that everyone would require this training where it seems more appropriate that it would be those individuals involved in TDG and transportation related functions. This clarification could also better help align with the U.S. DOT requirements.

Finally, if security training requirements were linked to the training requirements in Part 6 of the TDG Regulations and included within those regulations, there could be increased awareness and comprehension of the expectations.

Conclusion

CIAC supports Transport Canada's mission to promote a safe, secure, efficient and environmentally responsible transportation system and fundamentally agrees with the importance of security in the safe transportation of dangerous goods. Enhanced alignment between Canadian and U.S. regulations that facilitate the movement of dangerous goods by rail across the border are key to CIAC, and we would not want to see the level of confidence in the security of the Canadian rail transportation system negatively impact trade. CIAC and its members value the flexible versus prescriptive approach promoted within the proposed regulations and appreciate that regulated entities are intended to have the flexibility to develop and implement security measures that are commensurate with their individual risk profiles and operational environments.

After reviewing the proposed *Transportation of Dangerous Goods by Rail Regulations* the areas CIAC recommend be considered, clarified, or updated focused on the importance of language and the definition of consignor, timelines for implementation, harmonization issues, and general issues relating to clarification of expectations.

CIAC appreciates this opportunity to comment on the proposed regulations and is open to continuing to collaborate and engage with Transport Canada in the next steps of the regulatory process as well as the creation of the noted guidance materials.

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