



National Association of Chemical Distributors

1560 Wilson Boulevard, Suite 1250 • Arlington, VA 22209 • 703-527-NACD (6223) • FAX 703-527-7747

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Docket Management System
U.S. Department of Transportation
Nassif Building PL-401
400 Seventh Street, N.W.
Washington, DC 20590-0001

RE: DOCKET NO. PHMSA-06-25736 (HM-231)

Dockets Section:

This letter responds to the *Federal Register* notice published September 1, 2006, regarding docket PHMSA-06-25736 on HM-231, Miscellaneous Packaging Amendments to the Hazardous Materials Regulations (HMR).

NACD is an international trade association headquartered in Arlington, Virginia, with more than 250 chemical distribution companies in the United States and Canada. These companies represent between 80% and 90% of the chemical distribution facilities in the nation and more than 90% of the industry's gross revenue. NACD member companies have established themselves as leaders in health, safety, security, and environmental performance through implementation of the Responsible Distribution ProcessSM (RDP), established in 1991 as a condition of membership in NACD. RDP is a third-party verified management practice.

NACD members operate in every region of the country through 1400 facilities. The membership includes small businesses as well as regional and national companies. Hazardous materials transportation is an integral part of the chemical distribution business. In 2005, NACD members made 6.5 million chemical distribution shipments, were responsible for 46 billion pounds of delivered product, and drove 172 million miles while distributing chemicals.

Under *Part 171*, NACD objects to the proposal to classify all 3A, 3AAX, and 3T cylinders as bulk packaging. These containers have traditionally been considered non-bulk and have been handled as such without a history of problems. Changing the classification of these cylinders to "bulk" would create several complications that would interfere with the efficient transportation of certain hazardous materials. For example, the probability of mixed loads containing both bulk and non-bulk cylinders would increase, which would complicate regulatory compliance because of the varying regulatory requirements. In addition, the re-classification of the 3A, 3AAX, and 3T cylinders as bulk packaging could result in companies that distribute 150 lb. cylinders of

chlorine to have to apply for security permits and could also effectively eliminate the transportation of these cylinders by common carrier.

Also under *Part 171*, NACD supports the proposal to eliminate the volumetric limit for boxes, IBCs, and portable tanks. Eliminating this volumetric limit would result in increased flexibility and cost effectiveness.

As chemical distributors who receive and ship many different products each day, NACD members certainly understand the necessity of proper document control and maintenance. The Association is concerned about the proposed changes to *Parts 173.22 and 178.2* regarding closure instructions. As there is no evidence that the current regulations on closure instructions are inadequate, NACD urges PHMSA to refrain from imposing unnecessary new requirements in this area that would likely result in substantial costs for questionable benefits. If PHMSA can demonstrate a measurable need for these changes, in order to simplify the proposed requirement for shippers to retain documentation on closing instructions, NACD recommends the use of a master list of instructions and variations for shippers to maintain on site rather than a requirement to maintain the documentation for every individual shipment. This would reduce the amount of paper while still achieving the objective of making sure that closure instructions are available to all individuals closing packages.

Regarding the inquiry about whether or not to include a sunset provision, NACD recommends that the amendments to the HMR not automatically sunset after 10 years. NACD generally believes that sunset provisions are not good public policy. Parties affected by regulatory changes make significant investments to implement these changes and train employees on the new requirements. These efforts are wasted if the new regulations automatically sunset and the system reverts back to the old regulatory scheme. If the regulations become outdated or irrelevant, the government can initiate a rulemaking to address the deficiencies at any time.

Thank you for the opportunity to comment. If you have any questions, or require any additional information, please do not hesitate to contact me at 703/527-6223.

Sincerely,

Jennifer Gibson
Vice President, Government & Public Affairs
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS
1560 Wilson Boulevard
Suite 1250
Arlington, VA 22209