



National Association of Chemical Distributors

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February 20, 2007

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

RE: DOCKET NO. TSA-2006-26514
DOCKET NO. RSPA (PHMSA)-04-18730 (HM-232E)

Dockets Section:

This letter responds to the *Federal Register* notices published December 21, 2006, regarding dockets TSA-2006-26514 and RSPA (PHMSA)-04-18730 (HM-232E) on rail transportation security. Because the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued these rules simultaneously and share the goal of enhancing rail security, NACD is responding with a single set of comments to address both proposals.

NACD is an international trade association headquartered in Arlington, Virginia, with more than 250 chemical distribution companies in North America. 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.

In 2002, NACD became the first chemical industry trade association to approve security measures as a condition of association membership. New security measures, including transportation security, were added to the Responsible Distribution ProcessSM (RDP) in areas where vulnerabilities could best be addressed. A key example of this is in the RDP *Carrier Selection Code* to address the safe and secure transportation and handling of chemical products. Aside from other selection criteria, such as safety and fitness and regulatory compliance, this section urges member companies to consider the following when considering a carrier's ability to secure chemicals in transport:

- Proof of a security plan as prescribed by the Department of Transportation's HM-232 rule
- Verification of employee compliance with federal controlled substance testing
- Proof of practices to ensure chemicals are not diverted or stolen while in possession of the carrier
- Proof of a valid Commercial Drivers License with a Hazardous Materials Endorsement
- Carrier emergency contingency plan
- Driver training and safety plan
- DOT rating letter
- Periodic review of any audit done by others on the carriers
- Periodic review of supplier qualification procedures for their own carriers
- Financial statement
- Vehicle insurance

NACD is continually informed by its members that they routinely inquire about a carrier's security plan before contracting with the carrier. Members also inquire about any specific training carrier personnel have completed on hazardous materials transportation security.

In addition to complying with the RDP requirements, many, if not most, NACD members are covered by the Department of Transportation's HM-232 Rule that requires certain security measures to be taken by those who ship hazardous materials.

Secure handling and transportation of hazardous materials is a key element of the chemical distribution business, and NACD applauds TSA and PHMSA for addressing the security of hazardous materials by rail. However, NACD is concerned that some aspects of the proposed rules, particularly TSA's, would result in high costs and burdens that could hinder the safe and timely transportation of hazardous materials. Security proposals must be considered simultaneously with safety and economic concerns. For example, in the area of safety, while a hazardous materials placard on a rail car could be considered an advertisement to terrorists, that same placard provides essential information to first responders approaching the scene of an incident. On the economic side, if the government were to impose requirements so restrictive as to halt the transportation of important materials, the terrorists' objective of harming the U.S. economy would be achieved.

Regarding the TSA proposal to require rail carriers and shippers and receivers of hazardous materials in high urban threat areas (HUTAs) to designate Rail Security Coordinators (RSC), NACD urges the agency to maintain flexibility in how this requirement is carried out. Having a 24/7 emergency contact is necessary when dealing with hazardous materials and is an existing requirement under PHMSA's jurisdiction. NACD urges TSA to allow each facility to determine how to meet the 24/7 contact requirement, whether it be through a team of people or through one designated individual. Every facility is different, and in some cases, it would not be practical to assign this duty to a single individual.

Regarding the TSA chain of custody proposal, the attendance requirement would be particularly burdensome. Many chemical distribution companies receive shipments by rail car and report that the delivery times are inconsistent. Establishing a requirement that an individual must be present to

receive each shipment, even those that arrive at 2:00 a.m., would require facilities that receive hazardous materials by rail to be staffed 24/7. This would require many facilities to hire and train additional employees to ensure adequate staffing. This raises the question of what type of job experience and educational background these individuals would need to have. For example, would they need advanced emergency response training, or a law enforcement or military background? There are also questions about the responsibilities of these individuals. For example, would they be expected to stop attempted breaches, or merely report suspicious activities? This leads to the further question of the expectations for companies to provide safe work environments for their employees carrying out this function. For example, would there need to be two or more individuals on-site at all times to ensure adequate safety?

The potential costs and liability issues raised by the chain of custody attendance requirement, particularly for small businesses, could lead some facility managers to stop using rail and begin using only trucks for shipments and deliveries. This could ultimately lead to reduced safety and security because the capacity of a rail car is approximately seven times that of a truck, meaning that more hazardous materials shipments would be shifted from rail to truck transportation. This would also have harmful economic impacts as truck transportation is generally more expensive and less efficient than rail transportation, compounded by the fact that there are driver shortages and a lack of capacity.

Regarding the PHMSA proposals to require rail carriers to compile information on hazardous materials shipments, consider the safest and most practicable routes, address security risks of delayed or temporarily stored shipments, notify consignees of unplanned delays in deliveries, minimize the time a rail car is placed on a track awaiting pick-up or delivery, notify storage facilities and consignees of deliveries, and conduct visual inspections, NACD believes these are reasonable measures, although we realize that the burden would be on the rail carriers and we cannot speak for them. The requirements regarding notification of shipments and delays are absolutely essential if the TSA chain of custody attendance requirement is adopted.

In conclusion, NACD again urges TSA and PHMSA to consider safety and economic impacts in conjunction with security measures and to make sure that safety and the economy are not jeopardized in the name of security.

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,

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