National Association of Chemical Distributors

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Docket Management System
U.S. Department of Transportation
Dockets Operations
M-30, Ground Floor, Room W12-140
1200 New Jersey Avenue, S.E.
Washington, DC 20590-0001

Re: Docket PHMSA-08-0010 (HM-208G)

This letter responds to the *Federal Register* notice published May 5, 2008, regarding docket PHMSA-08-0010 (HM-208G) on the Hazardous Materials Transportation Registration and Fee Assessment Program. The National Association of Chemical Distributors (NACD) has concerns about the fee increases proposed in this notice.

NACD is a trade association headquartered in Arlington, Virginia, with approximately 250 chemical distribution companies throughout 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. Members of NACD operate in every region of the country through more than 1500 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 2007, NACD members made 5.3 million chemical distribution shipments, were responsible for 71.7 billion pounds of delivered product, and drove 175 million miles while distributing chemicals.

NACD member companies have established themselves as leaders in health, safety, security, and environmental performance through implementation of the Responsible Distribution Process℠ (RDP), established in 1991 as a condition of membership in NACD. RDP is a third-party verified management practice.

Through the Responsible Distribution Process℠, NACD members take measures every day to strengthen emergency response and public preparedness efforts in their communities. Member companies are required to communicate with state and/or local emergency planning commissions and response organizations about the potential hazards of their chemicals; annually review, test, and assess the operability of their written emergency action and fire prevention plans and/or emergency response plans; conduct facility tours for first responders to promote emergency preparedness and to provide current knowledge of facility operations; coordinate written emergency response plans with local emergency response teams and other facilities; and

participate in their Local Emergency Planning Committees' processes to develop and test the local emergency response plans. The internal costs of these important and worthwhile outreach efforts are sustained by each NACD member.

NACD clearly supports efforts to ensure that emergency responders, facility and transportation employees, and local community members are prepared to respond to hazardous materials incidents. NACD also realizes that Congress called for a significant increase in the size of the Hazardous Materials Emergency Preparedness (HMEP) grant program as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETY-LU), P.L. 109-59. However, NACD has concerns about the proposed fee increases.

Although Congress doubled the authorization level for the HMEP grants to $28 million from $14.3 million, there has been no justification for this increase nor adequate explanation of how the extra funds would be spent. There is strong justification for industry concern. In the early 2000's, the Department of Transportation (DOT) over-collected hazardous materials registration fees and in 2003 was forced to issue refunds to registrants because there was a significant surplus in the grant fund.

Before implementing such significant fee increases, DOT must demonstrate why the additional funds are needed and specify how they will be spent. As the parties who receive the grants are also focused on other areas of responsibility, including public health (e.g. pandemic flu preparedness) and natural disasters, it is important to ensure that any increased funding would be specifically tied to HMEP activities. Further, there should be a mechanism to ensure that any increased funding will not be considered an offset to redirect current funding allocations to non-HMEP activities.

In addition, persons with multi-year registrations should not be subject to increased fees until their registrations are due for renewal. These persons registered and paid with the understanding that their obligations would be met for the next two or three years.

Finally, the proposed increase in hazardous materials registration fees at this time would be a significant burden on many companies who are already struggling with skyrocketing energy and transportation costs as well as new security requirements. The availability and affordability of thousands of essential consumer and industrial products is dependent on the safe and cost-effective transportation of hazardous materials. At a time when fuel costs are at record highs with no sign of decreasing, a significant increase is registration fees would be a particularly harsh burden, exacerbated by the fact that a convincing case has not been made for the need for these additional funds.

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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