

NACD KEY ISSUE: HAZARDOUS MATERIALS TRANSPORTATION SECURITY

NACD ISSUE

Balancing hazardous materials transportation security and safety with the ability to continue to move goods that are critical to public health, commerce, and the economy.

BACKGROUND

In the wake of the September 11, 2001, terrorist attacks, the chemical and transportation industries, Congress, and the media have focused increased attention on hazardous materials transportation security. Soon after 9/11, the U.S. Department of Transportation (DOT) issued a comprehensive **transportation security rule, HM-232**, which requires shippers of hazardous materials to take specific security measures. The chemical and transportation industries have been in compliance with HM-232 since it took effect in 2003. NACD and other trade associations have also added security as part of industry management practices such as NACD's Responsible Distribution ProcessSM. Although these measures have been effective in preventing incidents, some in Congress and in the federal agencies continue to consider additional requirements.

LEGISLATIVE UPDATE

On March 27, 2007, the House of Representatives passed H.R. 1401, the Rail and Public Transportation Security Act, by a vote of 299-124, to address rail, truck, and bus security for passengers and cargo. The provisions of this bill were later included in the massive "Implementing the 9/11 Commission Recommendations Act," which the President signed into Public Law No. 110-53 on August 3, 2007. In the area of hazardous materials transportation security, the legislation requires the Department of Homeland Security (DHS) to develop a program to encourage the tracking of motor carrier shipments of high hazard materials, directs DHS to establish a program for reviewing security plans for HazMat offerors and carriers, including penalties for non-compliance, requires DOT to study insurance, security, and safety costs borne by carriers as compared to the costs borne by offerors, and requires DHS to report to Congress on truck security. It also requires rail carriers to analyze routes and storage facilities for security sensitive materials and select the routes and facilities that would best reduce the risk and consequences of a terrorist attack on these materials.

Over the past few years, several Members of Congress have introduced legislation and/or amendments to require re-routing of certain hazardous materials shipments by rail. The last action on this was a re-routing amendment offered by Senator Joseph Biden (D-DE) in March 2007 to S. 4, the 9-11 Commission legislation. The amendment was soundly defeated by a bipartisan vote of 73-25.

In addition, DHS and DOT are both in the process of finalizing rules on the security of hazardous materials transportation by rail, particularly chemicals classified as Toxic-by-Inhalation Hazards (TIH). The DHS proposal addresses the secure transport by rail of TIH materials from start to finish, including the creation of a tracking system to allow DHS to determine the location of rail cars carrying TIH materials within minutes, the establishment of "chain of custody" that includes in-person exchange upon delivery, and a requirement that shippers and receivers immediately report to DHS any potential threats and significant security concerns. The DOT proposal would

require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. The proposal also seeks to clarify current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for HazMat shipments.

Finally, DHS has circulated draft “Security Action Items” for the highway transportation of high security hazardous materials and security sensitive hazardous materials. The 27 security items are divided into four categories: 1) personnel security; 2) unauthorized access; 3) en route security; and 4) other security measures. They include items such as background checks for motor vehicle HazMat employees other than motor vehicle drivers, locking doors on a tractor when unattended by a driver, establishing reporting procedures for suspicious incidents, threats, or concerns, and setting up a security hotline. While these action items will initially be voluntary, they could become the basis for a rulemaking later, as happened with the rail sector.

NACD POSITION

NACD members are strongly committed to the safe and secure transportation of hazardous materials. NACD was the first chemical trade association to approve new security measures, including specific transportation security measures, as part of its management program, the Responsible Distribution ProcessSM (RDP). In addition to complying with RDP requirements, many, if not most, NACD members are covered by the U.S. DOT’s HM-232 Rule that requires those who ship hazardous materials to implement certain security measures.

NACD urges Congress and the federal agencies with jurisdiction over hazardous materials transportation security to work together and agree on one common set of requirements. Those involved with hazardous materials transportation are currently faced with multiple sets of regulations and requirements from various agencies including the Pipeline and Hazardous Materials Safety Administration (DOT), the Transportation Security Administration (DHS), and the Infrastructure Security Compliance Division of DHS. Duplication creates confusion and wastes valuable resources. For example, if there are multiple sets of requirements, employees must be trained on all of them and then try to make sense out of each, rather than being able to focus on one uniform set of effective standards.

NACD also urges Congress to refrain from imposing mandatory rerouting requirements on hazardous materials rail shipments. With rerouting, shipments would not travel along the most direct route, but on much longer routes, resulting in increased miles traveled and potential for incidents. It is also likely that the alternative routes would be through areas where the emergency responders do not have adequate training and equipment to handle major hazardous materials incidents. In addition, in some cases, shipments could be switched from rail to truck, which would increase the potential for loading, unloading, and highway incidents. It would also substantially raise costs for consumers without making people safer.

Overall, NACD urges Congress and the federal agencies to adopt reasonable policies that balance hazardous materials safety and security with the ability to continue to effectively move goods that are critical to public health, commerce, and the economy.