



National Association of Chemical Distributors

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Docket Operations
U.S. Department of Transportation
West Building, Ground Floor
Room W12-140
Routing Symbol M-30,
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Re: Docket PHMSA-06-25885 (HM-232F)

These comments respond to the notice of proposed rulemaking published in the September 9, 2008, *Federal Register* regarding docket PHMSA-06-25885 (HM-232F), Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements. The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on these proposed changes to the Department of Transportation (DOT) security plan requirements and commends the Pipeline and Hazardous Materials Safety Administration (PHMSA) for this effort to streamline and clarify these regulations.

NACD, established in 1971, is an international association of chemical distributor companies that purchase and take title of chemical products from manufacturers. Member companies process, formulate, blend, re-package, warehouse, transport, and market these chemical products exclusively for an industrial customer base of approximately 750,000. NACD's nearly 250 member companies are located in every region of the United States, operate more than 1,550 chemical distribution locations, and employ more than 20,800 individuals. NACD also has member and Affiliate companies in Canada, Mexico, and Singapore. Many members are small businesses, although some companies are national and international in scope. They know their products and processes, and provide value-added services to their customers in a professional, responsible manner.

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 ProcessSM (RDP), established in 1991 as a condition of membership in NACD. RDP is a third-party verified management practice.

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 (DOT) 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
- Specific hazardous materials transportation security training completed by carrier personnel
- DOT rating letter
- Financial statement
- Vehicle insurance

All NACD members will continue to implement security measures through the Responsible Distribution ProcessSM.

NACD commends PHMSA's effort as outlined in the proposed rule to make federal hazardous materials transportation security requirements more risk-based than they are under the current regulations. Narrowing the list of materials subject to DOT security plan requirements to those that have the most serious potential to be effectively used in a terrorist attack will focus limited resources on the areas of greatest concern.

While NACD appreciates the proposed development of a risk-based list, the Association strongly urges PHMSA and the Transportation Security Administration (TSA) to adopt identical lists of security sensitive hazardous materials (SSHM). As TSA coordinates with PHMSA on transportation security regulations and takes on an increasing role in the enforcement of these measures, it is important for both agencies to work from the same list. The transportation security risks do not change based on the agency administering and enforcing the regulations, so there is no reason to have different lists, even if these differences are not extensive. Use of more than one SSHM list could lead to confusion and misinterpretation for both regulators and industry. It is much more efficient for all parties involved in regulatory implementation and enforcement to work from the same list.

Regarding security plans and security risk assessments, NACD believes that the clarification in the proposed rule that these items be in writing is reasonable. NACD also believes that a requirement to have site-specific and *general* en-route or delivery operations risk assessments is reasonable. However, NACD has grave concerns about the proposed requirement for risk assessments to include assessments of specific risks that exist on specific *routes*. While some chemical distributors have regular routes for which this requirement would be possible, the vast majority have far too much variation among their shipment destinations for a specific route risk assessment requirement to be feasible. Under such a requirement, a company could have hundreds of risk assessments, some for routes that may be traveled only one or two times. This would be a tremendous cost and administrative burden for companies with no corresponding benefit in most cases.

NACD believes that the clarifications of security plan requirements outlined in the proposed rule are reasonable, including the identification of a senior management official responsible for the plan, annual plan reviews and reviews upon changed circumstances, training of hazardous materials employees, and the assignment of duties to each department responsible for plan implementation. Regarding the assignment of security duties for each position or department responsible for plan implementation, NACD urges PHMSA to allow for flexibility in this area in order to allow facilities to write the plans and assign the security duties as appropriate to fit their unique organizational structures.

Finally, NACD urges DOT to recognize measures that facilities have taken under other regulations such as the Chemical Facility Anti-Terrorism Standards and the Maritime Transportation Security Act regulations in meeting their HM-232 security plan requirements. As there is significant overlap among these regulations, being able to use security plans that are already in place would prevent unnecessary duplication of effort.

Thank you for the opportunity to comment on this proposed rule. 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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