



National Association of Chemical Distributors

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

RE: DOCKET NO. PHMSA-2007-28119

Dockets Section:

These comments respond to the *Federal Register* notice published January 4, 2008, regarding Docket Number PHMSA-2007-28119, Proposed Recommended Practices for Bulk Loading and Unloading of Hazardous Materials in Transportation. The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on the notice.

NACD is a trade association headquartered in Arlington, Virginia, with more than 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 2006, NACD members made 5.6 million chemical distribution shipments, were responsible for 50.7 billion pounds of delivered product, and drove 167.6 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. Handling and Storage is a key element of the NACD Code of Management Practice. As with the 11 other Codes under RDP, NACD members must write and implement policies and procedures to address the following areas under Handling and Storage:

- Procedures for ensuring that containers are appropriate for the chemical being shipped, in compliance with regulatory requirements, and free from leaks and visible defects
- Criteria for the cleaning and re-use of transportation equipment and chemical containers, and the proper disposal of cleaning residues

- Procedures for loading and unloading chemicals at member company's facilities that result in protection of personnel, a reduction in emissions to the environment, and an increased awareness of hazards from inadvertent mixing of incompatible chemicals
- A process for providing manufacturer guidance and information to customers, warehouses, terminals, and carriers on procedures for loading, unloading, and storing chemicals, and a process to increase awareness of hazards from inadvertent mixing of incompatible chemicals
- A process for selecting owned and contracted facilities and sites for chemical storage or handling that emphasizes safety and fitness and includes reviews
- Documentation of current operating procedures for handling and storing chemicals
- Facility design, construction, maintenance, inspection, and security practices that promote facility integrity, consistent with recognized codes and regulations
- A process for addressing chemical site and chemical transportation security, to include conducting a security vulnerability assessment
- Provisions for control of processes and equipment during emergencies resulting from natural events, utility disruptions, and other external conditions
- Procedures to properly label and mark packages and containers

As demonstrated by their adherence to the practices outlined above, NACD members are fully committed to the safe handling and storage of hazardous materials, including in the areas of loading and unloading.

NACD commends PHMSA for seeking to address hazardous materials transportation safety by focusing on the loading and unloading operations involving bulk packagings such as rail tank cars. The fact that 27 percent of serious hazardous materials transportation incidents between 2004 and 2006 occurred during loading and unloading operations demonstrates that the DOT needs clear authority to adopt and enforce safety regulations in these areas.

NACD supports the concept of federal performance standards to address loading and unloading operations involving bulk quantities of hazardous materials and would support the inclusion of reasonable standards into the Hazardous Materials Regulations (HMR).

Regarding the universe of bulk packagings to be covered by federal performance standards, NACD believes the standards should only apply to packagings whose capacity is 3000 liters or greater. The data on the most serious loading and unloading incidents seems to implicate packagings over 3000 liters. For example, all of the incidents leading to investigations and recommendations from the National Transportation Safety Board and the Chemical Safety and Hazard Investigation Board involved rail tank cars, which have a capacity greater than 3000 liters. The Hazardous Materials Interested Parties Working Group chose a limit of 3000 liters based upon the fact that most packagings smaller than that are not loaded and unloaded using pumping equipment and are not loaded while on the transport vehicle.

Depending on their business structures, chemical distributors can be the loading facilities, the carriers, and/or the unloading facilities. The vast majority of chemical distributors ship products to multiple facilities, either using their own trucks or through common carriers. In order to avoid confusion, a necessary element to ensure that new federal standards are adopted and

implemented effectively is a clear delineation of responsibilities among all of the parties involved. As PHMSA moves forward with a rulemaking, NACD urges the agency to make sure that the responsibilities for developing and implementing the bulk loading and unloading procedures are clearly apportioned between the facilities and the carriers.

In addition, as PHMSA moves forward, NACD urges the agency to adopt a rule that establishes hazard level-based performance standards rather than prescriptive requirements. For example, NACD is concerned that the elements outlined in the Dangerous Goods Advisory Council's November 17, 2007, petition for rulemaking are too prescriptive and would not be appropriate for all situations. In addition, requirements that are too prescriptive might not recognize that many elements are already covered by other existing laws and regulations. It is important for the standards to refrain from creating duplicate requirements and to recognize programs already in place under existing regulations.

NACD strongly agrees with the statement under the Proposed Recommended Practices for Bulk Loading and Unloading item addressing the area of safety analyses, which says, "The analysis should be appropriate to the complexity of the process and the materials involved in the operation." PHMSA's rulemaking should reflect this view and establish different performance standards depending on the hazard of the material. For example, bulk packagings containing materials that are subject to the Federal Motor Carrier Safety Administration Hazardous Materials Safety Program Permit requirements could be subject to a more thorough safety analysis than those that are not. PHMSA could also facilitate compliance by recognizing procedures established by private sector Environment, Health, Safety and Security Management programs such as NACD's Responsible Distribution ProcessSM.

The greatest barrier to effective regulation of loading and unloading operations today is the fact that under the current HMR, DOT only has the authority to regulate loading and unloading functions when carrier personnel are present. This creates a substantial regulatory gap, which opens the door to inconsistent regulation across multiple agencies and jurisdictions. This situation not only compromises safety; it also deprives DOT of valuable incident data. Today, if a loading or unloading incident occurs without carrier personnel present, DOT does not have the regulatory authority to collect information on that incident. Therefore, the most important element of any new rule on loading and unloading must include an expansion of DOT authority to regulate these functions. Only with strong federal authority can a uniform set of standards for loading and unloading of bulk packagings even be achievable.

Thank you for the opportunity to provide these comments. 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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