



March 4, 2010

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

RE: DOCKET NO. PHMSA-2009-0201 (HM-208H)

Dockets Section:

This letter responds to the notice of proposed rulemaking (NPRM) published in the February 2, 2010 *Federal Register* issue regarding docket PHMSA-2009-0201 on HM-208H, Hazardous Materials Transportation: Registration and Fee Assessment Program.

NACD is an international trade association headquartered in Arlington, Virginia, with more than 240 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. NACD member companies have established themselves as leaders in health, safety, security, and environmental performance through implementation of Responsible Distribution, established in 1991 as a condition of membership in NACD. Responsible Distribution is a third-party verified management practice.

Members of NACD operate in every region of the country through approximately 1500 facilities. The membership includes small businesses as well as many regional and national companies. Hazardous materials transportation is an integral part of the chemical distribution business. In 2008, NACD members made 5.2 million chemical distribution shipments, were responsible for 81 billion pounds of delivered product, and drove more than 199 million miles in the distribution of these chemicals.

Through Responsible Distribution, 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 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 strongly opposes 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. 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, the proposed increase in hazardous materials registration fees at this time would be a significant burden on many companies who are already struggling with high energy and transportation costs as well as new federal 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 again rising, a significant increase in 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.

If DOT is able to provide a stronger case as to why additional HMEP funds are needed and specifically how they will be allocated, NACD encourages the agency to consider a performance-based fee structure rather than an arbitrary tripling of fees for many registrants. Under such a system, those entities with poor incident histories and safety records should pay higher fees as they are the ones causing emergency response resources to be used. Entities with good safety records and incident histories have already invested substantial time and expense in hazardous materials safety training. It is unfair to ask these parties to take on the burden of those who are not doing their job in this area.

Thank you for the opportunity to comment on this NPRM. If you have any questions, or need any additional information, please do not hesitate to contact me at 703/527-6223.

Sincerely,

Jennifer Gibson
Vice President, Government & Public Affairs
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS
1555 Wilson Boulevard, Suite 700
Arlington, VA 22209