

NACD KEY ISSUE: HAZARDOUS MATERIALS TRANSPORTATION ACT REAUTHORIZATION

NACD ISSUE

The adoption of reasonable policies, through Hazardous Materials Transportation Act (HMTA) reauthorization, to promote strong, uniform regulation of hazardous materials transportation.

BACKGROUND

Since the enactment of the HMTA in 1975, those engaged in hazardous materials (HazMat) transportation have operated under the national uniform regulations established by this law. In each reauthorization of the law since 1975, Congress has repeatedly reaffirmed its intention to maintain national uniform HazMat transportation regulation. These laws and regulations have resulted in a commendable HazMat safety record. Each year, more than 3 billion tons of regulated HazMat, including toxic, corrosive, flammable, explosive, and radioactive materials, are transported in this country. Over 800,000 shipments of hazardous materials move daily by plane, train, truck, or vessel in packages with quantities ranging from several ounces to many thousands of gallons. Even as the volumes of hazardous materials shipped have increased, the number of serious incidents has decreased significantly in recent years.

LEGISLATIVE UPDATE

In the 111th Congress, the House Transportation and Infrastructure (T&I) Committee has held several hearings about HazMat transportation regulation, specifically the effectiveness of the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) in carrying out and enforcing the Hazardous Materials Regulations (HMR). These hearings, along with an investigation by the DOT Office of Inspector General have alleged that PHMSA was too close to the HazMat transportation industry and had failed to consider safety as the top priority in several areas such as the issuance and renewals of DOT Special Permits.

On November 19, 2009, the T&I Committee approved H.R. 4016, the Hazardous Materials Transportation Safety Act, sponsored by Committee Chairman James Oberstar (D-MN). This legislation focuses on more training for emergency responders, increased enforcement of the HMR, and specific areas highlighted in the T&I Committee hearings, including lithium batteries on aircraft, wetlines on cargo tank motor vehicles and the DOT Special Permits and Approvals program. H.R. 4016 would phase out the permitted use of wetlines to transport flammable liquids by prohibiting the transportation of Class 3 flammable liquids in wetlines of all cargo tank motor vehicles manufactured two years after enactment and prohibiting existing vehicles from transporting Class 3 flammables in wetlines as of December 31, 2025. It would also make changes to PHMSA's Special Permit and Approvals program by requiring PHMSA to conduct safety fitness tests before authorizing and renewing special permits and allowing the agency to charge fees for processing the permits.

H.R. 4016 would also establish minimum standards for emergency response information services, increase and specify training requirements for emergency responders, and increase information resources for emergency responders. In addition, the bill would require DOT to carry out a hazardous materials enforcement training program for HazMat inspectors and directs DOT to hire an additional 84 employees to support the HazMat safety program, 30 of which

must be inspectors. The bill also requires the Government Accountability Office to conduct a study on the HazMat safety permit program.

H.R. 4016 makes no changes to DOT's current authority to preempt state and local HazMat transportation regulations.

Companion legislation to H.R. 4016 has not yet been introduced in the Senate.

NACD POSITION

Hazardous materials transportation is an integral part of the chemical distribution business. NACD member companies make a delivery every 6 seconds with a fatality rate twice as good as DOT's target goal. 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. In doing so, NACD members experienced only 64 vehicular accidents or transportation spills and 14 injuries.

The Hazardous Materials Regulations (HMR) provide a clear and effective framework to promote the safe transportation of HazMat in the U.S., as proven by the industry's strong safety record. NACD believes that this framework should be maintained and that enforcement is a key element of the program as long as this is done in a clear and consistent manner.

NACD has some concerns about the wetlines ban in H.R. 4016. Given the number of shipments using wetlines, the fatality rate is extremely low. In addition, requiring retrofit of existing systems would create additional safety hazards and would be difficult because of the shortage of suppliers of the necessary materials. NACD is pleased that the phase out date was pushed back to 2025, but urges Congress to reconsider the ban.

The DOT Special Permits and Approvals program is an important regulatory tool needed to address situations not anticipated by the HMR or to perform functions for which prior authorization by the agency is required under the HMR. Without the Special Permits and Approvals program, new materials, certain medicines, innovative packagings and energy storage devices – to name a few – could not be used or moved until new regulations were adopted. Despite the essential function of the Special Permits and Approvals program, it has been chronically under-resourced. As a result, there are several thousand special permits and approvals pending action at DOT, and many special permits remain on the books long after their safety value has been validated and could have been incorporated into the HMR. NACD appreciates the Committee's concerns about the Special Permits and Approvals program and the fact that H.R. 4016 sets the framework to refocus and resource this area. PHMSA has also taken several steps over the past several months to improve the process to ensure safety.

NACD appreciates the fact that H.R. 4016 recognizes the need for continued strong national regulation of hazardous materials in transportation. Uniform regulation is essential for protecting the public, facilitating compliance, and providing for efficient movement of essential materials in intrastate, interstate, and foreign commerce.