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**Attn: Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading Operations
[Docket Number PHMSA-2007-28119 (HM-247)]**

These comments respond to the notice of proposed rulemaking (NPRM) published in the March 11, 2011 *Federal Register* issue regarding Docket Number PHMSA-2007-28119 (HM-247), Hazardous Materials: Cargo Tank Motor Vehicle Loading and Unloading Operations.

The National Association of Chemical Distributors (NACD) is an international association of more than 380 chemical distributors and their supply-chain partners. NACD represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Members of NACD operate in every region of the country through approximately 1300 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 2009, NACD members were responsible for the delivery of over 75 billion pounds chemicals and drove more than 160 million miles in the distribution of these products.

NACD members meet the highest standards in safety and performance through mandatory participation in Responsible Distribution, NACD's third-party verified environmental, health, safety, and security (EHS&S) program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations. In 2009, NACD members achieved a handling/storage safety record of 99.9997% and averaged just one traffic incident in every 700,000 miles driven.

Handling and Storage is one of 12 Codes of Management Practice under Responsible Distribution. Each NACD member must write and implement policies and procedures to address the following areas under the Handling and Storage Code:

- 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.

While NACD supports the concept of including reasonable standards to address loading and unloading operations in the Hazardous Materials Regulations (HMR), the measures included in HM-247 are far too extensive and prescriptive. As PHMSA recognizes in the proposal's preamble, NACD's comments on the January, 2008 notice on Proposed Recommended Practices for Bulk Loading and Unloading of Hazardous Materials in Transportation said, "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."

NACD's concerns are even more applicable to the March 11, 2011 HM-247 proposed rule. The DGAC says in its March 31 letter, "While DGAC in its petition listed a number of elements that should be included in operating procedures, the lists were prefaced with the words "if

appropriate.” The proposal uses no similar qualifying terms so that it appears that each item must be addressed in the operating procedures irrespective of relevance.”

New Obligations for Covered Firms

PHMSA estimates that 50 percent of shippers and carriers are already in compliance with HM-247 because of other regulatory requirements and industry codes of practice. This is not necessarily the case. Even for firms such as NACD members who practice Responsible Distribution, substantial revisions of standard operating procedures (SOPs) will be needed in areas such as documented risk assessments and annual training certifications. Even those covered under the Environmental Protection Agency’s Risk Management Plan and the Occupational Safety and Health Administration’s Process Safety Management (PSM) regulations will be impacted because these rules apply to fixed site functions, not customer delivery functions. While many of these firms may have a good head start with delivery SOPs because of other regulations, they will still need to develop risk assessments under HM-247. Much also depends on the extent of risk assessments that PHMSA would require. If this is only a basic job hazard analysis, many companies are already doing this; however, if a full-blown PSM type process is required, major rewrites would be needed.

One specific measure that would result in new obligations and compliance costs is the annual employee training and certification, including annual observation and evaluation of each covered employee's performance of covered tasks. If this means that chemical distributors delivering products must observe and evaluate their cargo tank drivers' performance of unloading at each customer facility where the customer does not participate in the unloading, this is a major new obligation. It would take substantial time to track this annual requirement for each covered employee/customer facility, and to accompany them to observe and evaluate.

Another major example is the risk assessment requirement. This would be doable for a general type delivery. However, the rule could be interpreted that a detailed risk assessment would have to be done for every type of delivery and every type of site condition. A typical chemical distributor has thousands of customers, and many of these companies deliver products to their customers themselves. Completing detailed assessments for every type of site condition would be an impossible task.

The requirement to retain the written analysis of specific loading and unloading hazards with the operating procedures would also be a new obligation for many companies. Particularly because the proposal does not appear to allow for electronic records, this measure would require the creation of a substantial new document management system.

Standard Operating Procedure and Risk Assessment Development Costs

PHMSA estimates that costs for the development of the risk assessment and operating procedures, subsequent updates, and maintaining the documentation on file will be around \$250 (5 person-hours of professional staff time and 5 person-hours of administrative support time) annually for small and \$500 (10 hours each of professional and administrative time) for large firms. NACD believes that these estimate are unrealistic. Many small companies, who do

not have the staff nor expertise to perform hazard and risk assessments, would have to contract out these types of services. Typical contractor hours would be \$100/hr or more. The contractor would have to perform the assessment, which might mean travel costs to a location in addition to the time needed to review current procedures and to document everything. This could typically result in eight hours for the assessment, four hours of travel, and another four to eight hours to complete documentation for a total of about 20 hours. This would mean a baseline cost of about \$2000 and likely higher. In most cases, there would also be follow-up hours and work.

One NACD member estimates that they will need to spend at least 20 hours per company-owned site revising and re-formatting existing SOP's to comply in detail with HM-247. However, this is only the beginning. If the rule forces companies to create risk assessments for all, or many, customer bulk delivery sites, including the ones where the distributors' drivers do all the work, or where their hoses are used, each one of those will require a site visit and several hours to create the risk assessment and integrate it into their work flows. This NACD member has more than 100 bulk delivery locations and estimates that this process will take eight hours per delivery site. This is a common scenario for a typical chemical distributor.

Personnel Training Costs

PHMSA estimates that it will only take one additional hour per year per cargo tank motor vehicle loading-unloading employee to fulfill the new training requirements in HM-247. NACD also believes that this estimate is unrealistic. These new requirements are extensive with many elements including the written test, observation and evaluation, the establishment of the performance improvement process, and recordkeeping. Also, the training must be conducted every year rather than once every three years as under most DOT regulations.

One NACD member estimates that three hours per employee would be needed each year to train each employee on the loading procedures and at least an additional three hours of each year for unloading procedures, at \$30/hour.

In addition, some companies operate remotely and would have to either bring employees to the corporate headquarters or have management trainers travel to remote sites to complete the training. PHMSA fails to consider these hours and travel costs in the estimate.

HM-247 Complications/Responsibilities of Carriers and Receivers

The proposed requirement in HM-247 for facilities that perform loading or unloading operations or provide transfer equipment to the motor carrier for loading or unloading operations to ensure that the carrier is either (a) supervised or assisted by a facility employee who is trained on the operating procedures, or (b) provided with written instructions on how to conduct the loading or unloading operation in accordance with the facility's unique operating procedures would be complicated.

For companies who perform all loading and unloading functions at their own sites, using their own equipment, the main foreseeable complication is if delivering carriers begin to demand

new forms of documentation to cover their needs under HM-247. More serious complications arise for those chemical distributors that make bulk deliveries to their customers. As currently written, HM-247 incentivizes at least the worst facility operators to abdicate all assistance and oversight of the unloading process to the carrier, because the rule invites a shift in responsibility away from the facility, onto the carriers, especially the carriers who provide the most service - those who are willing to perform most or all of the unloading function at a customer's facility.

On page 13317, column 3 paragraph 2, the NPRM states that "if the facility operator provides employees or equipment to the carrier for loading and unloading operations, then it is PHMSA's intent that the facility operator share responsibility for the safety of the loading or unloading operation". The implication is that if the facility operator does not provide help to the carrier, the responsibility for the safety of the operation belongs entirely to the carrier. This is the wrong approach and could have a negative impact on safety. The facility operator has the best vantage for safety oversight at his own facility. The driver may never have been there before. Responsible facility operators will continue to assume the full responsibility for safety at their own sites, while the less-responsible operators will be rewarded with this rule for making no contribution to safety at their own sites with the carrier now having full responsibility. This will have the effect of reducing overall safety by forcing knowledgeable receiving facility personnel out of the unloading process, in favor of the carrier, whose expertise is focused on the vehicle, not on the engineering and maintenance details of each site.

More Reasonable Approaches to Address Loading and Unloading Safety Concerns

Much of HM-247 has merit. For example, a general requirement that the carriers and receivers have documented delivery SOPs, or a simple checklist, would be reasonable. Also, a basic, flexible risk assessment requirement would be reasonable. It is unreasonable to require a carrier to perform a detailed risk assessment to address each delivery site.

In addition, the training requirements should be consistent with those already in place in the Hazardous Materials Regulations (HMR), which require retraining on other hazardous materials functions every three years, not annually. Some of these functions can be more essential to safety than following prescriptive loading and unloading procedures. In addition, observation of these other functions is not specifically mandated in the HMR, although many facilities may chose to do so, particularly for less-experienced employees. Requiring observation of *all* employees involved in loading and unloading operations could actually decrease safety by unnecessarily diverting resources currently focused on training new and less-experienced personnel to those who already have experience and expertise with transfer operations.

Finally, it is critical for PHMSA to clearly delineate responsibilities between receiving facilities and delivering carriers as such: The carrier should be responsible for the carrier's equipment and carrier personnel training on product hazards and the use of the carrier's equipment. Facilities should be responsible for the facility's equipment and facility personnel training on product hazards and the use of the facility's equipment. Carrier equipment design and

maintenance should be the carrier's responsibility. Facility equipment design and maintenance should be the facility's responsibility.

Thank you for the opportunity to comment on this issue. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

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