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Docket Management Facility
U.S. Department of Transportation
Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001
Electronic Address: <http://www.regulations.gov>

Attn: Highway-Rail Grade Crossing; Safe Clearance; DOCKET Numbers PHMSA-2010-0319 (HM-255) & FMCSA-2006-25660

These comments respond to the notice of proposed rulemaking (NPRM) published in the January 28, 2011 *Federal Register* issue regarding docket Docket Numbers PHMSA-2010-0319 (HM-255) & FMCSA-2006-25660, Highway-Rail Grade Crossing; Safe Clearance.

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.

NACD has concerns about the PHMSA and FMCSA January 28 proposal to prohibit a motor vehicle driver from entering onto a highway-rail grade crossing unless there is sufficient space to drive completely through the grade crossing without stopping. While PHMSA and FMCSA state that the objective of this proposal is to reduce highway-rail grade crashes, the rate for these incidents is already extremely low. The miniscule benefit projected by the proposed rule would not justify the cost of implementation.

The proposed rule states that the storage-distance related annual crash rate per 1000 grade crossings is only 0.72. With this rule in place, PHMSA and FMCSA expect 2.62 fewer crashes per year at rail grade crossings. For an anticipated reduction of fewer than three crashes, the agencies do not take into account the potential increase in hazardous materials transportation incidents that would result from increased miles traveled because of rerouting needed to avoid the impacted highway-rail grade crossings.

If the proposed rule is adopted, carriers would need to assess each of their delivery routes, many of which are on major thoroughfares, and would have to re-route all that pass through one of the more than 21,000 crossings affected. Re-routing these shipments would result in hazardous materials being transported over increased miles for longer periods of time. Not only would this increase the potential for incidents, it would put additional pressure on drivers who must comply with hours of service requirements.

FMCSA and/or PHMSA would need to specially mark all of the impacted crossings or leave carriers guessing as to which ones are prohibited. Even if these crossings are marked, there would still be problems. For example, drivers frequently pick up or make deliveries in new areas and do not have working knowledge of the rail crossings in these vicinities. If a driver comes upon a new crossing that does not have the required clearance, his choices would be to either cross illegally or back away from the crossing. Backing away from the crossing would likely be more dangerous than crossing illegally. In addition, even if the driver were able to back away from the crossing without incident, he would need to figure out a new route in an unfamiliar area. In doing so, he is likely to select a route that is many miles longer than the original route and/or presents other unknown hazards.

In addition, trucks carrying hazardous materials are already required to stop before entering rail grade crossings to make sure that trains are not approaching, which makes the prohibition on entering certain crossings unnecessary.

Finally, the proposal would be particularly problematic for chemical facilities as many of the affected crossings are close to these plants. In some cases, the proposal would even preclude making deliveries to certain customers or taking on new accounts in areas with limited space crossings. This would impede the ability of companies to deliver the materials essential to producing goods that consumers need and would be detrimental to jobs and the economy.

NACD urges PHMSA and FMCSA to withdraw this proposed rule. The increased costs and potential for increased-distance-related incidents do not justify the extremely limited benefit that the agencies even acknowledge are probable if the proposal is implemented. This proposed rule is inconsistent with the regulatory reform initiative announced by the President earlier this year, which calls for a review and reconsideration of unnecessary and overly burdensome regulations.

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,

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