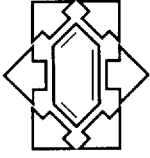


178365



National Association of Chemical Distributors

1560 Wilson Boulevard, Suite 1250 • Arlington, VA 22209 • 703-527-NACD (6223) • FAX 703-527-7747

July 2, 2002

Dockets Management System
U.S. Department of Transportation
Room PL 401
400 Seventh Street, SW
Washington, DC 20590

DEPT. OF TRANSPORTATION
DOCKETS
02 JUL - 3 PM 12:35

RE: Docket No. RSPA-02-12064 - 128

Dear Sir or Madam:

On behalf of the members of the National Association of Chemical Distributors (NACD), I am submitting comments on the Research and Special Programs Administration's (RSPA) proposals to enhance the security of hazardous materials transportation.

General Comments Regarding DOT's HazMat Transportation Security Proposal

NACD supports RSPA's intent to enhance hazardous materials transportation security. We recognize RSPA's efforts to work in cooperation with industry via communication prior to the development of its proposal and encourage a similar dialogue in the future. However, we believe that the security measures approved by the NACD membership, and other security improvements that are being implemented on a continuing basis maybe more effective in securing the transportation of our products

Registration Certificate

Although some NACD members currently have their drivers carry a copy of the company's certificate of registration in their trucks, NACD questions how making this mandatory will improve security of the product in transportation. The reason DOT provides-that this will establish whether a carrier is legitimate-is simply inaccurate.



Quality • Responsibility • Stewardship

Registration certificates are mailed to anyone who registers and pays the fee to RSPA. A certificate is merely a receipt for payment. To the best of our knowledge, certificates were never intended to be used by DOT as evidence of a company's legitimacy to transport hazardous materials. Using the example provided in RSPA's proposal preamble, a law enforcement officer will only be able to determine whether the carrier has complied with registration requirements, which is not a determination of whether the carrier poses any sort of security threat. If there were some method of verification or background checks on those who apply prior to the issuance of the registration certificate, then NACD would agree that such a requirement may be useful. While we are not advocating for such a verification, we strongly believe that without it, a requirement to have a copy of the registration certificate will serve no benefit. In the absence of one, we feel that RSPA should not require company's to have with them a copy of the registration certificate for the purpose of demonstrating legitimacy.

NACD is troubled by the implication in the proposed rule that motor carrier shipments that are placarded also have the requirement to file a registration statement with RSPA and therefore are identified as transporters of hazardous materials in commerce. This may mislead law enforcement and the public about what shipments require close scrutiny. For example, placards are not required for ammunition and flares classed as ORM-D which in trailer load quantities could pose a serious risk to the public. On the other hand many shipments requiring placarding may not likely be useful to a terrorist and are a low security risk but yet a burden on enforcement resources. In other words there should be other criteria that more definitively categorize a shipment as within the meaning and intent of the proposed rule.

Shipping Papers

NACD has very serious concerns with RSPA's proposed requirement to include the name and address of the consignor and the consignee. The concern involves the unique issue of competition not only within the chemical distribution industry, but all industries in which non-manufacturers are handling distribution. This proposed requirement would entirely compromise the identity and proprietary nature of a distributor's customers.

Distributors often purchase products from their competitors and have the shipment delivered to the distributor's customers via an authorized carrier, either their own or a common carrier. According to the proposal, a distributor's competitor would have information on the distributor's customers as they ship the product to them. Again, placing the distributor at a competitive disadvantage. Clearly, distributors who sell only a few products could be particularly vulnerable.

NACD proposes that the shipper be required to have the name and address of the purchaser of the product and the name of the carrier that is authorized to pick up and deliver the product, who will have the name and address of the final delivery destination. This alternative would ensure confidentiality, while providing additional security.

Security Plans

NACD supports RSPA's proposal in principle to require new or additional security assessments of a company's transportation risks and to take any appropriate measures to reduce identified risks. NACD particularly appreciates the flexibility RSPA provides in its proposal to regulated entities in how they go about meeting this requirement.

In recent revisions to NACD's Responsible Distribution ProcessSM (RDP), member companies will be required to address site and transportation security as well as scrutinize their carriers' ability to secure their products. Additionally, NACD members will be required to qualify customers buying products from them as prescribed by governmental regulations. In other words, there will be additional attention given to how NACD members transport hazardous materials on their own or by a common carrier as well as to whom they sell.

NACD worked with the American Chemistry Council and The Chlorine Institute, Inc., to develop security guidelines for hazardous materials transportation. Many of the same requirements in RSPA's proposal were included as guidance in this jointly-developed security guidelines document.

Training

NACD believes that requiring industry to train its employees within three months of a Final Rule gives insufficient time to be in compliance with this requirement. We appreciate the need to complete the training in an expeditious manner to secure facilities and transportation as quickly as possible. However, RSPA has underestimated the amount of time it takes to schedule and train employees of a new company-wide program or policy, such as a security plan. The estimated one-hour of training time per employee is also woefully short. Realistically it should be three hours per employee. Therefore, with the additional time needed to train employees on the company's new policies on security, NACD urges DOT to extend the deadline to six months from the date of a Final Rule.

Executive Order 13132

NACD firmly believes that until a Department of Homeland Security is in place, that it is in the best interest of all impacted parties that DOT be the only agency to promulgate uniform national requirements for transportation security. It makes little sense to have differing and conflicting security requirements which would only reduce the effectiveness of transportation security.

On other provisions of the proposal we would make the following changes:

Section 172.800 (a) omit the words "to assure" and replace with "strengthen and improve."

Section 172.802 (4) The intent of this provision is clear and in instances involving the transportation of hazardous materials between city pairs or interstate shipments, determining preferred and alternative routing, would not be particularly burdensome. However, given the diversity of chemical distributors' customer base, many customers are located in populated areas which often involve the use of tunnels and bridges because there is no alternative to completing delivery of the product to the customer. In these instances adherence to the letter or the intent of the provision would be impossible.

Interest of the Respondent

NACD represents more than 250 chemical distribution companies across the United States as well as in Canada, Mexico, and Europe. NACD member companies purchase and take title to chemical products in bulk from suppliers. They then process, formulate, blend, re-package, warehouse, transport, and market these chemical products exclusively for an industrial customer base of approximately 750,000. According to NACD data,¹ over 96% of its members ship product by truck. Nearly 60% own their own trucking fleet, although almost all use for-hire trucking firms. Member companies traveled over 100 million miles last year with an accident and injury rate far better than the rest of the trucking industry and somewhat better than the allied chemical industry. Safely delivering these products to customers is vital to NACD members. In fact, new security measures have been added to NACD's Responsible Distribution ProcessSM (RDP) that specifically address transportation security. RDP is a condition of membership in NACD and requires two stages of third party verification, including an on-site visit by an independent third party firm every three years. Adherence to this third party visit is also a condition of membership. Failure to comply with all of RDP's requirements results in membership termination.

Industry Security Actions Following September 11, 2001

NACD has been a leader among industry trade associations in addressing hazardous materials transportation security. In November 2001, NACD partnered with the American Chemistry Council and The Chlorine Institute, Inc., in developing a widely distributed, 26-page guidance document titled, *Transportation Security Guidelines for the U.S. Chemical Industry*. The guidance address key security areas such as conducting security risk reviews, including vulnerability assessments, and developing and implementing risk reduction and preventative measures. Each NACD member received a copy and was strongly encouraged to consider recommendations included within the guidance that make sense according to their operations. Most significantly, however, in April 2002, NACD members agreed to implement and subsequently be verified by a third party on new industry practices that specifically address site and transportation security.

¹ NACD RDP Indices Questionnaire data, 1999-2000.

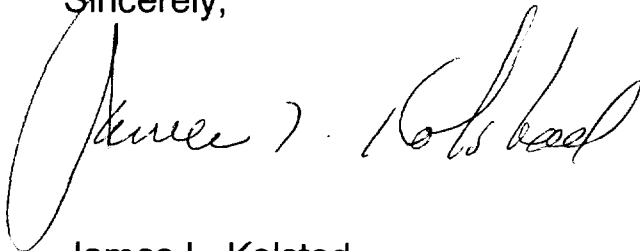
In summary, the new measures include the following:

- Members will make security considerations among the priorities in their planning for all existing and new operations, products, processes, and facilities;
- Members will write and implement company policies and procedures for selecting carriers that are able to demonstrate security as well as carrier safety and fitness, regulatory compliance, and performance review;
- Members will write and implement a process for addressing site and chemical transportation security; and
- Members will write and implement a process to qualify customers as prescribed by governmental regulations.

Conclusion

NACD recognizes the need to take quick and meaningful action to secure our members' facilities and their modes and methods of transporting hazardous materials. As we have in the past on various other issues, NACD is committed to working with the Agency to improve the safe transportation of hazardous materials, even while we may disagree on the best way to do so.

Sincerely,

A handwritten signature in cursive script that reads "James L. Kolstad". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

James L. Kolstad
President & COO
National Association of Chemical Distributors
1560 Wilson Boulevard
Suite 1250
Arlington, VA 22209
(703) 527-6223
(703) 527-7747 fax
www.nacd.com