

June 17, 2015

Docket Management System  
U.S. Department of Transportation  
West Building, Ground Floor, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Via Electronic Submission: <http://regulations.gov>

**Re: Support for American Chemistry Council Appeal of Final Rule Issued in Docket No. PHMSA-2012-0082(HM-251), Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains**

The National Association of Chemical Distributors (NACD)<sup>1</sup> submits this statement in support of the American Chemistry Council's (ACC) Appeal of the Final Rule Issued in Docket No. PHMSA-2012-0082(HM-251), Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains. In the June 8, 2015, Appeal, ACC requested PHMSA to revise the Final Rule to ensure the requirement to retrofit existing tank cars applies only to cars carrying crude oil and ethanol. NACD strongly supports this request.

NACD shares PHMSA's goal of enhancing the safety of hazardous materials transportation by rail; however, the association believes the Final Rule extends beyond the original intent of PHMSA to focus on crude oil and ethanol, as expressed in the Notice of Proposed Rulemaking preamble<sup>2</sup> and Regulatory Impact Analysis<sup>3</sup>.

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<sup>1</sup> NACD is an international association of nearly 440 chemical distributors and supply-chain partners. NACD's membership comprises businesses representing in total more than 85% of the chemical distribution capacity in the nation and generating 90% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family-owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

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 program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of handling, transportation, storage, and disposal of chemical products. Hazardous materials transportation is an integral part of the chemical distribution business. In 2013, NACD members made over 4 million shipments, were responsible for 26.3 million tons of product, and drove more than 140 million miles while making deliveries to customers every 7.3 seconds. Nearly 40% of NACD members receive product via rail. For those who do, the average received annually is 55,328 tons per company, accounting for approximately 25% of their total products received. Many members also ship product by rail.

<sup>2</sup> *Federal Register*, Vol. 79, No. 148, page 45040 / Friday, August 1, 2014

<sup>3</sup> Draft Regulatory Impact Analysis [Docket No. PHMSA-2012-0082] (HM-251) Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains; Notice of Proposed Rulemaking, July 2014

As ACC described in its appeal, the Final Rule will require nearly 40,000 Class 3 rail cars to meet the design criteria set forth in the rule, substantially more than the 354 PHMSA stated in the final Regulatory Impact Analysis<sup>4</sup>.

Chemical distributors depend on rail service to ship and receive shipments of hazardous and non-hazardous chemical materials that are critical to the industries they serve, including agriculture, automotive, personal care, electronic, food and beverage, paint, pharmaceutical, plastic, and textile products, among many others. For some substances, including flammable materials, rail is the safest and most efficient mode of transportation because of the large volume capacity of rail cars and a strong rail safety record. Rail service and pricing is already at a premium because of record high demand.

The number of facilities in existence that are capable of building new rail cars and converting/retrofitting other tank cars is limited. Because of this limited capacity, requiring all Class 3 rail cars to be retrofitted would create a further backlog at rail car repair facilities, and as a result, exacerbate the problem of inadequate rail shipping capacity. If PHMSA does not revise the HM-251 Final Rule to limit retrofit requirements to only rail cars carrying crude oil and ethanol, the result will be an enormous disruption of rail transportation, which would have a stifling impact not just on chemical distribution, but on the entire U.S. supply chain and economy.

While NACD agrees with PHMSA that measures must be taken to ensure the safety of hazardous materials transportation by rail, these measures must be feasible, cost effective, and commensurate with the actual risk.

For these reasons, NACD urges PHMSA to address ACC's Appeal favorably.

Thank you for your consideration. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



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<sup>4</sup> Final Regulatory Impact Analysis [Docket No. PHMSA-2012-0082] (HM-251) Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains; Notice of Proposed Rulemaking, May 2015