

April 2, 2015

Mr. Karl Alexy
Staff Director, Hazardous Materials Division
Office of Technical Oversight
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

via: Karl.Alexy@dot.gov

Dear Mr. Alexy:

On behalf of the National Association of Chemical Distributors (NACD), I respectfully submit the following comments about the Federal Railroad Administration's (FRA) Railworthiness Directive for Railroad Tank Cars Equipped With Certain McKenzie Valve & Machining LLC Valves as published in the March 18, 2015, *Federal Register*.

About NACD

The National Association of Chemical Distributors is an international association of more than 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 93% 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. NACD members are predominantly small regional businesses, many of which are multigenerational 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 NACD Responsible Distribution®, the association'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.

NACD/Chemical Distribution Interest

While NACD shares the FRA's objective of ensuring that rail cars are safe and free of leaks, the association has serious concerns about the Directive, specifically the scope of tank cars covered and the tight timelines for replacing the McKenzie 1", 2", and 3" valves.

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.

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, 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. Depending on the material, a single rail car can hold the same volume as between four and eight tank trucks.

Rail service and pricing is already at a premium because of record high demand. If the scope and timelines in the Directive are not modified, 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.

Scope of Directive

NACD is concerned the scope of the Directive is unnecessarily broad as it covers valves that have presented no safety concern and extends to tank cars that may not even carry hazardous materials.

FRA states in the Directive the agency is not aware of any releases from rail tank cars involving the 1” or 2” McKenzie valves, yet FRA is prohibiting the transportation of tank cars with these valves as of June 11, 2015, just over two months from now. FRA also states McKenzie has indicated it has sold over 37,000 of these valves. The result of prohibiting the use of these valves as of June 11 will result in thousands of essential rail cars being pulled out of service.

The directive also prohibits the transportation of tank cars with 3” McKenzie valves with 2” bushings as of May 12, 2015, even though this configuration has not presented a leak issue.

Rather than requiring these tank cars to be removed from transportation, alternatives are available to ensure safety. For example, FRA could maintain the recordkeeping, information submission, and inspection requirements for the McKenzie valves as outlined in the Directive, while stopping short of requiring that all of the tank cars be removed from service as of May 12, 2015, for the 3” valves and June 11, 2015, for the 1” and 2” valves. By requiring individual cars with the valves to be removed from service if those valves show any evidence of mechanical damage, these provisions would ensure safety while minimizing transportation delays.

In addition, the Directive extends to rail cars that are not necessarily transporting hazardous materials and therefore, do not present the same safety concerns. Answer #6 on the FRA’s March 24 Q&A document states that “the Directive applies to all DOT specification tank cars regardless of the product being transported.” Based on that statement, it appears that the measure would apply to empty rail cars as well, which would further complicate matters. Many small chemical distributors receive products by rail and then prepare the empty cars for return, but some may lack the expertise to make a qualified determination on the valves. There is also limited track space for the rail cars with additional cars scheduled for delivery. Arranging for repairs at so many remote locations is not viable for these distributors. Because

empty cars do not present a product leak hazard, the rail tank car owner, lessor, or filler must be the party to determine the valve integrity rather than the person unloading and returning the empty car.

NACD strongly urges the agency to limit the Directive to only tank cars carrying products that truly present safety concerns. Extending the prohibitions to rail cars carrying non-hazardous materials and empty cars will halt rail transportation of not only hazardous materials, but of all products that would have been shipped in these cars. This will create further rail transportation delays and will have a substantial impact on the entire product supply chain in the U.S.

Unrealistic Timelines

The impacts that will result from the large scope of the Directive will be exacerbated by the unrealistic deadlines it imposes.

The Directive requires that all 3” McKenzie valves be replaced by May 12, 2015, or that the tank cars with these valves be removed from service. It further requires that all 1” and 2” valves be replaced by June 11, 2015, or that the tank cars with these valves be removed from service. This time frame requires the replacement of tens of thousands of valves or removal of the impacted rail cars from service in less than 10 weeks.

The rail car facilities that would replace the valves do not have the capacity to do all of the required work in such a short time frame. These facilities are already booked with other projects, including rail car maintenance work and retrofits. It is physically impossible for these facilities to replace the valves of tens of thousands of cars in less than 10 weeks. In addition, it is uncertain enough valves currently exist to replace the ones FRA is prohibiting. Because of this limited capacity in such a short time frame, thousands of rail cars will be removed from service, which will cause severe supply chain delays and impact thousands of businesses and consumers.

NACD urges FRA to reconsider the short time frames for prohibition of the valves that have not presented a leak concern and to allow for substantially more time for the replacement of these items. By requiring recordkeeping, inspections, and removal from service of those with evidence of damage, FRA can ensure safety while minimizing transportation disruptions.

Conclusion

While NACD agrees with FRA 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. The prohibition of the use of tens of thousands of valves in less than three months does not meet these criteria and will have a negative effect on the fluidity of the entire rail network, creating more reductions of reliable service to rail customers, including NACD members.

NACD urges FRA to consider the alternatives mentioned in this letter that will ensure safety while minimizing supply chain delays and disruptions.

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

Sincerely,



Jennifer C. Gibson
Vice President, Regulatory Affairs
jgibson@nacd.com
(571)482-3047