

September 30, 2014

Docket Management System
Docket No. PHMSA-2012-0082(HM-251)
U.S. Department of Transportation
Room W12-140, Routing Symbol M-30
1200 New Jersey Avenue SE
Washington, DC 20590

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

Re: 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) submits the following comments in response to the notice of proposed rulemaking published in the August 1, 2014 *Federal Register* issue regarding **Docket Number PHMSA-2012-0082(HM-251), Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains.**

Introduction

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 2014, 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.

General Concerns and Issues

While NACD supports the goal of enhancing the safety of hazardous materials transportation by rail, the association has concerns about some aspects of the proposed rule. The scope of rail operations covered, the speed restrictions, and the timelines in the proposal would cause enormous disruptions to rail transportation, which would have a stifling impact on the entire U.S. supply chain and economy.

Chemical distributors depend on rail service to send 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 U.S. Department of Transportation (DOT) adopts measures such as some of those included in this proposed rule, rail service could become prohibitively expensive for chemical distributors and other rail customers. Without rail, transportation of these materials would be shifted to truck, which would not only cause major delays, but also present additional safety risks, such as increased opportunity for loading and unloading incidents and additional volume of hazardous materials on the nation's highways. In addition to safety concerns, shifting transportation from rail to truck would exacerbate the already existing problems of road congestion, a crumbling infrastructure, and a severe shortage of qualified drivers.

Scope of Proposal

The scope of the proposed rule is far-reaching. As written, it covers not only tank cars carrying crude oil, but all tank cars carrying flammable liquids in high-hazard flammable trains (HHFTs). In addition, the proposal defines all trains with 20 or more cars of flammable liquids as HHFTs, without consideration of whether the cars are in manifest or unit train. The proposal further assumes that rail cars spread throughout a manifest train are as hazardous as cars in a single block. Because of the number of commodities covered and the broad definition of HHFT, the number of customers covered will extend far beyond those shipping and receiving crude oil. Most trains carry well over 20 rail cars and can have as many as 100. The proposed rule would subject all of the cars to the same restrictions, not only those carrying crude oil. This will have a substantial impact on the entire product supply chain in the U.S.

Speed Restrictions

The proposed rule would also impose speed limits on HHFTs until all cars in those trains meet the new tank car standards mandated in the rule. As a practice, the railroads currently restrict the speed for trains carrying 20 or more cars of crude oil to 40 mph in high-threat urban areas (HTUAs). The proposed rule could, at a minimum, extend the existing 40 mph speed limit to all

HHFTs in HTUAs. At a maximum, the proposal would impose a nationwide 40 mph speed limit on all HHFTs regardless of their location.

An arbitrary national speed limit on all trains carrying flammable liquids would have wide-spread impacts throughout the entire national rail system as well as the economy as a whole. Speed restrictions applicable to HHFTs would directly impact the speed of **all** traffic on a rail line, which would increase transit times for all and create additional congestion. In addition, if these speed restrictions are adopted, any disruption such as a weather event would even more severely impact service levels and create longer recovery times.

Rail Car Replacement, Retrofit, and New Braking Systems

NACD is also concerned about the time frame for replacement of all of the DOT-111 tank cars to meet the new standards. The Railway Supply Institute's analysis of the total capacity for new car production along with the current backlog indicates that replacing existing DOT-111 tank cars cannot be completed before 2017. 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, a short time frame for replacement or retrofit would prematurely restrict a significant number of tank cars, and as a result, exacerbate the problem of the lacking shipping capacity. Modifying existing rail cars requires adequate time to account for modification complexities and to phase in retrofitted cars with no further deficiencies.

An additional complication in the proposed rule is the requirement to install Electronically Controlled Pneumatic (ECP) brakes in new and retrofitted tank cars being used in HHFTs. ECP brakes are a costly addition to rail cars and locomotives that have yet to be proven effective for large-scale use. As recently as 2008, the Federal Railroad Administration (FRA) conducted a rulemaking proceeding on ECP brakes. After an extensive cost benefit analysis, the FRA concluded that converting to ECP brakes is logistically difficult and would not be mandatory.¹ In a recent filing in response to a similar proposal in Canada, the Railway Association of Canada concluded that a requirement for ECP brakes would pose significant compatibility and reliability issues.

Conclusion

While NACD agrees with DOT that steps must be taken to enhance the safety of hazardous materials transportation by rail, these measures must be feasible, cost effective, and commensurate with the actual risk. Proposals such as speed reductions in **all** urban areas do 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 DOT to consider the potential safety risks, economic impact and rail service shortages discussed above as the department formulates the final rule.

¹ U.S. DOT/FRA - Electronically Controlled Pneumatic Brake Systems Final Rulemaking Regulatory Analysis, Federal Railroad Administration, June 2008, FRA-2006-26175-0065

Thank you for the opportunity to provide these comments. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



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