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These comments respond to the notice of proposed rulemaking (NPRM) published in the September 26, 2013 *Federal Register* issue regarding **Docket Number FMCSA-2013-0140, Commercial Driver's License Standards: Definition of Tank Vehicle Used for Determining the License Endorsement Requirement**

About NACD

NACD is an international association of 400 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. NACD members are responsible for more than 150,000 direct and indirect jobs in the United State while operating in all 50 states through nearly 1700 facilities. NACD members are predominantly small regional businesses, many of whom are multi-generational 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 (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. NACD members have achieved a strong safety record under Responsible Distribution. Member companies' safety rating is consistently better than non-member companies in the Chemical & Allied Merchant Wholesale Industry and nearly twice as good as all manufacturing combined.¹

¹ Based on 2012 data reported by 100% of NACD Member Companies, and the most recent data from the U.S. Bureau of Labor Statistics and the U.S. Bureau of Economic Analysis.

Transportation is an integral part of the chemical distribution business. In 2012, NACD members collectively drove more than 143.2 million miles and safely and securely delivered 1.03 tons of product every second to their customers, who represent virtually every industry sector in the U.S.

Some NACD members utilize their own private fleets; others utilize only third-party carriers; and yet others use a combination of their own fleets and third-party carriers. In each of these situations, the safe and secure transportation of products is a top priority. Code III of NACD's Responsible Distribution program is Carrier Selection and Private Fleet. Under this code, each NACD member must develop and implement their own processes as well as processes for selecting carriers to transport chemicals that includes carrier safety and fitness, security, and regulatory compliance, including ongoing performance reviews.

NACD Comments on Proposed Definition

Because the Federal Motor Carrier Safety Administration's (FMCSA) definition of tank vehicle triggers the requirement for drivers to obtain tank endorsements on their commercial driver's licenses (CDL), it is important for the agency's definition to include situations that pose the unique safety risks of tank vehicles and to exclude situations that do not pose these risks. Too broad of a definition will force drivers who do not need the specialized training required by a tank endorsement to acquire it.

NACD supports most of the tank vehicle definition proposed in the agency's September 26, 2013 NPRM. It is reasonable to regulate tanks with an individual capacity of 1000 gallons or more. It is also reasonable to regulate trucks carrying *permanently attached* bulk tanks with an aggregate capacity of 1000 gallons or more. NACD also supports FMCSA's proposal not to regulate bulk portable tanks that are manifested as empty or contain only residue.

NACD has serious concerns about FMCSA's inclusion of trucks transporting bulk portable tanks with an individual capacity of less than 1000 gallons and an aggregate capacity of 1000 gallons or more in the proposed tank vehicle definition. Including this scenario in the definition will force many drivers transporting vehicles that do not pose the same safety risks as tank vehicles to obtain tank endorsements on their CDLs.

FMCSA should exclude these bulk portable tanks for several reasons. First, FMCSA never intended to regulate these tanks in transportation as tank vehicles. Secondly, vehicles transporting these tanks do not have the higher center of gravity that tank endorsements teach drivers to recognize and mitigate. In addition, vehicles transporting these tanks present little to no surge/slosh risk during acceleration/deceleration because they are shipped empty, with minimal residue, or filled to their outage levels. Finally, excluding these tanks retains the same level of safety without unnecessarily complicating enforcement procedures and training.

FMCSA has stated at least twice that it has no intention of regulating bulk portable tanks intended for transport. First, in its April 9, 2008 proposed rule, Commercial Driver's License Testing and Commercial Learner's Permit Standards, the agency expressed its intent "to clarify

that only tanks with a rated capacity of 1,000 gallons or more come under the [tank vehicle] definition.” Unfortunately, that statement of intent was not placed in the proposed regulatory text and the definition that included tanks with an individual capacity of less than 1000 gallons and an aggregate capacity of 1000 gallons was adopted without comment in FMCSA’s May 9, 2011 final rule. Second, in responding to a petition from the American Trucking Associations (ATA) to correct this oversight, FMCSA clearly stated that it “never intended that the transportation of tanks as cargo should require a tank vehicle endorsement” and “that confusion would be eliminated by a revision to the ‘tank vehicle’ definition to clearly state this.” Unfortunately, the September 26, 2013 proposed rule does not incorporate this intent into either the preamble or the proposed definition of a tank vehicle.

A practical reason to exclude vehicles transporting bulk portable tanks with an individual capacity of less than 1000 gallons and an aggregate capacity of 1000 gallons or more from the tank vehicle definition is that these vehicles and tanks do not pose the same safety risks as actual tank vehicles. The tank vehicle endorsement trains drivers to mitigate the greater risks associated with operating vehicles with a higher center of gravity than other vehicles. FMCSA’s safety materials, specifically its Cargo Tank Truck Rollover Prevention Video, notes that tank trucks have a higher center of gravity than those moving dry van trailers and therefore have a greater rollover risk. Vehicles transporting portable tanks within a dry van do not share the same center of gravity challenges as actual tank trucks. By including vehicles transporting bulk portable tanks with individual capacities of less than 1,000 gallons in the proposed tank vehicle definition, the agency is requiring drivers to obtain training and endorsements for a risk that does not exist.

Another practical reason to exclude vehicles transporting bulk portable tanks with an individual capacity of less than 1000 gallons and an aggregate capacity of 1000 gallons or more from the tank vehicle definition is that bulk portable tanks are almost always shipped full, empty, or containing only residue; therefore presenting minimal risk of surge/slosh. In addition to addressing the high center of gravity issue, according to the American Association of Motor Vehicle Administrators (AAMVA) CDL Training Manual, the tank vehicle endorsement is also designed to educate drivers about controlling the effects of surge inherent in transporting a large amount of liquid. A liquid inside a cargo tank can change position based on gravity and other momentum effects inside that tank while it is in motion, meaning that the liquid will change its position in the tank as that vessel accelerates and decelerates, which is referred to as surge. The tank endorsement trains drivers to address this situation. However, surge is only a risk with *partially filled* tanks. Completely full tanks pose no surge risk because there is no space for the movement of the liquid within the tank. Empty tanks pose no surge risk because there is obviously no liquid to move around within the tank.

The real surge risk is posed by tanks that contain too much liquid to be considered residue, but insufficient liquid to be considered full. Portable bulk tanks (including intermediate bulk containers (IBCS), totes, cylinders, etc.) are as a practice only shipped when they are completely full, empty, or contain only residue; so they do not present a surge risk. Portable tanks are not shipped at partially-filled levels because it does not make economic sense to ship or to

purchase a container with wasted space. Rather, these containers are shipped empty (from manufacture to first user), full (from seller to customer), or containing residue (after use for cleaning or for refill). Chemical and other product distributors commonly use IBCs in shipping products to customers. The proposed tank vehicle definition poses a particular challenge for companies that ship products in IBCs and use third-party carriers as well as the carriers themselves. Drivers of third-party trucking firms, particularly less-than-truckload carriers, do not always know what the shipments will be in advance of arriving at a distribution facility. Therefore, any carrier that picks up or delivers packagings that fit the proposed tank vehicle definition would be compelled to require *all* of its drivers to obtain tank endorsements to ensure efficient customer pick-up and delivery services.

Finally, excluding bulk portable containers with a capacity of under 1,000 gallons from the tank vehicle definition will significantly simplify enforcement. Under the FMCSA's current proposed tank vehicle definition, officers inspecting loads containing IBCs, cylinders, totes, and other tanks will have to first determine which tanks are and are not bulk containers that trigger the aggregation requirement. Then, those officers must compute the aggregate capacity of only those bulk containers. Loads that contain both bulk and non-bulk containers could be subject to confusion if some officers first ascertain the presence of a single bulk container and then proceed to aggregate the capacity of all containers, both bulk and non-bulk.

A system that cleanly considers **only** portable tanks with an individual capacity of 1,000 gallons or more is far simpler to administer. While the aggregation process would remain in place for bulk tanks that are permanently attached, those vehicles are not as common. Permanently attached non-bulk tanks are also uncommon. A definition that includes only portable tanks with an individual capacity of 1,000 gallons or more is far simpler to administer and would accomplish the objectives of the 2008 Commercial Vehicle Safety Alliance (CVSA) petition that originally opened the tank vehicle definition question. Such a definition would capture those true tank trucks that have a total capacity of 1,000 gallons or more but no single tank compartment that holds at least 1,000 gallons. For example, a 6,000 gallon tank truck with eight equal size compartments holds 750 gallons per compartment. CVSA's 2008 petition asked FMCSA to regulate these tanks, but specifically asked the agency to refrain from adopting a similar approach to portable tanks.

Conclusion

The main purpose of the tank vehicle definition is to determine which vehicles trigger the requirement for drivers to obtain tank vehicle endorsements. According to FMCSA's own approved curriculum, the AAMVA CDL Training Manual, the tank vehicle endorsement is designed to train drivers to safely operate vehicles with a higher than normal center of gravity and to mitigate the effects of surge or slosh in tanks. Transporting portable tanks does not raise a truck's center of gravity to that of a traditional tank truck.

For economic reasons, portable tanks are transported either empty, containing only residue, or full. FMCSA guidance already states and the agency is proposing to clarify that empty and residue-only tanks pose no surge/slosh risk the tank endorsement would mitigate. Like empty

and residue-containing portable tanks, full tanks do not pose a surge/slosh risk because there is no physical space for movement of the liquid. Vehicles transporting bulk portable tanks with an individual capacity under 1,000 gallons pose neither of the safety risks the tank vehicle endorsement is designed to train drivers to alleviate. Therefore, requiring these drivers to obtain tank endorsements would require them to study for, test for, and acquire unnecessary credentials, resulting in substantial costs without any corresponding safety improvements.

For the reasons stated above, NACD urges FMCSA to exclude trucks transporting bulk portable tanks with an individual capacity of less than 1000 gallons and an aggregate capacity of more than 1000 gallons in the final tank vehicle definition. Including these vehicles, which are not actual tanks and which do not present the same safety risks as tanks, would create unnecessary costs and complexities and thus would be contrary to Presidential Executive Order 13563, Improving Regulation and Regulatory Review.

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,

A handwritten signature in cursive script, appearing to read "Jennifer C. Gibson".

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