

July 22, 2013

Docket Operations
U.S. Department of Transportation
West Building
Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Electronic Address: <http://www.regulations.gov>

These comments respond to the notice of proposed rulemaking (NPRM) published in the May 22, 2014 *Federal Register* issue regarding **Docket Number PHMSA-2012-0259 (HM-258B), Hazardous Materials: Enhanced Enforcement Procedures – Resumption of Transportation.**

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.

Hazardous materials transportation is an integral part of the chemical distribution business. In 2011, NACD members collectively drove more than 165 million miles and delivered 1.03 tons of product every second.

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

Comments of Support

NACD commends PHMSA for proposing to further clarify procedures related to the agency's enhanced inspection, investigation, and enforcement authority.

In the NPRM, PHMSA proposes to clarify that inspectors will use "appropriate alternatives" before opening or stopping the transportation of packages containing perishable hazardous materials and to establish a policy that inspectors will not intentionally open packages containing perishable hazardous materials unless a "compelling safety need exists." NACD believes that inspectors should use the enhanced enforcement authority as sparingly as possible and supports this clarification.

The proposal would also require PHMSA to "take reasonable measures" to notify affected parties of reasons for package openings, removals from transportation, and relocations to facilities for examination; the results of preliminary investigations; any apparent violations; and any further action that might be warranted. NACD supports this clarification. The more information that involved parties receive, the better they can communicate about potential delays up and down the supply chain.

Finally, PHMSA proposes to add a requirement that inspectors use appropriate safety and handling equipment. NACD also supports this measure. For example, if an inspector opens a package, it is essential that he/she have the proper equipment to close that package.

Additional Recommendation

NACD recommends that PHMSA extend the proposed procedures regarding the treatment of perishable hazardous materials to cover temperature-sensitive materials as well. Chemical distributors frequently transport materials that may not be completely perishable, but that are temperature-sensitive. For example, if a shipment of such a material is detained and thereby exposed to extreme temperatures for a period of time, the properties of that material can change and make the product less effective. Instances such as this could have substantial negative economic impacts on both chemical distributors, who may need to replace the materials, and their customers, who would be subject to additional delays in receiving the necessary substances to make their products.

¹ Based on 2011 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.

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 black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer C. Gibson
Vice President, Regulatory Affairs
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS
1555 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703)527-6223