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**Attn: Hazardous Materials: Incorporation of Certain Special Permits and Competent Authorities Into Regulations [Docket No. PHMSA-2011-0158 (HM-233C)]**

These comments respond to the notice of proposed rulemaking (NPRM) published in the October 22, 2012 *Federal Register* issue regarding Docket Number PHMSA-2011-0158 (HM-233C), Hazardous Materials: Incorporation of Certain Special Permits and Competent Authorities Into Regulations.

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.<sup>1</sup>

NACD commends PHMSA for proposing to incorporate DOT Special Permits that are widely used and have a longstanding safety track record into the Hazardous Materials Regulations (HMR). NACD agrees with PHMSA that including Special Permits that are widely used and have demonstrated safety records into the HMR will provide wider access to the regulatory flexibility offered through the Special Permits and will eliminate the need for numerous renewals. This will facilitate commerce and reduce paperwork burdens for Special Permit users and PHMSA staff, while maintaining a high level of safety.

#### Comments of Support

Of the Special Permits recommended by PHMSA for inclusion in the HMR in the October, 2012 NPRM, NACD particularly supports the following:

#### **DOT-SP 11836 – Authorization for the Transportation in Commerce of UN1H1 and UN6HA1 Drums Containing Ammonia Solutions That Do Not Meet Certain Requirements Contained in Sections 173.24 and 173.24a**

As PHMSA notes, DOT-SP 11836 has been in effect since 1997, has been utilized by more than 60 entities and has a strong safety record with no incidents over the past ten years involving the special permit.

The amendments that PHMSA proposed to the Hazardous Materials Table and Hazardous Materials Regulations (HMR) to authorize the use of the specified drums, jerricans, and composite packagings to transport the specified ammonia solutions while meeting the specified marking and training requirements are consistent with the terms of SP 11836.

The majority of companies who are currently authorized to use SP 11836 are NACD members who operate safely through the Responsible Distribution program. These companies have safely transported the specified ammonia solutions under the terms of SP 11836 for many years with no incidents. Incorporating the provisions of SP 11836 directly into the HMR would provide a substantial paperwork burden relief to these companies without compromising safety.

#### Clarification Requested

NACD requests clarification regarding **DOT-SP 13124**, which is also listed in PHMSA's list of Special Permits to be included into the HMR. In the NPRM, PHMSA describes SP 13124 as *authorizations for the transportation of ammonia solutions in UN1H1 and UN6HA1 drums by private or contract carrier*. It was NACD's understanding that DOT-SP 13124 *authorizes the transportation in commerce of certain ammonia solutions in UN31H1, UN31H2 or UN31HZ1*

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<sup>1</sup> 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.

*intermediate bulk containers*. Further, it was NACD's understanding that PHMSA had terminated SP 13124 because it was no longer needed based on an October 2003 rulemaking [Docket HM-215E (68 FR 44992)] that revised Special Provision IB3 by excepting "Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*," UN2672 from the Special Provision's "Additional Requirement" that authorizes liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F). A new Special Provision IP8 was also added to the UN2672 entry specifying ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

PHMSA sent all SP 13124 grantees, many of whom are also NACD members, a notice of proposed termination in September of 2011. NACD is unaware that any objections to the termination of SP 13124 were filed; however, it remains listed on the Special Permits List on PHMSA's web site. NACD would appreciate a clarification that DOT SP 13124 has indeed been terminated and that it is no longer needed for those operating under Special Provisions IB3 and IP8 as described above.

#### Conclusion

NACD strongly supports PHMSA's proposal to incorporate the provisions of DOT-SP 11836 directly into the HMR. NACD does not have specific comments on the additional Special Permits proposed for inclusion into the HMR in the October 22 NPRM; however, we do support PHMSA's objectives of reducing administrative burdens and increasing efficiencies while maintaining a high level of safety.

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,



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