



July 6, 2010

Dockets Management System  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

**RE: DOCKET NO. PHMSA-2009-0241 (HM-242); RIN 2137-AE52**

Dockets Section:

This letter responds to the advance notice of proposed rulemaking (ANPRM) published in the April 5, 2010 *Federal Register* issue regarding docket PHMSA-2009-0241 (HM-242), Hazardous Materials Regulations: Combustible Liquids.

NACD is a trade association headquartered in Arlington, Virginia, whose members are 250 chemical distribution companies throughout North America. These companies represent between 80% and 90% of the chemical distribution facilities in the nation and more than 90% of the industry's gross revenue. NACD member companies have established themselves as leaders in health, safety, security, and environmental performance through implementation of Responsible Distribution, established in 1991 as a condition of membership in NACD. Responsible Distribution is a third-party verified management practice.

Members of NACD operate in every region of the country through approximately 1500 facilities. The membership includes small businesses as well as many regional and national companies. Hazardous materials transportation is an integral part of the chemical distribution business. In 2008, NACD members made 5.2 million chemical distribution shipments, were responsible for 81 billion pounds of delivered product, and drove more than 199 million miles in the distribution of these chemicals.

NACD commends PHMSA for seeking to harmonize the domestic regulations applicable to the transportation of combustible liquids with the international standards. Many chemical distributors receive products from overseas suppliers and/or ship products to overseas customers. Harmonization of the Hazardous Materials Regulations (HMR) with international standards addressing combustible liquids would eliminate confusion in the transportation of these products across borders.

NACD is pleased to provide the following input in response to the questions PHMSA has asked in the ANPRM.

**1) Should the HMR continue to apply to materials with a flashpoint above 60[deg] C (140[deg] F) and below 93[deg] C 200[deg] F)? What benefits would result from de-regulation of combustible liquids? What are the safety implications of such de-regulation? How would such de-regulation affect emergency response?**

Deregulation of materials with a flashpoint above 60[deg] C (140[deg] F) and below 93[deg] C 200[deg] F) would result in more complete harmonization with international standards as these only regulate up to 60[deg]C (140[deg]F). This would minimize confusion in trade and commerce.

The disadvantage is that this could result in complications for chemical distributors who receive regular visits from local fire officials. The National Fire Protection Association (NFPA) has its own system of markings for various flashpoints, but generally follows DOT. In this case, the materials are NFPA Class III A Combustible Liquids. If these materials are not covered by the HMR and labeled accordingly, fire officials are likely to require NFPA labels on more packages because there would be no DOT hazardous materials markings to recognize.

**2) Should the HMR continue to permit Class 3 materials with flashpoints between 38[deg] C (100[deg] F) and 60[deg] C (140[deg] F) to be reclassified and transported as combustible liquids? What are the benefits of eliminating this reclassification exception? Would there be costs associated with eliminating this reclassification exception? What are the safety implications of eliminating the reclassification exception? How would elimination of the reclassification exception affect emergency response?**

NACD believes that the elimination of the reclassification exemption would promote the desired objective of harmonization. It would level the playing field and eliminate confusion, which would enhance safety. NACD members have found that for materials with flashpoints between 38[deg] C (100[deg] F) and 60[deg] C (140[deg] F), some suppliers use hazardous materials labels, even though not currently required, while others do not. This is confusing.

Because the NFPA generally follows DOT, it would be helpful for distributors working with fire officials if all materials with flashpoints between 38[deg] C (100[deg] F) and 60[deg] C (140[deg] F) were appropriately labeled under the HMR. Labeling these materials would also enhance overall safety in handling the materials and provide better information for others throughout the supply chain including customers and consignment warehouses.

On the other hand, eliminating the reclassification exception would increase costs for some because it is more expensive to ship hazardous materials than non-hazardous materials. It could also potentially lead to other negative safety implications. For example, those who currently ship these materials through areas such as tunnels that prohibit hazardous materials would have to avoid these areas and take alternative routes that could involve longer distances and conditions such as dangerous mountain passes.

**3) Should the HMR provide expanded exceptions for the transportation of combustible liquids? For example, should the HMR except combustible liquids below a certain threshold (e.g., not more than 1,893 L (500 gallons), 3000 L (793 gallons), 3,785 L (1,000 gallons), or 13,249 L (3,500 gallons) from packaging, hazard communication, or other requirements? What are the potential impacts on hazard communication and emergency response notification of such changes?**

NACD believes that the HMR should **not** provide expanded exceptions for the transportation of combustible liquids. It is preferable to keep the system simple in order to facilitate compliance and enhance safety. Excepting combustible liquids below certain thresholds from packaging, hazard communication, and other requirements would result in the exemption of intermediate bulk containers (IBCs), which would cause additional difficulties in the areas of hazard communication and emergency response.

**4) Should the HMR include expanded exceptions for farm operations or agribusinesses? Should the HMR include expanded materials of trade exceptions for persons who transport combustible liquids? What are the potential impacts on hazard communication and emergency response notification of such changes? Are there additional exceptions that should be considered?**

No comment.

**5) Should the HMR continue to permit combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials? Should PHMSA adopt a requirement for all combustible liquids to be described as "Combustible liquid, n.o.s."? For example, for hazardous material shipping names currently in the Sec. 172.101 HMT, such as Paint, Diesel fuel, Fuel oil, Kerosene, Turpentine, Methallyl alcohol, etc. What safety benefits would result from the use of shipping descriptions unique to combustible liquid materials? How would such a change affect emergency response?**

Continuing to allow combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials would not promote uniformity and would add to the confusion that PHMSA is trying to reduce through this rulemaking.

**6) Should the HMR provide for use of a unique combustible liquid marking (e.g., the words "COMBUSTIBLE" or "COMBUSTIBLE LIQUID" in red letters on a white background) in place of COMBUSTIBLE placards and other hazard communication for bulk shipments of combustible liquids? Should the HMR provide for use of the domestic identification number, NA1993, on bulk packages utilizing a combustible liquid marking? What are the potential impacts on hazard communication and emergency response notification of such a change? Are there other practical alternatives to use of COMBUSTIBLE placards for bulk shipments?**

NACD believes that the HMR should not provide for the use of a unique combustible liquid marking. Such a marking could be confused with existing placards and markings required by other codes, including international codes.

Thank you for the opportunity to comment on this ANPRM. If you have any questions, or need any additional information, please do not hesitate to contact me at 703/527-6223.

Sincerely,

Jennifer Gibson  
Vice President, Government & Public Affairs  
NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS  
1555 Wilson Boulevard, Suite 700  
Arlington, VA 22209