



February 16, 2010

U.S. Department of Transportation
Docket Operations
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: DOCKET NO. PHMSA-2009-0289 (HM-233A)

Dockets Section:

This letter responds to the notice of proposed rulemaking (NPRM) published in the December 22, 2009, *Federal Register* issue regarding docket PHMSA-2009-0289 on HM-233A, Hazardous Materials: Incorporation of Special Permits into Regulations.

NACD is an international trade association headquartered in Arlington, Virginia, with more than 240 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 the Responsible Distribution ProcessSM (RDP), established in 1991 as a condition of membership in NACD. RDP 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 regional and national companies. The average member has \$26 million in sales, three sites, and 28 employees. 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 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.

Of the Special Permits recommended by PHMSA for inclusion in the HMR in the December 22 notice, NACD particularly supports the following:

Visual Inspection of Rail Tank Cars

Under this category, NACD recommended the inclusion of DOT-SP 11761 into the HMR in September 2007 comments in response to PHMSA's July 16, 2007 call for suggestions of Special Permits that could be made part of the HMR. NACD is pleased that PHMSA has included SP 11761 in the December 22, 2009 NPRM. SP 11761 authorizes the transportation in commerce of certain DOT specification and AAR specification tank cars, containing a residue of Class 8 materials, that have been inspected prior to offering under a modified inspection program

DOT-SP 11761 contains extensive safety control measures in the areas of packaging, testing, and operational controls and, as a result, has a demonstrated safety record. Under the Special Permit, the shipper must conduct a visual inspection of each car containing covered residue, but does not have to remove the frangible disk for inspection. This is beneficial because it reduces the chance of the frangible disk being damaged.

NACD supports PHMSA's proposal to revise paragraph (d)(1)(vi) to exclude inspection of the underside of the rupture disc on rail tank cars containing residue of a Class 8 (corrosive), Packing Group II or III material with no subsidiary hazard or the residue of a Class 9 molten sulfur.

Lab Packs

NACD also supports PHMSA's proposals to allow the use of a UN 4G fiberboard box that meets certain specifications and is marked to at least the Packing Group II performance level and to allow the use of a UN11G fiberboard intermediate bulk container (IBC) and a UN11HH2 composite IBC as alternative outer packagings for lab packs. NACD also supports PHMSA's additional proposal to except certain additional hazardous waste materials in lab packs and non-bulk packagings from segregation and overpack marking requirements as long as certain conditions are met. These measures have been in place for several years under several Special Permits and have a demonstrated safety history. Including them in the HMR will eliminate the need for the processing of numerous special permit renewals. Because chemical distributors ship so many different materials, it will be helpful to have more flexibility in the segregation requirements in the HMR as long as safety is not compromised. Given the track record of the Special Permits involved in this proposal, it is clear that including them in the HMR would maintain a the high level of safety while greatly increasing efficiency for affected shippers and PHMSA staff.

NACD does not have specific comments on the additional Special Permits proposed for inclusion into the HMR in the December 22 NPRM; however, we do support PHMSA's objectives of increasing efficiencies while maintaining a high level of safety. NACD will submit additional recommendations for widely used Special Permits with strong safety records that should be made part of the HMR in a separate communication to PHMSA.

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

Sincerely,

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