

October 21, 2019

BY ELECTRONIC SUBMISSION

The Honorable Raymond P. Martinez, Administrator
Federal Motor Carrier Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
Electronic Address: <http://www.regulations.gov>

RE: Docket No. FMCSA-2018-0248; Hours of Service of Drivers

Dear Administrator Martinez:

The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration (FMCSA) Notice of Proposed Rulemaking on Hours of Service (HOS) of Drivers. NACD commends FMCSA for proposing commonsense changes to make the HOS rules more flexible while maintaining a high level of safety.

About NACD

NACD is an international association of nearly 430 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 90 percent of the industry's gross revenue. NACD members, operating in nearly every U.S. state through more than 3,000 facilities, are responsible for more than 75,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

Transportation is an integral part of the chemical distribution business. In 2018, NACD members made 4.6 million shipments, were responsible for 30.6 million tons of product, and drove more than 404 million miles while safely making deliveries to customers every 6.9 seconds. Over the past eight years, NACD members averaged just one incident for every 9,091 shipments. NACD members include companies that use their own private fleets, third-party logistics providers, or a combination of both.

NACD appreciates FMCSA's proposed revisions to the HOS regulations and invitation for comment from the businesses and individuals impacted by these rules. If ultimately adopted, these changes will provide more flexibility for drivers and businesses and will enhance safety

by decreasing stress on drivers. NACD is pleased to provide the following input on FMCSA's proposed revisions.

Short Haul Operations

FMCSA proposes to extend the maximum duty period allowed under the short-haul exception available to certain commercial motor vehicle (CMV) drivers from 12 to 14 hours and to extend the maximum distance short-haul drivers may operate from a 100-air mile to a 150-air-mile radius. Driving time would continue to be limited to 11 hours.

NACD strongly supports FMCSA's proposed expansion of the short-haul exemption. Most NACD members make truck deliveries within limited geographic areas, either from one or a few regional facilities for smaller companies or from individual local branches for larger companies. Numerous members report that their typical delivery range exceeds a 100-air-mile radius but is under a 150-air-mile radius; therefore, the proposed air-mile radius increase would extend the exception to these companies, resulting in substantial time and resource savings.

One NACD member that has approximately 40 locations in various parts of the country estimates the air-mile radius expansion would result in potential savings in excess of \$120,000 per year for the company. Another member that has five locations and primarily serves the utility industry reports that the expansion would impact 100 percent of their drivers, resulting in a potential savings of \$50,000 per year in equipment, management of the electronic logging device system, and driver labor to operate the system. If FMCSA ultimately adopts the air-mile expansion, this company plans to use the savings to invest further in its safety program.

Regarding the proposed expansion of the maximum duty period from 12 to 14 hours, many drivers in the chemical distribution business work 14-hour days but do not exceed 100 air miles. These drivers currently do not qualify under the existing exemption. In many cases, the majority of these drivers' days are not spent traveling over the road. Substantial time is spent at suppliers' locations loading, customers' locations unloading, or waiting in line at these locations for products to be loaded or unloaded.

The most substantial benefit of extending the period to 14 hours is that many more drivers would be able to go to their homes at night rather than sleeping in hotels. One NACD member reported they would be able to eliminate overnight trips for their drivers who do not have a territory extending beyond 100 air miles from their home base. It makes safety and practical sense for drivers to be able to return to their base terminals the same day rather than being out overnight when only 60 or so miles from home. Enabling these drivers to sleep in their own beds rather than in hotels would most likely result in better nights' rest. In addition, these drivers would not be under the stress of having to return the next morning to begin to reload their trucks for that day's deliveries. Other employees could prepare the trucks and have them ready. The drivers would begin their days with less hurry and stress, which would enhance safety and productivity.

One NACD member reported that increasing the exemption to 14 hours could save the company upwards of \$90,000 annually and would also have a safety and security benefit by decreasing the number of nights trucks loaded with hazardous materials must be parked outside of their fenced yards. Another NACD member reported the change would result in

some of their drivers moving from exempt to non-exempt status. The result of this change would be improved workflow, as the equipment could be at the terminal overnight to be serviced and prepared for the next day's loads while the drivers are taking their breaks. This company estimates an extra hour from a driver could result in an efficiency improvement of six to eight hours.

Adverse Driving Conditions

FMCSA proposes to allow a CMV driver up to a 16-hour driving window within which to complete up to 13 hours of driving if he/she encounters adverse conditions such as weather or road conditions.

Although NACD members report that the use of the adverse driving conditions exception is rare, NACD believes an expansion of the window could enhance safety by giving drivers more peace of mind to find a place to wait out dangerous conditions or to drive more slowly if they have been stuck in a back-up because of a wreck without worrying about reaching the 11-hour and 14-hour limits.

A potential benefit of the expansion could be hotel room cost savings and allowing drivers to sleep in their own bed in cases where the extra hours would provide drivers time to return to their home bases. Another is a reduction of security concerns created in cases where loaded hazardous materials trucks must stay outside of secure facilities.

One NACD member, who believes an expansion of the exception would be helpful, reports that their company watches the weather carefully and plans accordingly, making it necessary to use the exception only two or three times per year. The member notes that in these rare instances, accidents have stalled traffic and kept drivers from reaching their planned shutdown points within the time limits.

Another member reports that the exception is practically unusable because of the advanced knowledge provision. With access to forecasts, the member notes that law enforcement will always make the argument that a driver or dispatcher should know of a weather event. As mentioned above, the most likely case in which the expanded exception would be utilized is in the event of a wreck happening directly in front of a truck resulting in the driver being stuck waiting for the incident to clear or waiting for his or her turn at the detour.

NACD believes it would be worthwhile for FMCSA to consider changing the adverse driving conditions definition to give both the driver and the dispatcher the flexibility to identify and adjust to adverse driving conditions while making clear that it does not include conditions such as rush hour traffic. The exception would be more usable with an improved definition and more guidance for carriers, drivers, and law enforcement on how it can be utilized and how it will be enforced.

30-Minute Rest Break

FMCSA proposes to make the 30-minute break requirement for CMV drivers applicable only in situations where an individual has driven for a period of eight hours without at least a 30-minute non-driving interruption. If required, a 30-minute break could be satisfied with a period either off duty, in the sleeper berth, or *on-duty not-driving*.

NACD strongly supports FMCSA's proposed changes to the 30-minute rest break requirement, particularly allowing it to be satisfied while on duty, not driving.

Drivers making regular stops for delivery or pick-up during the day have ample opportunity to get out of their trucks and refresh themselves. Most drivers for NACD member companies make multiple stops each day and spend substantial time waiting in parking lots and loading docks prior to, during, or post loading/unloading operations. During this time, they can complete tasks less strenuous than driving such as paperwork, fueling up, and checking in with dispatchers. Allowing the rest-break requirement to be satisfied during these periods would increase efficiencies and reduce stress for drivers because they would not feel so rushed. This would enhance safety.

One NACD member noted the current 30-minute break has had the effect of keeping some of their drivers out on the road overnight when they were formerly able to return home each day. This also denies the driver and company the efficiency of having the truck at the terminal overnight where others can service and prepare it for the next day. This does not have only a 30-minute effect on the operations but may also cause processes to back up 6-8 hours when these internal tasks cannot be completed while the driver is off the clock for the 10-hour rest period.

NACD also recommends that FMCSA provide additional flexibility and allow multiple, short breaks to meet the 30-minute rest requirement. As noted, many NACD members' drivers take regular driving breaks in the course of the workday, either to rest, wait for a load, fuel up, or perform another activity. These multiple breaks may be as short as 10 to 15 minutes or as long as or longer than 30 minutes. These breaks are arranged around the driver's daily responsibilities, including deliveries, completing paperwork, and checking in with the office.

Making the 30-minute rest break requirement more flexible would increase efficiencies for both drivers and companies, reduce stress on drivers giving them more control over their time, and increase safety by reducing the need for drivers to rush to complete both driving and non-driving duties.

Split Sleeper Berth

FMCSA proposes to modify the sleeper berth requirements to allow drivers to take their required 10 hours off-duty in two periods, provided one off-duty period (whether in or out of the sleeper berth) is at least two hours long and the other involves at least seven consecutive hours spent in the sleeper berth. Neither time period would count against the maximum 14-hour driving window.

NACD believes this change would provide more flexibility for drivers by not forcing them to remain in the sleeper berth if they need fewer than eight hours of sleep. In some cases, it could also provide drivers with more ability to avoid congestion while completing trips with less time behind the wheel. A driver would need to recalculate the on-duty period and driving hours available whenever taking one of the two rest breaks to ensure compliance with the 11-hour driving time and 14-hour driving window requirements on both sides of the rest period.

Split Duty Provision

FMCSA proposes to add a new option under Sec.395.3(a)(3)(iii) that would allow a single off-duty break of at least 30 minutes, but not more than three hours, during the course of a

driver's 14-hour window to extend that period for the length of the break, provided drivers take at least 10 consecutive hours off-duty at the end of the work shift.

NACD has mixed views about this proposal. On the positive side, by providing more flexibility, this new option could reduce the number of overnight trips and allow drivers to return home more frequently at the end of their workdays. This would enhance the well-being and quality of life for drivers, which would enhance safety.

On the other hand, if adopted, the new provision could result in drivers being on the road too long each day, either through their own choices or under direction of the carriers or employers. This concern would be even greater if FMCSA allows the three hours to be divided up into multiple shorter time periods. Under this scenario, drivers could go off-duty every time they must wait at docks or loading racks. They could work the longer days to take the maximum of their 70 hours. They could work 4 days, 17 hours per day, take 34 hours off and then resume. That would mean a driver could be out up to 90 hours in a seven-day period. Fatigue would be a concern under this scenario.

Perhaps FMCSA could conduct a pilot program to determine additional information on the likely safety impacts of a split duty period.

Conclusion

NACD appreciates FMCSA's HOS reform proposals and thanks the agency for the opportunity to comment. The proposed short haul exception expansion and rest break proposals would certainly provide more flexibility and result in tangible health, safety, and quality of life benefits for drivers and efficiency, cost, and safety benefits for employers. NACD looks forward to working with FMCSA as the agency finalizes and implements improvements to the HOS regulations.

If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson
Vice President, Regulatory Affairs