

October 10, 2018

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building, Ground Floor, Room W-12-140  
Washington, DC 20590

Via Electronic Filing at <http://www.regulations.gov>

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

The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration (FMCSA) Advance Notice of Proposed Rulemaking on Hours of Service of Drivers.

#### About NACD

NACD is an international association of nearly 450 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 states through more than 3,000 facilities, are responsible for nearly 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 2017, NACD members made nearly 5.2 million shipments, were responsible for 30.7 million tons of product, and drove more than 415 million miles while safely making deliveries to customers every 6.1 seconds. In 2017, NACD averaged just one incident for every 903,755 miles driven. NACD members include companies that use their own private fleets or third-party logistics providers.

NACD commends FMCSA for considering revisions to the hours of service (HOS) regulations and for inviting comment from the businesses and individuals impacted by these rules. NACD believes it is possible to make the requirements more flexible while maintaining the existing high level of safety. NACD is pleased to provide the following input on FMCSA's questions regarding areas for potential revision.

## 1. Short Haul Operations

a. Do you have any data to show that extending the 12-hour period for the short-haul exception to the records of duty status (RODS)/electronics logging device (ELD) requirements to 14 hours would change the safety performance of carriers using the short-haul provision?

In the chemical distribution business, many drivers 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.

b. How specifically would a 14-hour period change your driver or carrier operations as compared to 12 hours?

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 that extends 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 get back the next morning to begin to reload their trucks for that day's deliveries. Other employees could prepare the trucks and have them ready for the drivers after their 10-hour minimum breaks. These drivers would begin their days with less hurry and stress, which would enhance safety and productivity.

c. What would the incremental change be for your operations/business if the exemption was changed to 14 hours? For example, would your operations expand or would your drivers/carriers move from non-exempt status to exempt status? What would be the economic impacts of that incremental change?

One NACD member reported that a change to the exemption to 14 hours could save the company upwards of \$90,000 annually and would decrease the number of nights trucks loaded with hazardous materials had to 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 work flow 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 10-hour breaks. This company estimates that an extra hour from a driver could result in an efficiency improvement of six to eight hours.

## 2. Adverse Driving Conditions

a. Is there adequate flexibility in the existing adverse driving conditions exception?

NACD members expressed a range of views on the adverse driving conditions exception. One member stated the belief that there is adequate flexibility in the existing exemption, while another member stated that the exemption is nearly impossible to use.

Other members stated that expanding this exception would be helpful. One member explained that when operating in large cities, two hours may not be enough to reach a safe resting area such as a truck stop or rest area because of the gridlock created by a storm. The objective of this company is to have their drivers stop as soon as possible but only in an area where both the driver and the equipment are safe and out of the way for storm cleanup. This NACD member also noted that in more rural areas and on interstates in the upper Midwest truck stops and rest areas fill up rapidly when the weather deteriorates. A driver may need to drive slowly 30, 60, or more miles to find a suitable place to park and let a storm pass.

b. How often do you currently utilize the adverse driving conditions exception?

The NACD member who believes there is adequate flexibility in the current exception reported their company uses the exception on occasion, particularly during lake effect snow events coming from Lake Ontario. This company's dispatcher checks road conditions for traffic concerns early every morning. If the dispatcher discovers a concern, he will reroute drivers whenever possible.

The fleet compliance manager for the NACD member who stated the exemption is nearly impossible to use reported that he has never had the opportunity to take advantage of the exception in the nearly 15 years he has been involved with trucking fleets ranging in size from 80 to 200 trucks/semi-trailer combinations.

The NACD member who believes an expansion of the exception would be helpful reported 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 added that in these rare instances, wrecks have stalled traffic and kept drivers from reaching their planned shutdown points within the time limits.

c. What is the economic impact of the current exception on your driver or carrier operation?

NACD members reported little or no economic impact of the current exception on their operations.

d. Should the definition of adverse driving conditions be changed?

NACD members generally believe no change is necessary to the definition of adverse driving conditions. One member noted that if the company dispatcher is doing his job, he should reroute the driver prior to departure or otherwise contact the driver while in transit with needed information.

Another NACD member noted the definition should be as clear as possible to minimize the possibility for disagreement about whether it applies in any given instance. This member suggested it should also be made clear who has the authority to declare an adverse condition; and once the declaration is made, there should be no questions or violations issued during the event if a driver is found operating.

e. Should the adverse driving exception apply to the 14-hour work day window, not just the 11-hour driving limit?

NACD members expressed a range of opinions on whether the exception should apply to the 14-hour work day window. One said it should apply so drivers operating in transportation other than over the road could take advantage of it. Another member said it should not apply. Another expressed concerns that drivers would take advantage of it and use it on a regular basis to stay on the road longer, which would raise safety concerns.

f. How would the above changes affect the economic costs and benefits, and the impacts on safety and fatigue of the adverse driving conditions exception?

One NACD member projected the changes would save the company hotel room costs and reduce security concerns created in cases where loaded hazardous materials trucks must stay outside of secure facilities. Another member expressed concerns that the changes could increase the potential for accidents, which would result in a negative economic impact.

### **3. 30-Minute Rest Break**

a. If the 30-minute rest break rule did not exist, would drivers obtain adequate rest breaks throughout a daily driving period to relieve fatigue?

NACD members have a range of opinions of this topic. Some members strongly believe drivers would have adequate rest breaks throughout a driving period to relieve fatigue. The primary benefit of the 30-minute rest break is to give the driver a reprieve from the road. If the individual can get out from behind the wheel but still perform other activities such as unloading or fueling up, this would achieve the objective of giving the driver a break from being on the road. Allowing the driver to accomplish other tasks could arguably enhance safety by reducing the need or the feeling one must rush. Rushing leads to more aggressive driving and unsafe behaviors, increasing the likelihood of accidents.

Other NACD members believe the 30-minute rest break is needed to relieve fatigue, particularly for over-the-road drivers who are in their seats behind the wheel for eight hours or more.

b. Are there alternatives to the 30-minute rest break that would provide additional flexibility to drivers while achieving the safety benefits goal of the current 30-minute break?

Several NACD members recommended elimination of the 30-minute rest break for short haul operators who perform multiple-stop operations that cumulatively exceed 30 minutes of break time when “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. Many 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.

One NACD member recommended language in the regulation stating that an individual may not drive if it has been longer than eight hours since his/her last 30 minutes of consecutive off-duty, on-duty, or sleeper berth status or combination thereof.

c. If a rest break is retained, should it be taken off-duty or on-duty while the driver is not driving?

One NACD member recommended this be left to the driver's discretion. Another member noted that how the break is recorded on the log as currently defined in the rule does not make any difference as the remaining driving time and duty time remain the same in either instance. The member further noted that if the 14-hour day can be extended during the break time, it would make sense to log it as off duty, thus extending the clock. Another member recommended the rest break be retained and taken while on duty.

d. How does the 30-minute rest break impact the efficiency of operations from a driver's or a carrier's perspective?

One NACD member noted the 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 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.

Another NACD member noted that it may even be more impactful to the driver than it is to the carrier. Drivers can feel like they are falling behind in their tasks and begin to rush, which increases the likelihood of accidents.

e. How would your suggestions impact the costs and benefits of the 30-minute break?

NACD members who support elimination of or more flexibility in the 30-minute rest break noted that efficiencies will multiply for each truck able to return to a terminal a day early or on the planned day rather than a day later. The drivers can go home to their families, resulting in lower stress levels. These would be tangible benefits for both drivers and employers. Company costs could be lower as the warehouse/terminal employees could complete tasks while the driver rests.

Additionally, eliminating the need to be off-duty for the rest break would allow drivers to accomplish tasks other than driving. This would reduce the sense of urgency that leads to rushing and unsafe behavior.

#### **4. Split-Sleeper Berth**

NACD members report limited use of the sleeper-berth option, so we currently do not have any comment on these questions.

#### **5. OOIDA Petition**

a. What specifically would change about your driver/carrier operations by extending the 14-hour driving window?

One NACD member reported the only change would be the elimination of some overnight trips.

b. Is there a likely increase in safety risk from extending the 14-hour driving window? For example, would altering the current rule allowing 14 hours on duty and 10 hours off duty interfere with drivers' circadian rhythm? Could driver health be affected?

One NACD member noted a potential benefit of this change is providing drivers with more options for where and when to park.

Another member raised concerns about extending the 14-hour rule.

c. Would a potential increase in safety risk be lessened by the requirement that all the additional time beyond 14 hours must be off-duty time?

One NACD member noted that driving must be broken up to eliminate the risk of drivers being hypnotized by the road and thus more prone to accidents.

d. Would allowing OOIDA's request for an extended break during the work day improve safety by allowing drivers to increase the total amount of off-duty time during and immediately following the work from 10 hours and 30 minutes to 13 hours, without reducing the maximum driving time available within 14-hour window?

One NACD member noted a similar option is used in Canada and could be studied for application in the United States.

e. Are there other flexibilities or other non-safety benefits that could be realized if the 14-hour window is extended?

One NACD member noted that drivers who operate in a manner other than over the road would be home more, which could lead to a better family life and subsequent benefits. This would enhance safety by not having the distractions of a dysfunctional home and increasing general driver well-being.

## **6. TruckerNation Petition**

a. Is there a likely increase in safety risk from eliminating the consecutive 14-hour driving window? For example, would the absence of a limit on the length of the work shift--the time between the driver coming on duty after accumulating the minimum of 10 hours off-duty and the driver being prohibited from driving--combined with splitting the required 10 consecutive hours off-duty into a number of segments, interfere with drivers' circadian rhythm? Could driver health be affected? Please provide data on the costs and benefits of this approach.

One NACD member expressed the opinion that allowing segments of less than 10 hours would negatively impact road safety. This member believes drivers could experience long-term sleep deprivation, which would lead to health and safety concerns.

Another NACD member noted there is no safety benefit in eliminating an overall workday. The member believes limits must be in place to deter those who might otherwise put profits over safety.

b. Are there other flexibilities or other non-safety benefits that could be realized if the 14-hour window is eliminated?

One NACD member noted entirely eliminating a workday limit would lead to drivers being on the road too long each day, either through their own choices or under direction of the carriers or employers. It is necessary to have some limit. Expanding the window but creating limits on drive time in that window to include restrictions on how long a driver can drive consecutively before resting or performing another activity would be preferable.

Conclusion

Thank you for the opportunity to comment on this advance notice of proposed rulemaking. NACD believes many of the options presented would 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 moves forward in making improvements to the HOS regulations.

If you have questions or need additional information, please do not hesitate 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