

June 20, 2016

T.F. Scott Darling, III  
Acting Administrator, Federal Motor Carrier Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
Via Electronic Filing at [www.regulations.gov](http://www.regulations.gov)

**RE: Beyond Compliance Program Docket ID No. FMCSA-2015-0124, Vol 81, No. 76, Fed. Reg. (April 20, 2016)**

Dear Acting Administrator Darling:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice and request for comment published by the Federal Motor Carrier Safety Administration (FMCSA) in the April 23, 2016, *Federal Register* issue regarding docket no. FMCSA-2015-0124, Beyond Compliance Program (“notice”).

#### About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry’s gross revenue. Members of NACD operate in every region of the country through approximately 1,500 facilities. The membership includes small businesses as well as many regional and national companies.

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

Hazardous materials transportation is an integral part of the chemical distribution business. In 2013, NACD members made over 4 million shipments, were responsible for 26.3 million tons of product, and drove more than 140 million miles while making deliveries to customers every 7.3 seconds. In 2014, NACD members achieved a handling/storage safety record of 99.988% and averaged just one traffic incident for every 1.53 million miles driven. NACD members include companies that utilize their own private fleets.

FMCSA should recognize established industry management systems, such as NACD Responsible Distribution®, as official “safety programs” within FMCSA’s proposed Beyond Compliance BASIC.

Responsible Distribution® has significant benefits to participants and to the communities in which they operate. Key benefits of Responsible Distribution® include:

- Lower occurrences of safety and environmental incidents
- Better documentation of company policies
- Practices of excellence and quality systems employed throughout an organization's operations
- Better communication with local communities
- Reduction of audit costs and time spent on audits
- Lower insurance expenses
- Improved marketplace visibility and increased credibility through performance

NACD has provided responses to certain requests for comment by FMCSA within the notice to share information about Responsible Distribution<sup>®</sup> and our members' commitment to environmental performance, health, safety, and security:

**FMCSA proposes to create a new BASIC in SMS. The Beyond Compliance BASIC would appear when a motor carrier is approved and participating in the Beyond Compliance program... FMCSA is specifically seeking comments on this proposal, and the pros and cons of the Beyond Compliance BASIC.**

NACD strongly supports the creation of a Beyond Compliance BASIC which would allow carriers that use programs and technologies that go above and beyond regulatory compliance to be recognized by FMCSA. The benefit of a Beyond Compliance BASIC (an additional BASIC included within a carriers score) is that it is an incentive to carriers to adopt new technologies or programs that could improve their safety. NACD does not see any negative side to the general establishment of a Beyond Compliance BASIC.

**FMCSA specifically requests information on what documentation should be submitted with an application.**

NACD supports FMCSA's proposed petition process for carriers to include the following information when applying for consideration in a Beyond Compliance program:

1. USDOT number;
2. Company name and doing business as (DBA) names
3. Company official name, title, and contact information;
4. Proposed technology or program;
5. Coverage (drivers and/or fleet);
6. Baseline safety information;
7. Expected improvement;
8. Estimated cost;
9. Installation timeframe (past or future); and
10. Self-certification.

However, in the notice, FMCSA states, "Documentation to be submitted with a request would include, but is not limited to:

1. Vendor documentation;
2. Training materials;
3. Company policies;
4. Company monitoring plans; and
5. Other proof of implementation."

We urge FMCSA not to make the process so onerous that no carriers would complete it. For this reason, we recommend that when FMCSA promulgates the proposed rule the agency change the word *would* in the above quote to *could* so as to allow each individual carrier to determine the necessary documentation relevant to their application.

FMCSA should also explicitly allow existing documentation held by carriers (for other state, local, federal regulations or for internal purposes) to be submitted with their application as proof of documentation. Requiring carriers to rewrite information that otherwise meets all requirements but is only in a different format would be redundant and could harm carrier participation.

**FMCSA specifically seeks data and cost information to determine the appropriate range of fees to be paid by the motor carrier under the no-cost contract.**

NACD understands the necessity for carriers to pay for verification by the third-party contractor. However, it could result in a “pay-to-play” situation whereby only some carriers can afford to pay the fees needed to obtain the Beyond Compliance BASIC. We don’t have a recommendation on the range of appropriate fees; but, we do recommend FMCSA evaluate closely the third-party applicants to ensure the Beyond Compliance program is not used to gouge carriers that are trying to go above and beyond their regulatory responsibilities. The proposed fee of \$750 per carrier for a five-year period should be the absolute ceiling at which fees should be implemented. The \$750 per carrier should also not be exceeded regardless of the number of facilities or power units a carrier has. Additionally, the verifier should not expect to verify every facility that a carrier maintains, if facility inspection is a part of their duties, as this would be far too burdensome and costly. Furthermore, FMCSA should take extra precautions to ensure the verifiers that are employed by the third-party contractor have the appropriate expertise and experience to verify compliance, even within a voluntary program such as Beyond Compliance.

In addition, FMCSA would like to provide additional comments to the questions asked in the previous request for public comment on the Beyond Compliance program, 80 FR 22770, “Beyond Compliance Program” (April 23, 2015):

1. **What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance program?**
  - a. SmartDrive or DriveCam
  - b. OnGuard (adaptive cruise)
  - c. Vorad systems and collision avoidance sensors (downshift truck and brake if cars are in front of it)
  - d. Tractors with lane awareness alerts (car in blind spot)
  - e. Bluetooth technology
  - f. Electronic Pre/post trip inspection of vehicle logs using a bar code located at every checkpoint to ensure the driver went around the entire vehicle.
  - g. All of this data sent to the cloud for data capture to be used if needed.
2. **What safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?**
  - a. Compliance, Safety, and Accountability score (crash rating by carrier)
  - b. DOT violations score

**3. What incentives would encourage motor carriers to invest in technologies and best practices programs?**

- a. Credit on appropriate Safety Measurement System scores (e.g., credit in Driver Fitness BASIC for use of an employer notification system)
- b. Credit on Inspection Selection System scores
- c. Reduction in roadside inspection frequency
- d. Credits towards audits

**4. What events should cause the incentives to be removed?**

If a carrier receives a crash rating above the national average, the incentive should be removed.

**5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?**

Yes

**6. How would FMCSA verify that the voluntary technologies or safety programs were being implemented?**

NACD would be pleased to work with FMCSA by sharing third-party verification results from the verifiers who enforce NACD's Responsible Distribution<sup>®</sup> program.

Conclusion

NACD appreciates FMCSA's efforts to consider recognition to organizations that feature EHS&S characteristics above what is federally mandated. NACD Responsible Distribution<sup>®</sup> has enabled NACD member companies to operate in a more safe and secure manner. We support FMCSA's efforts to establish a Beyond Compliance Program and enthusiastically propose that NACD Responsible Distribution<sup>®</sup> should be recognized by FMCSA as an official safety program within Beyond Compliance.

Thank you for the opportunity to comment on this important issue. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson  
Vice President, Regulatory Affairs