

May 23, 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 <http://www.regulations.gov>

**RE: Carrier Safety Fitness Determination; Proposed Rule, Docket ID No. FMCSA-2015-0001, 81 Fed. Reg. 3562 (Jan. 21, 2016)**

Dear Acting Administrator Darling:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice of proposed rulemaking published by the Federal Motor Carrier Safety Administration (FMCSA) in the January 21, 2016 *Federal Register* issue regarding docket no. FMCSA-2015-0001, Carrier Safety Fitness Determination (SFD proposed rule).

#### 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 1500 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-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. 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 that would be impacted by the SFD proposed rule.

### FMCSA Should Withdraw the Proposed Rule and Await the Release of the FAST Act Study

NACD is appreciative of the opportunity to provide comments to FMCSA on the proposed rule. NACD has significant concerns with the proposed rule, and we highly recommend that FMCSA immediately withdraw the proposed rule for several reasons.

The Fixing America's Surface Transportation (FAST) Act of 2015 required that a study of the Compliance, Safety and Accountability (CSA) program and Safety Measurement System (SMS) used by FMCSA be completed by The National Research Council of the National Academies of Science. If the National Research Council identifies a deficiency or opportunity for improvement in the CSA program or in any element of the SMS, then FMCSA must submit a corrective action plan to Congress and obtain certification from the Department of Transportation Inspector General.

It is widely acknowledged that the CSA program has significant problems. Two reports completed by the Government Accountability Office have identified concerns about the reliability of the data within the CSA program. It is our strong belief FMCSA should await completion of the study and analyze the results before proceeding forward with any rulemaking in relation to CSA or SMS. In our opinion, it is not a matter of *if* the National Research Council identifies deficiencies but a matter of when and how many.

It doesn't make sense to revise the CSA program in the middle of 2016 when Congress has commissioned a study as recently as December 2015 to determine the data sufficiency and reliability of CSA and SMS. Therefore, we strongly recommend FMCSA withdraw the proposed rule and re-evaluate their rulemaking entirely after the completion of the study.

However, given the fact this proposed rule has already been released and some aspects of the proposed rule *may* not be impacted by the study, we provide the following additional comments for consideration.

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### FMCSA Should Address Inconsistency of Enforcement Efforts and Roadside Inspections

NACD is concerned with the use of information collected from all roadside inspections being used to rate carriers. Roadside enforcement efforts across the country are inconsistent and can significantly vary from state to state. Basing a carrier's fitness determination on data from enforcement that has been shown to be inconsistent is unfair to carriers that may be using all available safety precautions but due to inconsistent enforcement are penalized differently for minor violations from a carrier in a more lax state or region. We suggest FMCSA look at various ways of addressing these regional or state inconsistencies.

### FMCSA Should Address Lack of Information about Smaller Carriers

The threshold of 11 inspections within a 24-month period as required by the proposed rule does not allow for the inspection of tens of thousands of smaller carriers. This creates a double standard that simultaneously benefits and inhibits the operations of smaller carriers (who are more likely not to meet the 11 minimum inspections threshold). Some smaller carriers who are unsafe may get away with less than ideal safety precautions, and the

proposed rule doesn't enable the smaller carriers who are extremely safe to be recognized for their efforts.

#### Hazardous Materials Carriers Should Have the Same BASIC Standards

On page 3583 of the proposed rule, FMCSA solicits input on the evaluation of hazardous materials (HM) safety permit carriers and requests comment on whether HM carriers should be held to lower BASIC failure standards. The lower failure standard could mean an HM carrier would fail at a certain score whereas a non-HM carrier would still be able to pass.

HM carriers undergo significant additional regulation and evaluation. Given this fact, NACD believes that when the final failure standards are proposed, the standards for hazardous materials carriers should be identical to the standards for non-hazardous materials carriers due to the existing additional training and safety requirements.

#### NACD Supports the Exclusion of Non-Preventable Crashes from Fitness Determinations

NACD is supportive of the exclusion of non-preventable crashes from safety fitness determinations. Non-preventable accidents include but are not be limited to incidents such as a driver being struck while parked or a driver being struck while that driver was proceeding in his/her own lane of traffic at a safe and lawful speed.

#### Absolute Scale Is Preferred Over the Previous Relative Scale for Fitness Determinations

NACD is appreciative of the fact that in the proposed rule FMCSA has modified the scale used to calculate fitness determinations. While FMCSA previously used a relative scale to evaluate carriers against each other, the proposed rule only measures each carrier against an absolute failure standard. This would provide much-needed relief to carriers that were previously impacted by the safety ratings of other carriers, which does not indicate a carrier's overall level of safety. We are supportive of this provision of the proposed rule and hope it will remain after the publication of the study mandated by the FAST Act and further reconsideration of SMS as a whole.

#### Conclusion

NACD appreciates FMCSA's efforts to upgrade and reform the SFD system. However, the best course of action at this time is for FMCSA to await the completion of the study of SMS and CSA mandated by Congress rather than moving forward with this rulemaking. Given that the SFD proposed rule relies so heavily on SMS data, it doesn't make sense to move forward with a proposed rule modifying the SFD system at this time, when the results of the study will likely generate recommendations for significant changes to the methodology and other aspects of the SFD system.

We highly recommend that FMCSA await the results of the study and then move forward with all of the issues that have been identified as areas of concern within a comprehensive rulemaking, rather than starting a process, then later revising it, and then further adding and removing provisions over a number of years.

For the reasons outlined above, NACD urges FMCSA to withdraw the current proposed rule and revise their proposal after the publication of the FAST Act study. When the agency resumes

rulemaking, hopefully after publication of the study, we ask that the agency address our comments.

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,

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.

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