

June 1, 2015

Dockets Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building, Ground Floor, Room W12-140
Washington, DC 20590-0001

via: www.regulations.gov

Re: Docket No. FMCSA-2015-0012, Hours of Service of Drivers: Application for Exemption; American Trucking Associations, Inc.

The National Association of Chemical Distributors (NACD) submits the following comments in support of the application for exemption submitted by the American Trucking Associations, Inc. (ATA).

About NACD

The National Association of Chemical Distributors is an international association of more than 440 chemical distributors and supply-chain partners. NACD's membership comprises businesses representing in total more than 85% of the chemical distribution capacity in the nation and generating 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs. NACD members are predominantly small regional businesses, many of which are multigenerational and family owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

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 improvement in every phase of handling, transportation, storage, and disposal of chemical products. 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.

Statement of Support for ATA Exemption Application

NACD supports the ATA's application for an exemption from the federal hours-of-service (HOS) regulations that prohibit commercial motor vehicle (CMV) drivers from driving a CMV if more than eight consecutive hours have passed since the driver's last off-duty or sleeper-berth period of 30 minutes or more.

Specifically, ATA proposes that drivers transporting hazardous materials on behalf of motor carriers required to file security plans under the Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulations be allowed to count their on duty "attendance" time

required under these plans toward the 30-minute HOS rest break requirement, provided the drivers perform no other on-duty activity. This exemption would resemble Section 397.7 of the Federal Motor Carrier Safety Regulations (FMCSR), which requires drivers transporting certain explosives to “attend” their load constantly, while Section 395.1(q) allows them to count “attendance” time toward their rest break.

NACD urges the Federal Motor Carrier Safety Administration (FMCSA) to grant the ATA’s exemption application.

Carriers transporting security sensitive hazardous materials covered by Subpart J of Part 172 of the Hazardous Materials Regulations (HMR) are required to develop security plans to ensure their loads are protected from security threats while in transportation. Carriers meet this security requirement by adopting constant attendance requirements for their drivers, similar to that imposed on drivers transporting Division 1.1, 1.2, and 1.3 explosives under 397.5 in the FMCSRs. Once carriers adopt their security plans, they function as part of the HMRs, and carriers can be penalized for violating these security plans just as if they violated any other portion of the HMRs. Thus, security plans mandated by the HMRs essentially require drivers to maintain constant attendance for their cargo; while the rest break mandated by the HOS regulations require drivers to relinquish all responsibility for cargo.

As FMCSA states in the May 1, 2015, *Federal Register* notice, this situation forces drivers to choose between compliance with the FMCSA HOS off-duty rest break rules and compliance with PHMSA’s security plan requirements, which typically include a cargo attendance obligation.

Conclusion

NACD respectfully urges FMCSA to grant ATAs application for exemption from the 30-minute rest break requirement of the HOS regulations. Doing so would allow carriers to be in full compliance with both the FMCSA HOS rest break requirements and the PHMSA security plan requirements while maintaining a high level of safety for drivers and security protection for sensitive cargo.

NACD appreciates the opportunity to comment on this important issue. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



Jennifer C. Gibson
Vice President, Regulatory Affairs