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Docket Management Facility
U.S. Department of Transportation
Room W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590-0001
Electronic Address: <http://www.regulations.gov>

Attn: Electronic On-Board Recorders and Hours of Service Supporting Documents; DOCKET Number FMCSA-2010-0167

These comments respond to the notice of proposed rulemaking (NPRM) published in the February 1, 2011 *Federal Register* issue regarding Docket Number FMCSA-2010-0167, Electronic On-Board Recorders and Hours of Service Supporting Documents.

The National Association of Chemical Distributors (NACD) is an international association of more than 380 chemical distributors and their supply-chain partners. NACD represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Members of NACD operate in every region of the country through approximately 1300 facilities. The membership includes small businesses as well as many regional and national companies.

Hazardous materials transportation is an integral part of the chemical distribution business. In 2009, NACD members were responsible for the delivery of over 75 billion pounds of chemicals and drove more than 160 million miles in the distribution of these products.

NACD members meet the highest standards in safety and performance through mandatory participation in Responsible Distribution, NACD's third-party verified environmental, health, safety, and security (EHS&S) program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations. In 2009, NACD members achieved a handling/storage safety record of 99.9997% and averaged just one traffic incident in every 700,000 miles driven.

NACD has major concerns about the mandate in the NPRM for all interstate carriers currently using Records of Duty (RODS) logbooks to use electronic on-board recorders (EOBRs) to monitor hours of service (HOS) compliance. This is a one-size-fits-all mandate that fails to consider safety records of carriers and the additional costs that would be incurred, particularly for small businesses.

In the proposal, FMCSA fails to provide justification for requiring *all* interstate carriers to use EOBRs, rather than just those who have serious records of HOS violations. NACD did not oppose the 2010 rule requiring carriers with serious patterns of HOS violations to install EOBRs in all of their vehicles. The violation history of these parties provides a reason to impose more severe monitoring and enforcement measures; however, there is no reason to impose this costly new requirement on those who have exemplary safety records. It does not make sense to place those who have complied with the HOS regulations in the same category as those who have violated the rules.

FMCSA admits that small businesses would incur substantial new costs under this proposal, yet the only attempt at providing relief is to delay the effective date for three years for all regulated carriers. The agency estimates that a typical carrier would be forced to spend \$1500 to \$2000 per vehicle to purchase and install each EOBR in addition to ongoing costs of several hundred dollars each year in service fees. These costs are likely to rise even higher because of demand. FMCSA states in the NPRM, "This proposed mandate would be permanent and also would require EOBRs to be installed and used in approximately 20 times as many CMVs than were estimated to be affected by the April 5, 2010, final rule. Therefore, the Agency cannot assume that an adequate number of the lower-cost devices would be available to meet the needs of that larger market." With high demand because of the government mandate and a limited number of EOBR suppliers, costs are certain to be higher than estimated.

An alternative solution, which would address the lack of flexibility in the proposed rule, would be to give carriers the choice of either installing EOBRs to monitor HOS or continuing to retain supporting documents to verify driving time. This option would give each entity more flexibility in determining how best to comply with HOS monitoring requirements. Carriers who wish to invest in EOBRs in order to reduce paperwork burden could do so, while those who have an efficient paper system would not be forced to spend thousands of dollars on new mandated equipment, training, and service fees.

A one-size-fits all EOBR mandate as proposed in this NPRM is inconsistent with the regulatory reform initiative announced by the President earlier this year, which calls for a review and reconsideration of unnecessary and overly burdensome regulations.

Thank you for the opportunity to comment on this issue. If you have any questions or need additional information, please feel free to contact me.

Sincerely,

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