

March 4, 2011

The Honorable Anne S. Ferro
Administrator, Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590
Electronic Address: <http://www.regulations.gov>

Attn: Hours of Service of Drivers; DOCKET NO. FMCSA-2004-19608

Dear Administrator Ferro,

These comments respond to the notice of proposed rulemaking (NPRM) published in the December 29, 2010 *Federal Register* issue regarding docket FMCSA-2004-19608, Hours of Service of Drivers.

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 1500 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 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 grave concerns about the FMCSA's December 29 proposed hours of service rule. If enacted, the proposal would disrupt commerce and the supply chain and reduce flexibility during a time when the economy is struggling and there is a shortage of drivers. In addition, truck-related accidents have been decreasing under the current hours of service rules, even with a substantial increase in truck miles driven. Existing safety and health data fail to make the case that changes are needed to the current hours of service rules.

Costly Disruption of Operations

The proposed rule would disrupt operations and would be costly for businesses and the entire economy. The current hours of service regulations have been in place for seven years. Over that period, chemical distributors and other shippers have organized their delivery schedules and routes around these regulations. NACD members have carefully established routes so that their drivers can safely meet the driving time limits allowed under the current rules while efficiently delivering products to their customers. The significant changes proposed by FMCSA would force chemical distributors and other shippers to take on the complex and costly task of reprogramming their scheduling and distribution systems to comply.

Further limiting when drivers can be on duty and drive would narrow the time period during which products can be delivered to customers. Many customers already have extremely limited delivery windows. Delivery schedules would be further complicated by the proposed two consecutive night rest requirement from 12 midnight to 6 am. This would limit nighttime receiving, loading, and transportation and force drivers to make more deliveries during the daytime. Additional daytime deliveries would increase congestion at loading docks and over the highways during peak periods. This could further lead to more detention time for drivers and the need for receivers to add more staff during times of peak activity.

A complicating factor for many, particularly those in the chemical industry, is that in recent years, security measures, including both Department of Homeland Security regulations and voluntary industry initiatives, have substantially increased the time drivers now spend at various locations. Not only does it take more time to gain access; vehicle checks also take longer. In addition, some sites require escorts, which means that a driver may be waiting on site for the escort to arrive. These situations add on duty time, and in many instances, add on duty driving hours; and this type of on duty time is not actually in a full transportation mode.

In order to be able to deliver the same amount of product and meet the needs of customers under the proposed rule, companies would need to hire additional drivers and acquire additional trucks. Hiring additional drivers is problematic for two main reasons. First, there is a severe shortage of qualified drivers, particularly to transport hazardous materials. Second, if companies are able to find new drivers, they would be inexperienced and thus potentially more accident prone. They would need significant safety and security awareness training as well as time to gain experience.

The costs of hiring new drivers and acquiring more trucks would be exacerbated by the additional general operating expenses that go along with added equipment and drivers. In

addition, more costs would be incurred because of the need to train drivers, traffic managers, and related staff on the new rules and company systems put in place for compliance.

The additional limits on drivers and need to hire new drivers and obtain new equipment will result in higher shipping costs as fuel prices also continue to increase. This will lead to higher prices for industrial and consumer products when the economy is already struggling.

Decreased Flexibility, Increased Congestion, Negative Impacts on Health and Safety

The proposed rule would decrease flexibility for businesses and drivers, lead to increased road congestion, and could ultimately have a negative impact on driver health and safety. The current hours of service rules provide flexibility for drivers to manage inevitable unforeseen and uncontrollable situations that they face every day. It is important to maintain the 11-hour driving window. This is essential to give drivers the flexibility to deal with situations such as trying to find a parking space and unanticipated highway back-ups. Reducing the 11-hour window would cause drivers to feel rushed, which would cause stress and increase the probability of accidents.

NACD members are particularly concerned about the proposed mandatory two consecutive night rest requirement with the specified hours of 12 midnight to 6am in the 34-hour restart provision. Setting an arbitrary timeframe severely limits driver flexibility. This is exacerbated by the fact that a driver may only use the restart provision once per week. This lack of flexibility will prevent drivers from beginning their driving periods at the same time each day, which will disrupt their natural circadian rhythms.

In general, this proposed rule will make truck driving a much less attractive profession than it currently is. The new limits on driving periods and mandated rest timeframes will force drivers to drive during hours when roads and loading docks are much more congested; disrupt, and in some cases limit, the time they can spend with their families; and reduce their individual income-earning potential, when many are already struggling to make ends meet. This will increase driver stress levels, which leads to additional health problems and increases the likelihood of accidents.

The fact that truck driving will be so restrictive under the proposed rule will make it difficult to recruit the high caliber employees required to maintain high levels of safety and compliance with government regulations, which is critical for hazardous materials shippers like chemical distributors.

Better Safety Record Under Current Rules

Over the last seven years under the current hours of service rules, truck-related accidents have been decreasing even while truck miles driven have increased. The proposed rule disregards the fact that the trucking industry's safety performance has improved at an unprecedented rate while operating under the current rules. Both the number and rate of fatal and injury accidents involving large trucks have declined by more than one-third and are at their lowest levels in

recorded history. The remarkable reductions in the number of trucks involved in fatal and injury crashes occurred even as truck mileage continues to substantially increase.

The agency itself has data to support the industry's safety record in recent years. According to *Large Truck and Bus Crash Facts 2008*: FMCSA-RRA-10-043, March 2010, between 2004 and 2008, the number of truck-involved crash fatalities declined 16 percent, and the number of truck-involved crash injuries declined 26 percent. Also, the reduction in truck-involved crash injuries over the period was far greater than the reduction in car crash injuries.

In addition, at an April, 2010 hearing before a Senate subcommittee, FMCSA testified, "Even with the continued growth in commercial vehicle traffic, the most recent data available show that our Nation's highways experienced their lowest number of fatalities (4,525 in 2008) from crashes involving large trucks and buses since fatal crash data collection began in 1975." In the same testimony, FMCSA said, "Safety improvements have been realized not only in terms of fatal crashes, but also in injury crashes. In 2008, 113,000 people were injured in crashes involving large trucks and buses, the lowest number of persons injured in these crashes since 1988, the first year of injury crash data collection."

These facts all make a strong case that the current hours of service rules are improving safety and should remain in place.

Lack of Data to Support Need for Change

The safety data from the last seven years clearly demonstrate that the current hours of service rules are working well. On the other hand, there is a lack of data to demonstrate that the proposed rule is needed or that it would result in improved safety and driver health. The proposed changes are being driven by litigation and are not justified by existing safety and health data. It does not make sense for the agency to replace rules that have enhanced safety and are working well with new rules that are not only untested, but could actually have a negative impact on health and safety, as described under Costly Disruption of Operations.

For the reasons outlined above, NACD urges FMCSA to reject the December 29 proposal and keep the current hours of service rules in place.

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

Sincerely,

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