Before the Office of the Secretary of Transportation
U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Docket No. FMCSA-2018-0302
Notice of application for exemption

Request for Public Comment:
Hours of Service of Drivers: Transco, Inc.;
Application for Exemption

Comments of the National Association of Wholesaler-Distributors

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In response to the Department’s request for comments on the notice of petition for determination of exemption published in the Federal Register on October 18, 2018, these comments are submitted on behalf of the National Association of Wholesaler-Distributors (NAW). We appreciate the opportunity provided by the Department in this proceeding to bring the Department’s attention to how current Hours of Service (HOS) rules are impacting the wholesale distribution industry. NAW is an employer and a non-profit trade association that represents the wholesale distribution industry. NAW is comprised of direct member companies and a federation of approximately 85 national, regional, state, and local associations and their member firms, which together include approximately 40,000 companies operating in approximately 395,000 locations around the nation. NAW’s members form the backbone of the United States economy; the link in the marketing chain between manufacturers and retailers as well as commercial, institutional, and governmental end users. While wholesaler-distributors vary widely in size, the overwhelming majority are small to medium sized, closely held businesses. The wholesale distribution industry generates more than $5.6 trillion in annual sales volume and provides stable well-paying jobs to more than 5.9 million workers.

Every wholesaler-distributor relies on over-the-road delivery systems in the day-to-day conduct of their enterprise. The ability of the wholesaler-distributor to both obtain products from suppliers in a timely fashion and meet the product needs of customers on a “just-in-time” basis, exists at the very heart of the business’ prospects for success in an increasingly competitive and demanding marketplace.

Transco has submitted a petition to FMCSA that seeks an exemption from the 30-minute rest break provisions in 49 CFR 395.3(a)(3)(ii). This request was made on the basis that Transco drivers are often required to be out of the truck cab and doing moderate exercise, which negates the need for a required 30-minute break. NAW urges FMCSA to grant the exemption addressed in this petition.

It is our opinion that the current Hours of Service (HOS) regulations in 49 CFR 395.3 are inflexible and overly complex, which in turn negatively impacts the wholesale-distribution industry by lengthening delivery intervals. Wholesaler-distributors rely on suppliers to provide them with product in a timely fashion to enable them to meet customer needs as the customer defines them. In the same vein, customers rely on wholesaler-distributors to provide them with product in a timely fashion in order to meet goals they have set. The current HOS regulations impede the supplier’s and/or the wholesaler-distributor’s ability to fulfill those tasks – including the ability to physically deliver the product where and when it is needed – as well as disrupt the channel and undermine the ability of those enterprises in the channel to fulfill business plans.
Many wholesaler-distributors use drivers who are subject to the HOS rules, but who spend a significant portion of their on-duty time loading, unloading, and performing other non-driving activities, so-called multiple-delivery operations. It is NAW’s opinion that drivers whose on-duty work day consists of at least as much non-driving time as driving time should be exempt from the current rule that mandates a 30-minute break for multiple-delivery drivers. We believe this exemption is appropriate due to the fact that multiple-delivery drivers have low mileage exposure and risk simply because they spend at least half their time on non-driving activities. Much of the driving undertaken by multiple-delivery drivers is at lower speeds on local roads, conditions not associated with driver fatigue. Finally, the moderate physical exercise experienced by multiple-delivery drivers is alerting, not fatiguing.

The current federal HOS rules were based on research on long-haul trucking operations, which are very different from multiple-delivery operations. FMSCA research and regulatory development have traditionally focused on operations where driving is the main task and drowsiness from driving is the primary safety risk. Consequently, the current rules focus on limiting the total amount of consecutive time drivers spend behind the wheel. However, once again, multiple-delivery drivers spend significant portions of their on-duty time out of the vehicle engaging in substantial amounts of low-impact physical activities which is alerting.

Furthermore, drivers who currently qualify for a short-haul exemption are now also exempt from the 30-minute off-duty rest break requirement. Meaning, FMSCA has already concluded that the conditions similar to those that define multiple-delivery drivers discussed above greatly reduce safety concerns related to driver fatigue, and that operations characterized by such conditions do not require the application of a 30-minute rest break requirement. Further, it should be noted that this request for exemption is not proposing that the drivers not take a 30-minute break, but rather, that a driver’s on-duty non-driving activities could be substituted for the required break.

Should FMSCA decide to grant the requested exemption, NAW believes that there will be no change in safety performance for multiple-delivery drivers. This is due to the fact that the moderate exercise multiple-delivery drivers engage in makes them more physically active and less impacted by fatigue and drowsiness. Further, in a 2005 rulemaking FMCSA previously recognized that fatigue is not a significant problem for short-haul drivers who spend the majority of their time on non-driving tasks such as loading and unloading.1

As explained above, allowing for greater flexibility on HOS rules, specifically allowing for the required 30-minute rest break to be completed through on-duty, non-driving, tasks will

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improve driver efficiency and be beneficial to Transco Inc., Transco drivers, and commuters alike. Further, by granting this exemption FMSCA could produce additional safety benefits in the form of fewer trips and less driving exposure.

The members of the National Association of Wholesaler-Distributors applaud the Federal Motor Carrier Safety Administration’s efforts to enhance truck safety and with it the safety of all citizens traveling on America’s highways. We support the Transco, Inc. petition for exemption and thank you in advance for your careful consideration of these comments and we stand ready to supply any additional data that FMCSA may request.