

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PUBLIC CITIZEN, ADVOCATES FOR)
HIGHWAY AND AUTO SAFETY, TRUCK)
SAFETY COALITION, and the INTERNATIONAL)
BROTHERHOOD OF TEAMSTERS,)

Petitioners,)

v.)

FEDERAL MOTOR CARRIER SAFETY)
ADMINISTRATION and THE UNITED STATES,)

Respondents.)

No. 09-1094

MOTION FOR LEAVE TO INTERVENE

Pursuant to 28 U.S.C. § 2348, F.R.A.P. 15(d), and D.C. Cir. R. 15(b), the American Trucking Associations, Inc. (“ATA”) hereby moves to intervene as of right in the above-captioned proceeding. In support of this motion, ATA states:

1. ATA is a trade association of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the national trucking industry.

2. ATA was a party to the Federal Motor Carrier Safety Administration (“FMCSA”) proceeding on truckers’ Hours of Service – Docket No. FMCSA-2004-19608 – in which the FMCSA issued the final rule under review in this Court. ATA also participated as an intervenor in support of respondents in this

Court's review of the two previous Hours of Service rulemakings. *See Owner-Operator Independent Drivers Ass'n, Inc. v. FMCSA*, 494 F.3d 188 (D.C. Cir. 2007) (ATA intervened in Case No. 06-1078); *Public Citizen, et. al. v. Federal Motor Carrier Administration*, 374 F.3d 1209 (D.C. Cir. 2004).

3. ATA meets the requirements of 28 U.S.C. § 2348 for intervention as of right. First, as noted above, it participated in the agency proceeding from which the final rule under review issued. Second, ATA and its members' "interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended." 23 U.S.C. § 2348. ATA is a trade association of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the national trucking industry. ATA has approximately 2,500 direct motor carrier and industry supplier members and through its affiliated organizations represents more than 30,000 companies of every type and class of motor carrier operation. ATA regularly advocates the interests of the trucking industry before the United States Supreme Court, this Court, and other courts. ATA has a strong interest in the federal regulatory system governing commercial drivers' hours of service. Driver hours-of-service requirements impact motor carrier and public safety and carry significant financial consequences for trucking companies. ATA's members and ATA, on behalf of its members, have a direct interest in the promulgation of hours-of-service rules that reflect sound science,

advance public safety, and meet the operational needs of the trucking industry, enabling motor carriers to serve the needs of the American economy.

4. The reasons stated in the previous paragraph also satisfy F.R.A.P. 15(d)'s requirement that applicants for intervention state their interest in the litigation.

5. ATA's grounds for intervention also meet the requirements of Rule 15(d). Any decision of this Court on review of the agency's final rule will significantly affect ATA and its members. The final rule concerns hours-of-service requirements that include driving time limitations, on-duty time limitations, off-duty requirements, and other related provisions that dramatically impact the operational schedules of truck drivers and motor carriers. The final rule will directly affect the efficiency, productivity and safety of the national trucking industry and input from ATA will greatly assist this Court in understanding the effect of the regulations.

6. The considerations set forth in the previous paragraphs also make it self-evident that ATA has standing under Article III of the United States Constitution to intervene in this case. First, ATA's members are the entities directly regulated by the rules under consideration. And second, ATA meets the requirements of associational standing under Article III because its individual members would have standing, "the interest [ATA] seeks to protect is germane to

[ATA's organizational] purpose," and "neither the claim asserted nor the relief requested requires the members to participate in the lawsuit." *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 542 (D.C. Cir. 2003).

7 This motion is timely made under F.R.A.P. 15(d), the Petition for Review having been filed March 9, 2009.

WHEREFORE, ATA moves for leave to intervene as a party herein and to participate fully in the proceeding.

Respectfully submitted,

Robert Digges, Jr.
Vice President & Deputy General Counsel
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Counsel for American Trucking Associations, Inc

Dated: March __, 2009

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

American Trucking Associations, Inc. (“ATA”) is a trade association of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the national trucking industry. ATA has no parent companies, and no publicly-held company owns a 10% or greater ownership interest in ATA.

Respectfully submitted,

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Counsel for American Trucking Associations, Inc.

Dated: March __, 2009

CERTIFICATE OF SERVICE

I hereby certify that, on this ___ day of March, 2009, I caused one copy of each of the foregoing Motion for Leave to Intervene and F.R.A.P. 26.1 Corporate Disclosure Statement to be served by first-class U.S. mail, postage prepaid, on the following:

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