

BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY OF TRANSPORTATION

DOCKET NO. DOT-OST-2017-0069
NOTIFICATION OF REGULATORY REVIEW

COMMENTS OF
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

Paul G. Levine
Executive Director
National Motor Freight Traffic
Association, Inc.
1001 North Fairfax Street
Suite 600
Alexandria, VA 22314
Phone: (703) 838-1822
Email: levine@nmfta.org

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Phone: (301) 404-8382
Email: jmbagidell@msn.com

Counsel for National Motor Freight
Traffic Association, Inc.

Matthew S. Erim
Senior Classification Specialist
National Motor Freight Traffic
Association, Inc.
1001 North Fairfax Street
Suite 600
Alexandria, VA 22314
Phone: (703) 838-1825
Email: erim@nmfta.org

Dated: November 1, 2017

I. INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in response to the October 2, 2017 Notification of Regulatory Review, published by the Department of Transportation (“Department” or “DOT”) at 82 Fed. Reg. 45750 (“Notice”). That Notice seeks input on existing rules and other agency actions that may be appropriate for repeal, replacement, suspension, or modification in order to alleviate unnecessary regulatory burdens. NMFTA applauds and fully supports the Department’s efforts to identify and eliminate regulations that are superfluous, burdensome to commerce, and unrelated to the improvement of safety conditions.

II. STATEMENT OF INTEREST

NMFTA is a nonprofit membership organization headquartered at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. Its membership is comprised of approximately 550 motor carriers operating in interstate, intrastate, and foreign commerce primarily specializing in the transportation of less-than-truckload (“LTL”) quantities of freight. NMFTA represents the interests and welfare of its members in judicial, regulatory, and legislative proceedings that involve regulations affecting their operations. Accordingly, NMFTA sets forth below its comments regarding regulations that impose unnecessary burdens on the motor carrier industry.

III. COMMENTS

NMFTA initiated a review of DOT regulations in response to the Department’s Notice. The Notice requested that the public identify regulations which, among additional measures, neither meet the needs for which they were originally designed nor remain cost-justified. Keeping within the Department’s criteria for identifying such regulations, our review determined that a number of existing DOT rules are relics of a bygone regulatory era and do not serve a worthwhile purpose in the modern regulatory or commercial environment. For the Department’s consideration, NMFTA identified the following regulations as good candidates for repeal.

A. COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS, 49 C.F.R. PART 325

The Environmental Protection Agency (“EPA”) has similar provisions in 40 C.F.R. part 202, Subpart B. The EPA’s rule is less complex than the Federal Motor Carrier Safety Administration’s (“FMCSA” or “Agency”) rule, yet adequately satisfies the requirements of 49 C.F.R. part 325. The

existence of duplicative and overlapping regulations is burdensome to NMFTA's members in that it overcomplicates our members' efforts to ensure they are in compliance with all relevant regulations. Furthermore, it is NMFTA's understanding that FMCSA has not performed noise tests for many years. Repealing this rule would simplify regulations while having no deleterious impact on safety, commerce, or the environment.

B. MOTOR CARRIER ROUTING REGULATIONS, 49 C.F.R PART 356

This rule pertains to antiquated carrier designations that were developed by the defunct Interstate Commerce Commission ("ICC"). The labeling of a carrier as an "irregular route carrier" as opposed to a "regular route carrier," such as is done in this rule¹, refers to a regulatory framework which is no longer existent, rendering this rule purposeless. Today, practically all carriers would be defined as an "irregular route carrier." It is in our members' best interests to repeal unnecessary regulations that add an additional layer of complexity to the existing, functional regulations. Repealing this rule would help to ensure there are no more regulations than necessary, while having no negative safety ramifications on the operations of commercial motor vehicles.

C. PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE, 49 C.F.R. PART 370

The legal obligations of motor carriers, and the rights of shippers regarding the recovery of loss and/or damage claims, are established by the Carmack Amendment which is found in 49 U.S.C. Section 14706(a)(1). That section, as pertinent, provides that:

That carrier [issuing the receipt or bill of lading for the property it receives for transportation] and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 ... are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier.

Today, the process for resolving loss and damage claims are principally a matter of contract

¹ 49 CFR § 356.5

mutually agreed to between the shippers and the motor carriers. Moreover, motor carriers otherwise publish in their tariffs the procedures for the filing, acknowledgement, investigation, and disposition of submitted loss and/or damage claims. Thus, there is no need for FMCSA's continued application of the outdated procedures long ago promulgated by the former Interstate Commerce Commission. The law plainly identifies the liability of motor carriers for the loss and/or damage of the goods they transport, and long-established industry practices ensure the prompt and fair handling of such claims.

Furthermore, as the Department states in the Notice, "safety is the Department's highest priority, the Department seeks comments on those existing regulations and other agency actions that may be repealed, replaced, or modified without compromising safety." As observed by the Motor Carrier Safety Advisory Committee², this rule is in no way related to safety, and the repeal of this rule would not adversely affect safety. However, the removal of unnecessary regulations can help ensure that the public is not overwhelmed or confused by irrelevant regulations.

D. PRESERVATION OF RECORDS, 49 C.F.R. PART 379

The retention periods required in this rule are also covered by the Internal Revenue Service and general business rules and regulations. This rule adds an unnecessary layer of confusion to the already complex record preservation requirements. Keeping track of preservation rules under different federal agencies can be particularly burdensome to small entities that may lack the resources to ensure they are in compliance with overlapping regulations. Additionally, this rule does not relate to FMCSA's core responsibility of improving the safety of commercial motor vehicles.

E. COOPERATIVE AGREEMENTS WITH STATES, 49 C.F.R. PART 388

The requirements in this rule are adequately covered by the Motor Carrier Safety Assistance Program regulations.³ This redundancy is unnecessary and may confuse those attempting to properly comply with regulations. A repeal of this rule would help simplify regulations without having an adverse impact on safety.

² The Motor Carrier Safety Advisory Committee is a group of safety officials appointed by FMCSA to advise the Agency on motor carrier safety regulations. The Committee discussed 49 C.F.R. part 370 during a public meeting held on June 12, 2017. Discussion notes from that meeting are publically available here: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/mission/advisory-committees/mcsac/82091/mcsac-task-17-3-discussion-notes-draft.pdf>

³ 49 CFR part 350.

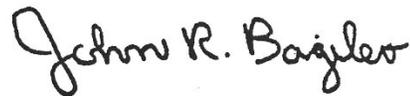
IV. CONCLUSION

NMFTA enthusiastically supports the Department's initiative to seek input from regulated entities regarding unnecessary regulations or other agency actions that are good candidates for suspension, repeal, replacement, or modification. In our comments, NMFTA identified a number of DOT regulations that are obsolete and should be candidates for repeal. The rules identified in these comments do not improve the safety of commercial motor vehicle operation or solve contemporary problems; however, the identified rules do create unnecessary burdens by contributing to a complex and in some cases outdated set of federal motor carrier safety regulations. NMFTA acknowledges that the improvement of DOT regulations is a continuous and incremental process. We look forward to assisting the Department with these improvements and helping ensure that our nation's roads and highways are as safe as reasonable possible.

Respectfully submitted,



Paul G. Levine
 Executive Director
 National Motor Freight Traffic
 Association, Inc.
 1001 North Fairfax Street
 Suite 600
 Alexandria, VA 22314
 Phone: (703) 838-1822
 Email: levine@nmfta.org



John R. Bagileo
 Law Office of John R. Bagileo
 15292 Callaway Court
 Glenwood, MD 21738
 Phone: (301) 404-8382
 Email: jmbagidell@msn.com

 Counsel for National Motor
 Freight Traffic Association, Inc.



Matthew S. Erim
 Senior Classification Specialist
 National Motor Freight Traffic
 Association, Inc.
 1001 North Fairfax Street
 Suite 600
 Alexandria, VA 22314
 Phone: (703) 838-1825
 Email: erim@nmfta.org