

Before The
U.S. Department of Transportation
Federal Motor Carrier Safety Administration

Docket No. FMCSA-2012-0336

Inspection, Repair, and Maintenance;
Driver Vehicle Inspection Report

Comments of
National Motor Freight Traffic Association, Inc.
Supporting Proposed Rescinding of the Requirement
that Commercial Motor Vehicle Drivers Operating in
Interstate Commerce Submit, and Motor Carriers
Retain, Driver-Vehicle Inspection Reports When the
Driver Has Neither Found, Nor Been Made Aware of
Any Vehicle Defects or Deficiencies

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Tel: (301) 404-8382
E-Mail: jmbagidell@msn.com
Fax: (410) 489-9873

Counsel for National Motor Freight
Traffic Association, Inc.

Dated: October 2, 2013

Due: October 7, 2013

1.

I.

Position of National Motor Freight Traffic Association, Inc.

National Motor Freight Traffic Association, Inc., (NMFTA), files these comments on behalf of its member motor carriers of property operating in interstate commerce in support of the Federal Motor Carrier Safety Administration's (FMCSA) Notice which appeared in the August 7, 2013 issue of the Federal Register proposing to rescind the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports [DVIRs] when the driver has neither found nor been made aware of any vehicle defects or deficiencies. As the Federal Motor Carrier Safety Administration (FMCSA) appropriately and correctly states: "This proposed rule would remove a significant information collection burden without adversely impacting safety." (78 Fed.Reg. at 48126.)

Moreover, this proposal would merely extend to motor carriers operating in interstate commerce the same relief provided to drivers operating intermodal equipment which do not have to submit, and the intermodal equipment providers to retain, DVIRs when the driver has neither found nor been made aware of any defects in the intermodal equipment. Certainly, some of the very same reasons that underpin FMCSA's elimination of those DVIRs are applicable here. As was pointed out to the agency in the proceeding which resulted in the elimination of those DVIRs, as is equally relevant here, there is a significant risk that the large volume of no-defect DVIRs could impair identification of the DVIRs that contain damage or defects; that the no-defect DVIRs add significant unnecessary costs to motor carrier operations without providing offsetting benefits; and that the submitting of no-defect DVIRs cause driver productivity losses. (78 Fed.Reg. at 48127.)

Given that the FMCSA recognizes that the no-defect DVIRs serve no useful regulatory purpose in promoting safety, and imposes a substantial cost, time and paperwork burden on the motor carrier industry, with no discernible social benefit, it is respectfully submitted that the no-defect DVIR requirement should be eliminated.

II.

Identity and Interest of NMFTA

NMFTA has its offices at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314. It is a non-profit Virginia corporation, the members of which primarily are motor carriers operating in interstate and foreign commerce under certificates of public convenience and necessity issued by the former Interstate Commerce Commission and/or the Federal Motor Carrier Safety Administration. Included among its members are approximately 800 motor carriers of property

2.

transporting shipments in interstate and/or foreign commerce. Annually, the members transport literally millions of shipments subject to the requirement that their drivers submit, and the carriers retain, no-defect driver-vehicle inspection reports. Implementation of the proposed rescinding of that reporting requirement would result, as FMCSA has correctly concluded, in substantial cost savings to the motor carriers charged with having their drivers prepare, and the companies retain, those documents, would eliminate the considerable productivity losses associated with the compliance with that regulation, and would not have any adverse safety consequences.

III.

No-Defect Driver-Vehicle Reports Serve No Useful Regulatory Purpose and Impose a Needless Burden on Interstate Motor Carriers

As FMCSA points out, removal of the no-defect DVIR would not have any negative effect on the ability of drivers to report vehicle defects or deficiencies to their companies. Moreover, none of the substantive safety requirements governing the inspection, repair and maintenance of the vehicles are changed. Therefore, rescinding the no-defect DVIR will not compromise in any way the safety of the equipment. As FMCSA states:

Drivers will still be required to perform pre-trip evaluations of equipment condition, and complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations. Motor carriers will still be required to have systematic inspection, repair, and maintenance programs (including preventative maintenance) and maintain records to prove measures are being taken to reduce, to the extent practicable, the risk of mechanical problems happening while the vehicle is in operation. In addition, motor carriers will still be required to review driver vehicle inspections that list defects or deficiencies and take appropriate action before the vehicle is dispatched again. (78 Fed.Reg. at 48128.)

Coupled with the other safety requirements pertaining to the periodic and annual inspections and maintenance of motor carrier equipment, and the continuing presence of roadside inspections, the no-defect DVIRs clearly serve no useful regulatory purpose in fostering the safety of motor carrier operations on the highways.

Equally compelling in justifying the proposed elimination of the no-defect DVIRs are the recognized administrative burdens created for the drivers and the motor carriers, the

3.

associated productivity losses incurred as a result thereof, and the substantial cost burdens imposed on the motor carriers because of compliance with the requirement. As FMCSA conservatively estimates, by rescinding the requirement some 46.7 million hours associated with the paperwork burden necessitated to comply with the regulation would be eliminated. It is also estimated that the elimination of the time required to be expended in meeting that paperwork burden would save the motor carrier industry some \$1.7 billion per year. Added to the positive revenue impact that the motor carrier industry would realize is the income that would be created by the productivity gains that would result from the elimination of the burden created by the no-defect DVIR for the drivers and the motor carriers.

IV.

FMCSA Proposed Rescission of the No-Defect DVIR Plainly Complies With the Statutes and Executive Orders Governing Agency Rulemaking Proceedings

NMFTA fully agrees with FMCSA's regulatory analysis of the statutes and executive orders related to this proposed rulemaking proceeding. The Agency's analysis of the administrative and financial benefits elimination of the no-defect DVIRs would have demonstrates that, as identified in *Executive Order 12866 (Regulatory Planning and Review) as Supplemented by E.O. 13563 and DOT Regulatory Policies and Procedures*, this rulemaking is not a significant regulatory action requiring OMB review. So too, in accord with the *Paperwork Reduction Act*, an undue and costly paperwork burden will be eliminated. Similarly, FMCSA has shown the consistency of its proposal with the *Regulatory Flexibility Act* in that the elimination of the filing requirements will relieve the motor carriers from the costs and administrative burdens associated with the no-defect DVIRs.

Additionally, established precedent exists for the elimination of such information where, as here, the report is not needed by the agency on a regular or frequent basis, serves no useful or regulatory purpose, and the deleted information is of no use to the general public. In *Patrick W. Simmons, Petitioner, v. Interstate Commerce Commission*, 757 F.2d 296 (D.C. Cir. 1985), the Court of Appeals for the District of Columbia Circuit upheld the former ICC's decision to eliminate from the railroads' annual reports certain schedules which it concluded were not necessary to be provided regularly or with frequency to the agency, and that the deleted information was not generally of interest to the public. As indicated by FMCSA, the no-defect DVIRs are not regularly or frequently relied upon for safety purposes, and do not serve any regulatory purpose that would require or justify their continued compilation by the drivers and retention by the motor carriers. Lastly, there is no demonstrated or potential use of the reports by the public.

4.

v.

Conclusion

NMFTA agrees with FMCSA that the no-defect DVIRs serve no useful regulatory purpose and do not add to the safety of operation on the highways. Moreover, the reports impose an unnecessary, nonproductive, and very costly paperwork burden on the drivers and motor carriers, and adversely impacts productivity. Accordingly, the requirement, as proposed by FMCSA, should be rescinded. Further, it is submitted that FMCSA's regulatory analysis in its Notice of Proposed Rulemaking clearly establishes that such proposal is consistent with, and in furtherance of, the statutes and executive orders which must underpin that action.

Respectfully submitted,

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Phone: (301) 404-8382
E-mail: jmbagidell@msn.com
Fax: (410) 489-9873

Counsel for National Motor Freight
Traffic Association, Inc.

Dated: October 2, 2013