

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING
DOCKET NO. FMCSA-2012-0376
ELECTRONIC DOCUMENTS AND SIGNATURES

CLAIRE SHAPIRO
Eisen & Shapiro
10028 Woodhill Rd.
Bethesda, MD 20817
e-mail: Claire@eisen-shapiro.com

Counsel for National Motor Freight
Traffic Association, Inc.

June 17, 2014

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA”) submits these comments in support of the amendments to regulations proposed by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) in its April 28, 2014 notice of proposed rulemaking at 79 Fed. Reg. 23306 (the “Notice”), which would allow regulated entities to use electronic records and signatures to satisfy FMCSA’s recordkeeping requirements. In the Notice, FMCSA proposes the establishment of parity between paper and electronic documents and signatures by allowing the use of electronic methods to sign, certify, generate, exchange, and maintain records. FMCSA would allow regulated entities to determine the form in which documents would be signed and retained in their daily operations so long as those records are accessible and usable for FMCSA’s regulatory purposes as needed. This flexibility, however, would only encompass documents that FMCSA requires regulated entities to retain: it would not extend to forms and other documents that must be submitted directly to FMCSA.

NMFTA is a trade association, with offices located at 1001 North Fairfax Street, Suite 600, Alexandria, VA 22314, whose members include approximately 450 less-than-truckload motor carriers operating throughout the United States and Canada. The operations conducted by NMFTA’s member motor carriers are subject to the FMCSA regulations within 49 C.F.R. Parts 300-399 that would be modified as a result of this rulemaking proceeding. Because NMFTA’s motor carrier members believe that the flexibility to use electronic signatures and to generate and

store documents in electronic form will make it easier for them to comply with their obligations under these regulations, NMFTA strongly supports FMCSA's proposal to give regulated entities, including its members, control over the methods they use to generate, sign, certify, exchange, and maintain documents. Indeed, NMFTA would like to see FMCSA go even further in this direction by establishing procedures that would give carriers a comparable electronic option for submitting forms and other documents to the Agency, a process that already appears to be happening on a program-by-program basis.

DISCUSSION

I. The electronic signature and document option will ease the regulatory burden on carriers without impeding FMCSA's ability to perform its regulatory duties.

The proposed rules would permit the use of electronic methods to sign, certify, generate, exchange, or maintain records "so long as the records accurately reflect the information in the record and can be used for their intended purpose." Carriers wishing to use an electronic format would no longer be required, as they were in the past, to seek FMCSA's permission on a case-by-case basis to eliminate certain categories of traditional paper-based signatures or documents.

NMFTA agrees that such an option will provide their members regulatory relief, by allowing them to choose the technologies that are most able to satisfy their individual needs and circumstances. Electronic contract formation and recordkeeping methods are often preferred because they decrease paperwork, eliminate duplicate copies and archived paper files, and free up space previously used for storage. NMFTA also appreciates FMCSA's decision to give those parties who would rather continue to use paper the option to do so. Although the current trend is away from paper, there are still carriers that are not in a position to give it up entirely. Finally, NMFTA appreciates the Agency's attempts to update any and all provisions that seem to

currently mandate paper-based recordkeeping, both because it ensures consistency and eliminates the need to revisit this issue in the future.

Further, NMFTA understands the limitations placed by FMCSA on the use of electronic technologies, namely that electronic documents or signatures must “accurately reflect the information in the record and remain accessible in a form that can be accurately viewed or reproduced according to Agency rules.” Electronic documents are not an adequate substitute for paper unless they have the same indicia of reliability and can be used in a comparable manner. The limitation proposed by the Agency gives carriers the flexibility they need to operate most efficiently while still ensuring that FMCSA will be able to carry out its regulatory duties unimpeded by the lack of paper documents.

II. FMCSA should, wherever practicable, allow the use of electronic methods for documents submitted directly to the Agency.

As noted above, FMCSA has stated in the Notice that the proposed amendments do not apply to forms or other documents that must be submitted directly to FMCSA. NMFTA understands that FMCSA may not be able to issue a blanket rule allowing the use of either electronic or paper-based methodologies for all documents and signatures that are submitted to the Agency, as the unique needs of each Agency program and the capabilities of the associated technology must be independently considered. However, it is clear that the Agency is turning towards optional or even mandatory use of electronic submission of documents in particular cases.¹ NMFTA would encourage FMCSA to conduct a review of all other programs within its

¹ For example, under the new Unified Registration System, 16 different forms that carriers, freight forwarders and brokers currently use to register and update their information with the Agency were combined into a single mandatory electronic “smart form” that will be used for all new applications and updates.

jurisdiction that require direct submission of documents to the Agency to determine whether an electronic option is feasible.

CONCLUSION

For the reasons discussed above, NMFTA strongly supports FMCSA's proposal to give regulated entities the ability to choose between paper and electronic means of complying with FMCSA's regulatory requirements. This much-appreciated freedom to choose will allow them to adopt the procedures that work the best in their daily business operations and will, at the same time, allow the Agency to continue to perform its regulatory duties unimpeded.

Respectfully submitted,



CLAIRE SHAPIRO
Eisen and Shapiro
10028 Woodhill Rd.
Bethesda, MD 20817

Counsel for National Motor Freight
Traffic Association, Inc.