

**COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.
IN RESPONSE TO THE DEPARTMENT OF DEFENSE
REQUEST FOR COMMENTS ON A PROPOSED RULE
ESTABLISHING TRANSPORTER PROOF OF DELIVERY REQUIREMENT
RIN 0790-AI05**

I. INTRODUCTION

The National Motor Freight Traffic Association, Inc., (“NMFTA”) submits these comments in response to a request for comments on a proposed rule published in the Federal Register on May 29, 2015, entitled “Transporter Proof of Delivery, RIN 0790-A105.” With this notice, the Defense Logistics Agency proposes a rule to establish a clause allowing the Government to require that contractors provide Transporter Proof of Delivery (TPD) when requested, as a means to facilitate the Government payment process.

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 600 motor carriers operating in interstate, intrastate and foreign commerce primarily specializing in the transportation of less-than-truckload quantities of freight (LTL). NMFTA’s mission is to serve as a research and development organization providing the transportation industry with the necessary information to advance and improve their interests and welfare. NMFTA is committed to helping the industry meet transportation challenges through research, education, and publication of specifications, rules, transportation codes and the preparation and dissemination of studies, reports and analyses. NMFTA participates in judicial, regulatory and legislative proceedings to represent the interests and welfare of its members and is authorized to file comments in this proceeding.

III. COMMENTS

The notice prescribes a mandate for specific information to be included on a document called Transporter Proof of Delivery (TPD). The TPD is purported to be a commercial document that is generated by the contractor, or the transporter of supplies, and that is signed by the Government

customer at time of delivery. The notice states that the TPD is required to have the following information:

- (1) Government customer signature and, if practicable, clearly state the name of the Government customer who signed;
- (2) Contract number and, if applicable, order number;
- (3) Contract line item number(s)(CLIN(s));
- (4) Quantity of items;
- (5) National stock number (NSN);
- (6) Delivery date;
- (7) Recipient organization's name and address; and
- (8) Location where the carrier made delivery (activity name, building number, city, state).

In addition to the above required information, the notice states that the TPD is to contain as much of the following information as possible:

- (1) Unit price;
- (2) Extended price;
- (3) Receiving activity Department of Defense activity address code (DoDAAC);
- (4) Requisition document number (and suffix, when applicable);
- (5) Shipment number; and
- (6) Invoice number.

Standard practice in the LTL industry is for the motor carrier to provide a document known as a Delivery Receipt (DR) to the consignee. The DR is generated by the carrier and usually contains the following information extracted from their computerized rating and freight bill system:

- (1) A PRO number or "freight bill number" unique only to a single shipment;
- (2) Name and address of the shipper and consignee;
- (3) Whether the freight charges are prepaid or collect. If the charges are being paid by a 3rd party, that party is named;
- (4) Whether section 7 of the bill of lading is signed;
- (5) Whether the collection of COD (cash on delivery) is required (most carriers will only accept a certified check) and the fee for this service;
- (6) The computed freight charges including any fuel surcharge and applicable discount;

- (7) Number of pieces shipped, weight, and commodity description. Often the packaging type, such as whether the cargo is on pallets (and the number of pallets), drums, etc., is included;
- (8) For freight classification purposes, when multiple commodities are shipped, the total weight for each commodity class is listed;
- (9) If any accessorial services are ordered, such as inside delivery, lift gate, call before delivery, etc; and
- (10) At the bottom of the Delivery Receipt, a signature area is provided where the consignee signs that the freight was received "in good order" or similar language. The driver will also record the date of delivery.

There are typically two copies of the DR. The driver and consignee sign both copies so that each may retain a copy. The consignee has the ability to mark any specific delivery exceptions, such as shortage or damage. Drivers are expected to require specific item descriptions for shortage or damage. Drivers will also note any accessorial services performed but not originally billed.

Other than the signatures of the motor carrier and consignee, the date and location of delivery and, in certain circumstances, when the quantity of goods delivered is the same as the number of pieces delivered, the remaining information specified by the notice for inclusion on the TPD are not the same nor accessible to the motor carrier. The government should not burden the motor carrier with the responsibility of obtaining this information and creating the TPD. The role of the motor carrier is to safely transport the goods tendered to it to destination and be responsible if, through its fault, the goods are damaged, lost or destroyed. The motor carrier should not be required to perform inventory and provide accounting information for the benefit of DOD. Because it is evident that much of the information required on the TPD is not within the possession of the motor carrier and may not be provided by the shipper, or is incorrectly reported to it, the inability of the motor carrier to create the TPD as required should not be used as a reason to create payment disputes or delays or the denial of payments due to the motor carriers for the transportation services provided. NMFTA's member motor carriers cannot agree to be subject to the onerous burdens which would be imposed on them to obtain information which is within the control of the government shippers and to have payments to them conditioned on providing information unrelated to their transportation services.

It should also be noted that, for operational reasons, it is not practicable for the shipper to give the motor carrier a TPD at the time the freight is picked up and expect the motor carrier to be responsible for having the document on hand at time of delivery for completion by the Government customer.

Standard motor carrier operating procedures do not provide for supplemental documentation to follow the freight from origin to destination. To place the motor carrier in the middle of an obligation that rightfully belongs on the government and its customer places an unfair burden on a third party that is not party to the arrangement and does not have possession of the information required to fulfill the requirements of this proposal.

IV CONCLUSION

In the LTL industry, it appears that the only overlapping data elements between the TPD and the DR are the signatures of the motor carrier and consignee, which would presumably be the government customer, address and date of delivery, and possibly the number pieces of freight delivered if it is the same as the quantity of goods that are delivered. The carrier does not have access to the remaining information the government is requiring on the TPD and thus it would not be possible for the motor carrier to produce the TPD. If the government intends to use the TPD with the information specified in the notice, the responsibility for creating this document and ensuring that it arrives at destination should be placed on the government and its contractor, who have access to the information, not the motor carrier who is not privy to this data and thus could not produce the TPD. Furthermore, should the shipper prepare the TPD, the motor carrier should not be expected to be responsible for ensuring the document is on hand at time of delivery. In view of the foregoing, NMFTA opposes the proposed rule.

Respectfully submitted,



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Thomas F. Swartz
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July 24, 2015