

BEFORE THE
DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

COMMENTS OF THE
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

IN RESPONSE TO NOTICE AND REQUEST FOR COMMENTS
DOCKET NO. FMCSA-2014-0192
AGENCY INFORMATION COLLECTION ACTIVITIES
MOTOR CARRIER RECORDS CHANGE FORM

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DEPARTMENT OF TRANSPORTATION
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INTRODUCTION

The National Motor Freight Traffic Association, Inc. (“NMFTA” or “Association”) submits these comments in support of the creation of a standardized “Motor Carrier Records Change Form,” as proposed by the Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) in its June 27, 2014 notice at 79 Fed. Reg. 36578 (the “Notice”). The Records Change Form would be used to process name changes, address changes, and requests for reinstatement of operating authority. Currently, when regulated motor carriers, brokers, or freight forwarders (“entities”) request such record changes, they submit the request without the use of any formal data collection form. This sometimes results in submission of incomplete supporting data that cannot be fully processed without follow-up by the FMCSA staff and the involved entities. The proposed form is intended to clarify the data requirements for such record changes, resulting in a process that is more efficient for all parties involved.

NMFTA is a trade association, with offices located at 1001 North Fairfax Street, Suite 600, Alexandria, Virginia 22314, whose members include approximately 450 less-than-truckload motor carriers operating throughout the United States and Canada. NMFTA has direct experience with FMCSA’s record-correction process because it sometimes comes into play when NMFTA assigns entities Standard Carrier Alpha Codes (“SCAC”), unique two-to-four letter codes used to identify entities operating in all modes of the transportation industry for a variety

of purposes.¹ Because NMFTA must use the name of the entity as it is registered with DOT for regulated motor carriers, freight forwarders, and brokers, the Association validates the accuracy of the information provided by the entity applying for a SCAC against Government records. In a number of cases, NMFTA staff finds discrepancies between the information provided by the applicant on the SCAC application and the information on file with the FMCSA in the Licensing and Insurance system and/or the Safety and Fitness Electronic Records database. The discrepancy often involves the company name, address, or operating status, the exact data points addressed by the proposed form. In such cases, the applicant is instructed to correct the FMCSA's information before the SCAC can be issued and, if the applicant asks how to do this, will be referred to the FMCSA's toll-free 800 number.

Because FMCSA does not have any form that is used to collect the information needed to accomplish the change, correction often involves a time-consuming trial and error process before the change can officially be made by the Agency. The availability of a standardized form to which NMFTA can direct these parties would be very helpful in facilitating the correction process and indirectly the SCAC-issuance process. Accordingly, NMFTA supports the FMCSA's plan to develop such a form and appreciates the opportunity being given to comment on the proposed form.

However, NMFTA is hampered in its ability to provide complete comments by the lack of an actual form to review. To encourage full public participation in the development process, NMFTA would ask that a draft form and accompanying instructions be placed in the docket, and

¹ Among their uses, SCACs are required by U.S. Customs and Border Protection for entry processes, intermodal interchange agreements, rate tariffs filed with U.S. Government agencies, and many electronic data interchange programs. SCACs are also used to identify transportation providers by U.S. Government shippers as well as by many commercial shippers.

that another opportunity for comments from interested parties be allowed. In the interim, NMFTA is providing some general comments below based upon the descriptive information contained in the Notice.

DISCUSSION

I. A standardized form would improve the efficiency of the records change process while minimizing the burden on the involved parties.

In the Notice, FMCSA asks parties to comment on whether the proposed collection is “necessary” for the performance of FMCSA’s functions. 79 Fed. Reg. at 36579. Since FMCSA has in the past and is now processing record change requests without a standardized form the technical answer to this question is “no”. However, given the reported problems that FMCSA and involved entities have had in attempting to make such record changes, when applications are incomplete, inaccurate, or not compliant with regulations, it is clear that the proposed form would ultimately make the record change process more efficient. In short, it will "make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives," in compliance with recent Executive Orders seeking to reduce regulatory burdens and costs.

The Notice also asks for comments on the estimated burden imposed by the form, which FMCSA identifies as .25 hours per form. *Id.* Even this minimal burden figure is misleading, however, since the time involved in completing the form is time that would currently be spent by parties seeking record changes to compose a letter, fax, or e-mail conveying the same information to FMCSA. With a comprehensive and clear form, less time should be required of a regulated entity to effectively cause a name change, address change, or change in operating status. Consequently, there really is no burden imposed by the form.

II. Additional data points are needed to cover all record changes.

FMCSA has provided a list of 11 data points that users may report on the proposed form. NMFTA believes that several additional data points are needed to conform this form more fully to the language of 49 C.F.R. § 365.413, the rule setting forth the procedures for certain record changes.

First, the form should specifically include changes to “business form” as a data point. Such changes are currently subject to the same regulatory procedures as name or address changes as referenced in data point 3. Second, changes reflecting reinstatement of operating authority should be allowed by “freight forwarders”, as well as motor carriers and brokers now referenced in data point 8. As reflected in the Notice, the record change procedures in 49 C.F.R. § 365.413 apply uniformly to “a motor carrier, freight forwarder, or property broker.”

Finally, data point 11 regarding the credit card information suggests that the applicable record change fee must be paid by credit card. Credit cards are currently the exclusive form of payment only when record changes are requested online. Checks or money orders are also allowed when changes are requested by mail. Thus, the data points should include a place to indicate the form of submission and payment, and require the credit-card related information now in data point 11 only if that is the method chosen. In this regard, NMFTA believes that both online and mail submissions, as well as the currently available means of payment, should continue to be allowed. While the majority of applicants may opt for online submission and credit card payments, because that speeds up the record-change process, there are still those who prefer handling such matters using hardcopy submissions accompanied by check or money order.

III. Detailed instructions must accompany the new record change form.

FMCSA also asks commenters to indicate “ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information”. *Id.* In NMFTA’s experience, thorough instructions can be more helpful than the actual data points included on a form in ensuring that the organization or agency processing the form gets all of the data it needs to perform its task. Only complete instructions will eliminate the need for follow-up by Agency staff and entities, as currently exists. FMCSA, however, does not give any indication in the Notice of the type or extent of guidance or instructions that will accompany the form. Some suggestions of information NMFTA believes should be provided with the form are discussed below.

The Notice advises that users should report whichever of the 11 data points “are relevant to their records change request”. To eliminate any uncertainty, it is important that the instructions tell users which data points are relevant to each type of request. The instructions should also clearly identify the documentation that must be submitted along with each type of request. Absent such direction, FMCSA will likely continue to get information that is just as incomplete as the individualized letter requests currently submitted for record change purposes.

NMFTA would also recommend the following instructions for name and business form changes. Because FMCSA cannot change either a legal or d/b/a name in its database unless the user has previously filed the new name with the appropriate State authority and been given approval for its use, the need for such prior action as well as the proof of the State action needed to support a record change request should be mentioned in the instructions. Similarly, while the form can be used to report name changes associated with changes in business form (e.g., incorporation of a partnership or sole proprietorship), there should be instructions advising users of the steps that must be taken at the State level to actually effectuate the change and the

documentation of the change that must be provided to FMCSA along with the form.

In addition, while users may indicate on the form (data point 6) whether the name change was associated with a change in ownership, management or control of the entity, the instructions should advise users of the additional steps that must be taken before requesting a record change when more than a simple name change is involved. In sum, the instructions must make it clear to users that this form only reports changes that have been previously made, it cannot be used to actually make any changes to the applicant's business form or name.

As with name changes, an entity cannot use the records correction form to reinstate its authority unless other preliminary steps have been taken. Specifically, an entity must obtain the required insurance, surety bond, or trust agreement, and make sure that the provider has filed with FMCSA the appropriate forms demonstrating such proof of financial responsibility for all motor vehicles operated on public highways. Entities seeking to reinstate their authority must also ensure that an effective designation of process agents (BOC-3) has been filed with the Agency. The instructions on the record change form should advise users of the steps required to reinstate operating authority before the change can actually be made in FMCSA records. Perhaps an additional data point requiring confirmation that such steps have been taken would minimize the follow-up associated with reinstatement requests using the proposed form.

CONCLUSION

For the reasons discussed above, NMFTA strongly supports FMCSA's proposal to develop a standardized "Motor Carrier Records Change Form" that can be used for the most common types of record changes requested by regulated motor carriers, property brokers, and freight forwarders. Such a form, if accompanied by complete instructions, including the items discussed above, would help the Agency, regulated entities, and parties such as NMFTA who

also work with regulated entities, to accomplish record changes in the most efficient possible manner.

Respectfully submitted,

A handwritten signature in blue ink that reads "Claire Shapiro". The signature is written in a cursive style with a large, decorative flourish at the end of the name.

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