

3-12600

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

**COMMENTS OF THE
OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.**

**IN RESPONSE TO A
NOTICE OF PROPOSED RULEMAKING
REQUEST FOR COMMENTS**

Docket No. FMCSA-97-2349 - 162

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**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

I. INTRODUCTION

A. Procedural Statement

These comments are submitted by the Owner-Operator Independent Drivers Association, Inc. ("OOIDA" or "Association") in response to a notice of proposed rulemaking ("NPRM") and request for comments on a Unified Registration System. The notice of this request was published in the Federal Register on May 19, 2005, by the Federal Motor Carrier Safety Administration ("FMCSA" or "Agency") under docket number FMCSA-97-2349.

B. Interest of OOIDA

OOIDA is a not-for-profit corporation incorporated in 1973 under the laws of the State of Missouri, with its principal place of business in Grain Valley, Missouri. OOIDA is the largest international trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 128,000 members of OOIDA are small-business men and women located in all 50 states and Canada who collectively own and operate more than 185,000 individual heavy-duty trucks. The mailing address of the Association is:

Owner Operator Independent Drivers Association, Inc.
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The Association actively promotes the views of small business truckers through its interaction with state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA is active in all aspects of highway safety and transportation policy, and represents the positions of small business truckers in numerous committees and various forums on the local, state, national, and international levels. FMCSA's adoption of a Unified Registration System would have a direct impact on owner-operators, motor carriers, and professional drivers, including members of OOIDA.

II. SUMMARY

OOIDA supports the new combined registration system. The efficiency that such a system will provide is long overdue. OOIDA notes that many of the issues in the NPRM were mooted by the new highway reauthorization law. If there are ambiguities between the new law and the NPRM, OOIDA would support another request for comments so that the agency has the benefit of comments that are more on-point than those now sought.

III. COMMENTS OF THE ASSOCIATION

These comments follow the outline numbering in the Notice of Proposed Rulemaking.

V. Congressionally Mandated Policy Issues

B. The Single State Registration System

In the NPRM, the Agency requests comments on the possible inclusion of the Single State Registration System ("SSRS") in the new unified system. Because section 4304 of the recently passed highway reauthorization law requires incorporation of the SSRS in a new Unified

Carrier Registration System and resolves several related issues, comments on this proposal appear moot. OOIDA supports this new part of the law.

D. Registration of Private Motor Carriers and Exempt For-Hire Motor Carriers

The NPRM proposes to extend the public liability insurance filing requirement to private carriers of hazardous materials and exempt for-hire motor carriers, but not to private carriers of non-hazardous commodities because there is "currently no statutory authority to do so." Section 4120 of the new highway reauthorization law amends 49 U.S.C. § 31139 and requires the Secretary to prescribe regulations to require all commercial motor carriers of property to maintain minimal levels of financial responsibility. This new section authorizes the Secretary to include private carriers in the registration requirements, and this registration should be required.

OOIDA agrees with the FMCSA proposal to require *all* motor carriers to file a process agent designation with FMCSA as a condition of registration, including all exempt for-hire and private motor carriers.

VI. The Proposed Replacement System

A. Registration

(1) What would be the impact (benefits or hardships) on applicants of a mandatory on-line filing requirement?

(2) Should FMCSA immediately require on-line filing or should there be a phase-in period for mandatory on-line filing? If so, how long should the phase-in period be?

OOIDA believes that many computer savvy persons will benefit from an on-line filing capability. Many others, however, will face a hardship if such a requirement is mandatory.

OOIDA surveys show that only 22% of our owner-operator members operating under their own authority have a computer in their truck and 60% of them keep records on a computer.

Estimating the percentage of motor carriers that have access to computers may be helpful to understand what part of the population is able to perform routine filings by computer. But this estimate does not necessarily measure the capabilities of the population of persons who will be registering for the first time. Only about half of all drivers and owner-operators not operating under their own authority, the most significant population of drivers who eventually become motor carriers, use computers.

OOIDA believes that if FMCSA were to mandate electronic filing, it must consider a phase-in for such a requirement. Persons who are not computer savvy will need a fair amount of time to arrange to perform their filings electronically. A period of five years would seem reasonable. But OOIDA also suggests that the Agency always allow paper filing. Persons who may otherwise become a very capable small business or sole proprietor motor carrier may need to file by paper. To provide such an option, the FMCSA may be justified to require a slightly higher filing fee.

*** Opposing Operating Authority**

Section 4113 of the new highway reauthorization law allows the Secretary to suspend, amend, or revoke a carrier's registration for a pattern of safety violations by motor carrier management. This new section goes hand in hand with the public's opportunity to oppose new applications for motor carrier authority. OOIDA asks the FMCSA to embrace the new monitoring system as a source of information to deny the registration of persons who have a pattern of violating laws and regulations at previous motor carriers.

Often, patterns of unsafe behavior by motor carrier management will only be known to members of the public. The public could be a valuable source of information to the FMCSA's efforts to keep bad actors out of the industry. In assisting our members with problem carriers,

OOIDA has seen that bad actors in the industry survive by jumping from one carrier to the next, or by closing one motor carrier and opening a new one. The public should be invited to submit this type of information in opposition to motor carrier applications.

OOIDA believes that it would be in the public interest for the monitoring of motor carrier management to include all of the same issues on which the public may challenge a carrier's authority under section 13902. By doing so, FMCSA would maximize the utility of its existing and new statutory authority to keep bad actors from staying in the motor carrier industry.

*** *Opposing the Registration of Private Motor Carriers or Exempt For-Hire Motor Carriers***

The NPRM does not extend the public's right to protest the registration of a motor carrier to private motor carriers or exempt for-hire motor carriers. This policy is consistent with the fact that neither type of entity is required to obtain DOT authority to operate.

But, if a private carrier takes loads for-hire, or an exempt for-hire carrier hauls non-exempt loads, then they would be operating without the required authority. Under 49 U.S.C. § 13902, a motor carrier operating without authority or beyond the scope of its authority must be placed out of service. Operating without proper authority or beyond the scope of one's authority is now one of the CVSA's Out of Service criteria. OOIDA suggests that the FMCSA and state personnel who enforce operating authority requirements provide a process that the public could use to report on those parties that are operating without the necessary authority.

B. USDOT Numbers

OOIDA supports phasing out the use of current MC, MX, and FF numbers, and strongly supports the adoption of a distinctive suffix to DOT numbers for Mexico-domiciled carriers. In fact, FMCSA should adopt a unique suffix that applies to all foreign domiciled carriers. Foreign

carriers, their drivers, and their trucks, face operating limits under NAFTA, immigration, and customs law that do not apply to domestic carriers. Distinguishing between all foreign and domestic domiciled carriers will be important to support the enforcement of these laws.

C. Transfer of Operating Authority

OOIDA supports the proposal to eliminate most transfers of authority and suggests one additional exception. FMCSA has appropriately identified the need for such authority to be identified with the ownership, management, or control of the carrier. There are circumstances, however, upon the death or disability of the principal or sole proprietor of a motor carrier, where it would be appropriate for the spouse or child who has been involved in the motor carrier's business to assume control of the carrier without having to file for new registration. OOIDA encourages FMCSA to consider this exception.

D. Biennial Update Requirement

OOIDA supports replacing MCS-150 with MCSA-1 and requiring the filing of a notice of changes to the information on this form within 20 days. The filing of this form should be applicable to all types of motor carriers, including all foreign carriers operating within the United States. The FMCSA does not explain why it would exempt Mexican carriers from this filing requirement, and OOIDA can think of no reason for such an exemption.

E. Proposed User Fees for the New System,

F. Registration Fees, and

G. General Fee Policy Changes and Revised Fees

Section 4304 of the new highway reauthorization law amends 49 U.S.C. § 13908(d) to require the Secretary to establish a fee system applicable to virtually all persons required to register with FMCSA, similar to the one proposed in the NPRM. Because the fee structure is assigned to a new advisory board, this portion of the NPRM appears moot.

H. Financial Responsibility

1. Bodily Injury and Property Damage Insurance (BI&PD) Requirement

Section 4120 of the new highway reauthorization law amends 49 U.S.C. § 13139 to require the Secretary to extend the requirement for minimum financial responsibility to all private motor carriers of property. It then gives the Secretary the discretion to require private carriers to file the same proof of financial responsibility as for-hire carriers. Now that Congress has granted the Secretary specific authority to require minimum levels of financial responsibility to all private carriers, OOIDA sees no rationale, and the NPRM provides none, for FMCSA to impose this requirement only upon certain categories of private carriers.

The NPRM makes no assertion that non-hazmat private carriers are less of a potential risk to the public than non-hazmat for-hire carriers who must file proof of insurance. Nor does the NPRM explain how non-hazmat private carriers would more reliably obtain the proper financial responsibility than other types of carriers, thereby justifying their exemption from this important check on their compliance.

If the agency's goal is, as stated in the NPRM, "to better enable FMCSA to identify and bring into compliance uninsured motor carriers or remove them from the public highways," then this goal could only be served by requiring all private carriers to file proof of financial responsibility. OOIDA strongly encourages the FMCSA to require the filing of evidence of financial responsibility by all carriers required to carry it.

2. Cargo Insurance Requirement

OOIDA supports eliminating the current cargo insurance requirement. OOIDA agrees that most shippers require a higher amount. The amount currently required, \$5,000, is minimal and serves little useful purpose.

3. Insurance Filings by Insurers, Surety Companies and Financial Institutions

OOIDA supports *immediate* electronic filing of evidence of financial responsibility by insurers, surety companies, and financial institutions. The important goal served by this requirement is the usefulness of the unified carrier registration database. Having up-to-date, accurate information about the status of a carrier's or broker's financial responsibility would be a powerful tool for the public and members of the motor carrier community. With such information, these parties would be able to make better decisions as to whom they should or should not do business.

4. Self-Insurance

OOIDA has serious questions regarding the sufficiency of the requirements on self-insured motor carriers. Those rules do not appear to assure the same amount of public protection as an insurance policy. In OOIDA's experience, self-insured motor carriers do not face the same financial oversight or have to comply with the same regulatory requirements as do licensed insurance companies. This kind of oversight is normally provided by state insurance regulatory commissions. FMCSA rules for self-insured carriers should be sufficient to ensure that they have the financial resources to cover their potential risks and that they settle claims in a timely and accurate fashion. OOIDA supports whatever fee level is necessary for FMCSA to provide such oversight.

*** Point of Clarification**

OOIDA asks the FMCSA to clarify that the new section 49 U.S.C §13908 (d)(1)(2), limiting the fee for filing proof of insurance to \$10, is NOT a substitute for the proposed \$4,200 initial fee and the ongoing quarterly \$500 fee to self-insurers proposed in the NPRM.

I. Designation of Process Agents

OOIDA supports requiring private carriers and exempt for-hire carriers to file process agent information with FMCSA for the reasons expressed in the NPRM.

J. Administrative Filings

Giving registration applicants 90 days to file proof of insurance and a registered agent designation seems fair, but the proposal to dismiss the registration request after that time appears arbitrary and without purpose. What burden is it to the FMCSA to retain an application until the carrier provides the insurance and registered agent information? OOIDA can think of no reason for FMCSA to arbitrarily dismiss an application, take the fee, and make the applicant file all over again after 90 days. FMCSA loses nothing after 90 days, but the applicant could lose considerable money and time. Obtaining authority is in the interest of the carrier, and it is likely that very few applicants are going to exceed the 90 day period. As long as the information on the application remains current, OOIDA sees no purpose to having a time limit for the filing of proof of insurance or a registered agent designation. OOIDA asks the FMCSA to abandon this proposal.

K. Cancellation and Reinstatement of USDOT Numbers

Presently there is no time limit for the cancellation of USDOT numbers. This policy should remain unchanged. FMCSA is mistaken in its assumption that an inactive carrier for more than two years is functionally equivalent to a new entrant. Many motor carriers, including OOIDA members, may, for economic reasons, decide not to operate under their own authority, but operate under another carrier's authority for a period of time. There is no reason to believe that such an operator has lost his knowledge of a carrier's safety responsibilities. There is no justification to require such a carrier to pay the registration fee again and undergo a new entrant

review in order to activate its registration.

L. The New Application Form

OOIDA supports the combination of several forms into one new form. This form will help streamline the application process and reduce confusion now created by different forms and requirements. OOIDA encourages the Agency to continue its cooperation with the Small Business Administration to make this form available to small businesses in an interactive electronic format. The Agency should also make the form available in paper copy to those who are not computer savvy.

OOIDA believes that the collection of information for the purpose of gathering an accurate view of the trucking industry is a worthy effort. This collection should not, however, be viewed as a replacement for the collection of extensive motor carrier financial information at the Bureau of Transportation Statistics ("BTS"). OOIDA also supports the collection of information about the identification of carrier and cargo classifications and the inclusion of household goods arbitration information.

* **Enforcement**

For the information collection effort to be complete, FMCSA will need to consider enforcement efforts to ensure that information is provided on the forms is accurate as required by 49 U.S.C. § 14901. From OOIDA's observation, the breakdown in carrier compliance with the financial filing requirements at BTS demonstrates that the mere existence of this statute is not enough to ensure compliance. Perhaps the threat of denial or revocation of a carrier's registration will improve compliance.

The proposed rule in section 360.25(a)(4) would penalize parties for not filing or filing false or misleading information on its biennial report. This rule should be expanded to include

the initial filing, proof of insurance filing, agent for process filing, all Form M filings, and all updates to those forms.

* **Citizenship Requirement**

A moratorium was established by the Bus Regulatory Reform Act of 1982, prohibiting persons with Mexican and Canadian citizenship from obtaining U.S. operating authority. That moratorium has since been lifted by executive order for Canadians. Because of the continued restriction on persons domiciled in Mexico, OOIDA believes that it would be important to ask for, on the new form, the citizenship of the individual with control over the motor carrier.

OOIDA notes that there is a limited type of "Enterprise Authority" mentioned on Form OP-1 available to Mexican citizens. It would seem required by the new law that such authority be defined and specified as part of the new registration form.

Additionally, OOIDA can think of no circumstance whereby a person who is neither a United States Citizen nor a permanent resident with permission to work within the United States should be permitted to register a motor carrier. Homeland Security interests would clearly be served by such a prohibition. The collection of information related to the citizenship and legal status of the applicant would be necessary to serve such a rule.

* **Patterns of Violations**

As mentioned in comments above, the new law provides for FMCSA's monitoring of patterns of safety violations by motor carrier management. To better perform this function, OOIDA recommends that the registration form ask for the name of the principles, officers, business associates, and controlling parties in a motor carrier. All updates to a carrier's registration should include updates to this personnel list. Keeping irresponsible persons out of the motor carrier industry is an important function of the registration requirement.

M. Multi-Phase Application Process

OOIDA supports the multi-phase application process.

VII. Special Transit Operation Provisions

OOIDA opposes relieving Federal Transit Administration grantees of the requirement to pay filing fees. If the FMCSA is attempting to set its fees structure at a level that supports the cost of the program, then every other motor carrier will be subsidizing FTA grantees. The NPRM describes no rationale for relieving what are essentially private companies with a government contract of their fair share of the cost of the registration program.

VIII. Systems Under Consideration for Merger with the New Unified Registration System

A. Registration for Certain Mexico-Domiciled Motor Carriers

The NPRM does not propose to register Mexico-domiciled motor carriers who operate between Mexico and points in the United States beyond border commercial zones along the U.S.-Mexico international border. Section 4304 of the new highway reauthorization law, establishes in the new 49 U.S.C. §13908 that the Unified Carrier Registration System “shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers...and others required to register with the Department of Transportation.”

Foreign motor carriers who must register with FMCSA to operate beyond the commercial border areas certainly fall within this description of carriers who must be part of the Unified Carrier Registration System. “Unique” conditions surrounding Mexican motor carriers, and all foreign carries for that matter, may warrant requiring them to complete additional sections of the new combined form, but does not warrant a separate system.

B. Hazardous Materials Safety Permit Application Process and
C. Hazardous Materials Cargo Tank Registration Process

Because the new 49 U.S.C. §13908 requires that the Unified Carrier Registration System “shall serve as a clearinghouse and depository of information on, and identification of, all foreign and domestic motor carriers...and others required to register with the Department of Transportation,” OOIDA believes that this necessarily requires the inclusion of hazmat permitting and cargo tank registration in the system. The appropriate information should be gathered on the new combined form. Currently, an applicant must make several phone calls to other agencies to fill out the various forms. OOIDA would recommend that the new form clearly indicate what sections are to be completed if applying for those permits.

IX. Performance and Registration Information Systems Management Program (PRISM)

OOIDA continues to support the PRISM program. Today, owner-operators who operate under a carrier’s authority are required under PRISM to obtain a DOT number for tracking purposes. Now under the proposed rule, states would not be able to obtain a DOT number. This would frustrate owner-operators’ ability to register their vehicle with the state. FMCSA seems to suggest that owner-operators must file an MCSA-1 to obtain a DOT number even if they are not a motor carrier and are not required to make any other filing. OOIDA suggests that states continue to be provided a mechanism to obtain DOT numbers for registering owner-operators. A simple, separate electronic form could be used at the time the vehicle is registered, and owner-operator DOT numbers could be maintained in the UCRS system. Such a procedure would not disrupt the new reporting system, but would facilitate owner-operator vehicle registration.


X. *Regulatory Evaluation of the Unified Registration System (URS) NPRM: Summary of Benefits and Costs*

The highway reauthorization law now gives primary responsibility to set registration fees to a new board including members of the public. OOIDA reminds the agency and all those who may participate on such a Board that its decisions related to fees must go through the same regulatory evaluation as fees set by rulemaking, and they also must be subject to review under the Regulatory Flexibility Act.

IV. CONCLUSION

There are many positive benefits to the new combined registration system. Applicant time and effort will be saved, the FMCSA and states will have better information on each motor carrier to perform appropriate enforcement, and the FMCSA and the public will benefit from a more comprehensive picture of the motor carrier industry created by the data collection. OOIDA believes its suggestions would help further each of these goals. Thank you for your consideration of these comments.

Respectfully submitted,



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