

**FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION  
UNIFIED REGISTRATION SYSTEM  
DOCKET No. FMCSA-97-2349**

**SUBMITTED BY:**  
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## **I. INTRODUCTION**

The American Trucking Associations, Inc. (ATA) is pleased to submit the following comments in response to the Supplemental Notice of Proposed Rulemaking (SNPRM or rulemaking) issued by the Federal Motor Carrier Safety Administration (FMCSA or the agency) on the Unified Registration System (URS) for motor carriers, *76 Federal Register 66506* (October 26, 2011). (Without more, page numbers below refer to this issue of the *Register*.)

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,500 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

As the national representative of the trucking industry, ATA is vitally interested in matters affecting the safety of the nation's trucking fleet, as well as regulatory simplification and efficiencies.

## **II. OVERVIEW OF ATA'S COMMENTS**

Our comments here are in two sections, the first on the SNPRM itself, and the changes it proposes, and the second on the new Form MCSA-1 (MCSA-1 or the form), presented as an appendix to the SNPRM.

## **The SNPRM**

In general, ATA agrees with the concept of the URS, as outlined in the SNPRM. Such a system, which could effectively combine currently disparate regulatory mechanisms within FMCSA, should provide efficiencies both to motor carriers and to the agency, and provide the government with better data on motor carriers and the other registered entities. Since the URS is basically a data-processing system, however, the technical details of its design – not presented in the SNPRM – are of critical importance to its eventual effectiveness in accomplishing its stated purposes and functions. We anticipate that FMCSA will again involve the motor carrier industry and other interested parties as the technical development of the URS proceeds.

We direct FMCSA's attention to the comments ATA filed to this docket in 1996 and in 2005. We note that many of the recommendations we made in those filings have now been adopted by FMCSA. We need not restate here either those recommendations or our approval of those many points which FMCSA included in the earlier NPRM and has retained in the current proposal.

In one area, however, the concept that motor carriers might fulfill their registration obligations by filings with their base states under the PRISM program, we have serious concerns. The SNPRM discloses so little with respect to these plans that we cannot assess their feasibility, or their chances for success. We strongly suggest that FMCSA amplify this aspect of the URS concept in a separate SNPRM (or even in a separate rulemaking divorced from the URS, of which it does not seem an integral part).

## **Form MCSA-1**

Unfortunately, the current draft of the form on which registered entities, and those applying to FMCSA for the first time, are to provide their data, is wholly inadequate for this purpose. In our 2005 comments to this docket, ATA argued that the Form MCSA-1 as it was then proposed – a form of 20 pages, with 14 pages of instructions – was far too lengthy, awkward, and complicated to encourage, or even to permit, compliance by the hundreds of thousands of entities that would be obliged to use it. We believe the form is deficient for the following general reasons.

- In the years since 2005, the form has swollen to 30 pages, plus 20 pages of instructions. It is simply too long and involved for FMCSA to expect full and accurate compliance from those who would be obliged to try to use it.
- Although the MCSA-1 is to be filed only on-line, the form as presented in the SNPRM shows no accommodation to this mode of use. Some potential adjustments to better adapt the form to this new filing requirement could in fact go some distance to making the form at least somewhat more practical.

- In many places, the instructions to the form, including the instructions on the form itself, are ambiguous and confusing.
- In a few places, there are arbitrary requirements, inconsistencies, or apparent errors in what the form calls for. In particular ATA very strongly opposes the novel and intrusive requirement that registrants disclose their revenue.

In our specific comments on the form we offer some suggestions on how the form may be improved. In general, however, we recommend that FMCSA entirely rethink the form and the agency's approach to it, perhaps in another SNPRM or, indeed, in a separate rulemaking, so that the internal data-processing changes stemming from URS itself may not be unduly delayed.

### **III. ATA's SPECIFIC COMMENTS**

#### **The SNPRM**

We are in particular pleased that FMCSA has (1) dropped the mechanism of the "tracking number" for carriers applying to the agency for operating authority, and (2) removed the proposed requirement that registered entities having a change in ownership, management, or control obtain a new DOT number. We continue to believe that both these provisions would have been unworkable in practice.

We are likewise pleased that FMCSA has determined to omit treatment in this rulemaking of (1) the fees associated with the self-insurance program and (2) any extension of financial responsibility requirements to private carriers other than those carrying hazardous materials. Inclusion of those issues here, as the agency rightly notes, would only further delay this already overdue rule.

We have some lingering concerns, however, in certain specific areas of the SNPRM.

- FMCSA proposes to allow motor carriers based in states participating in the PRISM program to fulfill their requirements to update their information biennially through filings made directly with those states. We believe this procedure will be at best quite difficult to coordinate, and the SNPRM reveals so little of how the idea might be implemented that it is impossible to determine whether it will work in practice. We recommend that FMCSA provide a clearer description of what is intended in this area. An additional SNPRM devoted to this subject seems to us to be in order. The interest of the public in this key element of the registration function appears to be too great for the matter to be left to be handled by amendments to the PRISM procedures.
- The SNPRM proposes to require registered entities to notify FMCSA of changes in certain data within 20 days, instead of the current 45 days. Considering that the

very nature of many of these changes (a change of address, change of business name, etc.) imply a disruption in the ordinary routines of a business entity, it may be unrealistic to expect such expeditious notification. For this and other reasons, ATA recommends retaining the current 45-day deadline. (In this general connection, we note that the SNPRM proposes no change in 49 CFR 365.413, regarding the procedure for motor carrier name changes. In light of the other changes proposed by the rulemaking, some revision of this provision may also be warranted.)

- ATA endorses the proposal to require entities applying to or updating their information with FMCSA to do so electronically. We believe this is not only feasible, but will obviate many discrepancies in the filing and processing of the data provided. However, we recommend that FMCSA give some attention to a back-up process, should the agency's own electronic systems be temporarily unavailable, by reason of natural disaster, terrorist attack, or the like.
- In our 2005 comments to this docket, ATA recommended that FMCSA's cargo tank program be excluded from the URS, or at least not included in Form MCSA-1. We renew that recommendation here, for the same reason; that is, the cargo tank program is not *per se* a transportation program, and can reasonably be handled in another manner. And its exclusion will help to prune the MCSA-1 to a more manageable size.
- ATA believes that the changes outlined in the SNPRM that FMCSA has made in the Form MCSA-1 are counterproductive, and make an overly lengthy, complex, and confusing form even worse. Our specific comments on the form follow in the next section.

### **Form MCSA-1**

For the most part, ATA's concern with this rulemaking is focused on the proposed new Form MCSA-1, which is to be the means of collecting the data and licensing applications that are to feed to URS. ATA believes that as it is presently proposed the MCSA-1 is wholly inadequate to this task. In general:

- The draft form is too long and involved.
- Although it is to be filed electronically, the form makes no accommodation to this mode of processing.
- The instructions for the form, including those on the form itself, are often ambiguous or misleading.
- Some of the form's requirements are arbitrary, inconsistent, or, in a few instances, apparently erroneous.

For these reasons, which are elaborated below, we urge FMCSA to rethink its entire approach to the form, which is so essential an element of the URS itself. This could well be handled in an additional SNPRM, or, perhaps, by a separate rulemaking.

#### A. Form Too Long

In 2005, we expressed concern with the form as it was then drafted, calling it unwieldy and complex. The form was then only 20 pages long, with 14 pages of instructions. Now it has grown to 30 pages, with 20 pages of instructions. By contrast, we note that the current Form MCS-150, the single form most often used by motor carriers to fulfill many of the obligations covered by this rulemaking, is only one page in length. Nevertheless, we have reason to believe that many smaller motor carriers are put off by even this relatively quite simple form, or misunderstand what data it actually requires them to provide.

At pages 66517-19, a number of the additions to the form are discussed. Quite clearly, the MCSA-1 has, in the agency's view, become an all-purpose form, combining numerous current forms, in addition to some new requirements. It has become, in short, the counterpart to the URS as a data system. But the system and the means by which data are collected for that system are two very distinct things. There seems to us no reason to amalgamate disparate requirements merely to have these united in a single form. Although we have not investigated closely, it appears likely that few if any registrants or applicants will have any business with at least half the form as it is currently drafted, and many with only a much smaller proportion of it.

The URS is a good idea; a unified system of this sort has the potential to make data-handling, coordination, and management much more productive for FMCSA – but only if the data are of high quality. An overly lengthy, very involved form is not a good vehicle for gathering high-quality data from hundreds of thousands of very disparate entities. If this problem – and it is very much a problem – cannot be otherwise resolved, ATA recommends that the MCSA-1 be split into a number of separate forms, along either functional lines or according to the type of entity required to report.

#### B. Form Not Well-Suited to On-Line Filing

In 2005, ATA commented with respect to this rulemaking that the proposal to require the MCSA-1 to be filed solely on-line was quite feasible and should eliminate many data errors. We still think so – provided the form lends itself to on-line filing. The current form, however, is not well-suited to on-line filing, and in fact shows little if any indication that its design took this important change into account.

The current FMCSA forms with which ATA is familiar are short, one or at most a few pages in length. A form of such a length requires little adaptation for on-line filing, since

a filer can see most or all of the form at one time, and in particular most or all of those parts of it which demand its attention. A longer form, however, requires different treatment on-line.

If the MCSA-1 is to be retained in anything like a single-form format – which ATA does not see as especially desirable, if in fact it is even feasible – we would offer the following suggestions, as a start toward adapting this very long form to on-line filing:

- The form should start by asking a filer what kind of entity it is, and providing a menu with the relevant choices. This could resemble in content, if not necessarily in format, the table comprising most of page 1 of the current draft form. In some cases, such as for carriers based in Mexico, subsidiary menus of narrower subchoices may be necessary.
- The second step would be to ask the filer what the filer’s purpose is in filing the form, the question again to be answered from a menu of the relevant choices – initial application for for-hire motor carrier operating authority, updating of data, and so forth.
- The filer having made these choices, the system would automatically direct it only to those parts of the form that match its identity and its purpose, and to no others.
- Separating the instructions from the form itself may not be optimal for on-line filings. It may be preferable to have the instructions for each form entry visible on the screen along with the entry itself, for ease of reference.

These are merely suggestions; those expert in designing on-line forms and formats may have quite other ideas that would work as well or better than these. But the draft form as presented in the rulemaking, we are convinced, will not function well for on-line filers.

### C. Form Instructions Ambiguous

However the MCSA-1 may be formatted, and however lengthy it or its successors may be, it will not serve its purpose well if the instructions for filling it out are not much clearer than they currently are. We do not pretend that this will be easy to accomplish; the form necessarily deals with a great many technical matters, and will be used by many different types of business operation that come to the form with differing predispositions. What follows in this section are only some examples of what we mean, but the problems in this area are pervasive in the current draft of the form.

The MCSA-1 is in its current draft very much a multi-purpose form. Throughout, however, the filer is referred to as the “applicant,” although only a minority, perhaps a small minority, of filers would be applicants for authority. The result will be confusion for those other than applicants, uncertain as to what parts of this voluminous form really apply to them. A more general, neutral term should be used; “filer” might do.

On the first page of the instructions for the form, in the line immediately above the bullet points, a reference is made to “interstate commerce as defined in 49 CFR 390.5.” This sort of technical reference will not be encouraging to unsophisticated filers as they begin to engage with this already intimidating form. And if they find the regulation referred to, they may well be misled again, to believe that interstate commerce only includes movements by vehicles that cross state lines. Elsewhere in the form, the term interstate commerce is handled somewhat more clearly; that needs to be done consistently throughout. In general, references to federal statute or regulations will rarely be helpful.

Although we note that even the current Form MCS-150 may not be as clear about this point as it could be, the MCSA-1 should state plainly and as often as may be helpful that while a registrant is *required* to update its data every 24 months, it *may* do so as often as it likes. The PRISM program, of course, effectively requires annual updates, a discrepancy that continues to confuse a great many carriers.

On page 4 of the instructions, under New Entrant Reapplication, the last two sentences are confusing and perhaps contradictory.

Where an existing form, such as the MCS-150, has been in use for years, and those filing it have become accustomed to the form and its instructions, it may be well, where this is possible, when the MCSA-1 asks for the same information as is currently asked for an existing form, for the MCSA-1 to use the same language as the existing form, and the same instructions.

On page 3 of the form, under Form of Business, the filer is asked to “select all that apply.” How can more than one apply?

On page 19 of the instructions, the section for a filer to report its Affiliations is especially unclear. What does “affiliation” mean in this connection? Is it the narrow, highly technical signification of the federal tax regulations, or some other meaning? At its broadest, the word can mean any business, familial, or personal connection whatever.

As we said above, these are only examples of the *kinds* of problems that pervade the current draft of the form, and render it ambiguous in places and wholly mystifying in others. It is by no means an exhaustive list of instances. As the form is redesigned, much more attention must be given to this area.

#### D. Form Arbitrary, Contains Errors

On pages 5 and 6 of the instructions, some of the requirements with respect to the filer’s name and address seem arbitrary. It would probably be preferable not to state so definitely that a “terminal address” is not acceptable. Many trucking companies’ headquarters office may, in effect, be a terminal, and if the use of this address is barred to them, what address are they to use? And why is a post office box prohibited for a

mailing address, as long as a physical location has been provided for the principal place of business? Many of the smallest trucking companies operate almost wholly out of a vehicle; the use of any physical address to receive mail may involve some insecurity for such operations, not to mention inconvenience. We note in this respect that the current Form MCS-150 does not prohibit P.O. boxes.

On page 5 of the instructions, at the top, there is a remnant of the 2005 NPRM's requirement that a carrier must notify FMCSA within 20 days of any change in ownership, management or control. This should be deleted.

On page 8 of the instructions, and on page 3 of the form, the filer is to enter its "gross annual revenue." This requirement is new, and there seems to be no reference to it in the text of the SNPRM. It appears to be required of all filers, and it is not at all clear what purpose such a requirement could serve. Motor private carriers are, by definition, engaged primarily in businesses other than transportation; and many motor carriers operate ancillary businesses as well. Moreover, many businesses quite rightly regard this data as proprietary. Such a novel, intrusive requirement is unwarranted without a full explanation of a valid regulatory purpose, and there is none here. The requirement should be deleted.

On page 6 of the instructions, the word "publicly" is misspelled. On page 19 of the instructions, the last instruction should probably refer to "questions 1 through 8."

#### **IV. CONCLUSION**

In conclusion, ATA repeats its general support of the Unified Registration System, as outlined in this SNPRM. We have a few remaining concerns with the program as outlined, and we have laid those out above. In particular, we suggest that FMCSA seriously consider formally amplifying the idea that motor carriers might register for purposes of the URS through their base states under the PRISM program. This could be pursued separately from future development of the URS itself.

We have extremely serious concerns with the Form MCSA-1, as the form is presented here. ATA urges FMCSA to revise the form thoroughly, with special attention to shortening it, to adapting it thoroughly to on-line filing, and to making the instructions much clearer than many of them currently are. In a few places, we have significant concerns with the content of the form and instructions; those have been laid out in the third part of our comments as well. We suggest that this too could usefully be the subject of another SNPRM, separate from the development of the URS *per se*.

ATA thanks the Federal Motor Carrier Safety Administration for the opportunity to comment on this rulemaking.