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**Transportation of Household Goods; Consumer Complaint Information Quarterly Report,
Proposed Rule, 73 FR 9266**

Public Citizen files the following comments with the Federal Motor Carrier Safety Administration (FMCSA) in response to the agency's proposed rule on quarterly reporting requirements for carriers of household goods.

Consumer dissatisfaction with household goods moving services is widespread. In addition to the complaints logged directly with registered motor carrier companies, FMCSA annually receives over 3,000 complaints from consumers over moving services. An additional 9,800 complaints are logged with the Better Business Bureaus.¹ Additionally, the Government Accountability Office (GAO) recently concluded that there is little evidence that FMCSA's efforts to regulate household movers have significantly increased consumer protections.²

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)³ correctly identified a need for oversight and necessary consumer protections from fraud and abuse within the household goods moving industry. Public Citizen commends FMCSA for finally addressing this remaining SAFETEA-LU requirement for movers of household goods. It is due time that FMCSA complete the regulatory scheme for household goods movers outlined in SAFETEA-LU by creating a comprehensive complaint reporting system to enhance consumer information and protections. It is likely the proposed requirements will aid in the prevention of damage to customers, since upon completion of the publicly-accessible database, customers can more thoroughly research specific movers and their records and make better informed decisions. This is a valuable and noteworthy step in protecting vulnerable consumers from exploitation at the hands of unscrupulous movers.

Nonetheless, the proposed rule dictating quarterly reporting requirements contains serious flaws that threaten to undermine the openness and accountability envisioned by SAFETEA-LU. We note five

¹ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, CONSUMER PROTECTION: SOME IMPROVEMENTS IN FEDERAL OVERSIGHT OF HOUSEHOLD GOOD MOVING INDUSTRY SINCE 2001, BUT MORE ACTION NEEDED TO BETTER PROTECT INDIVIDUAL CONSUMERS, 10 (May 2007). (GAO REPORT)

² *Id.* at 15.

³ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59 (2005). (SAFETEA-LU)

flawed areas of the proposed rule in fundamental need of improvement. These flaws must be adequately addressed to ensure that consumers will be empowered to make the meaningful comparisons⁴ envisioned by the proposed rule and to effectuate the informed consumer protection scheme established through SAFETEA-LU mandates.

Our comments have four main points:

1. FMCSA should give consumers a single point of access to all the valuable information about moving companies. Both the consumer complaint database currently accessible through FMCSA's "Protect Your Move" website and the proposed quarterly reporting database must have uniform categories to register consumer moving complaints. These two databases should be integrated using a standard point of access and standard search parameters, including shared search terms and uniform complaint categories.
2. FMCSA must do more to ensure that this database is as helpful as possible to consumers. The complaint categories proposed in this NPRM are overbroad, vague, and inconsistent with the already-accessible consumer complaint database. These categories do not allow consumers to research companies and consumer complaint histories in ways that matter to them. FMCSA's final rule must adopt the more detailed complaint categorization structure established in the consumer complaint database currently accessible by the public.
3. FMCSA must do more to make sure that consumers are actually aware that all this valuable data is available. FMCSA must renew its consumer awareness campaign to ensure that consumers are aware of both the database searching options before a move and of their right to submit complaints to both carriers and FMCSA if they are dissatisfied with the moving services received.
4. FMCSA must establish a plan to enforce the provisions established in this proposed rule. While FMCSA proposes fines for carriers found to be in non-compliance with reporting requirements, it fails to outline any plan of how it will discover such violations.

I. FMCSA'S PROPOSED COMPLAINT CATEGORIZATION STRUCTURE FAILS TO ADEQUATELY DEFINE COMPLAINT CATEGORIES AND PROVIDE CONSUMERS MEANINGFUL DETAIL.

FMCSA must significantly revise the proposed complaint category structure outlined in the proposed rule on quarterly reporting requirements. As outlined in the proposed rule, the complaint category structure fails to provide the specificity and detail necessary to ensure that consumers are provided significant, helpful information when researching household moving complaints. The proposed complaint categorization structure also regrettably provides the means for household movers to report in starkly insufficient detail, establishing a low standard for mover accountability.

As a set of reporting requirements supposedly designed to enhance accountability, the proposed quarterly reporting requirement complaint categories are ill-defined and startlingly vague in operation. Under the SAFETEA-LU mandate, FMCSA must issue regulations requiring registered motor carriers of household goods to submit a quarterly report including "the number and *general category* of complaints

⁴ 73 Fed. Reg. 9267.

lodged by consumers with the carrier”⁵ (emphasis added). The proposed rule outlining the quarterly reporting requirements provides for only four identifiable complaint categories and one generic complaint category, as follows:

1. Loss and Damage
2. Service
3. Rates or Charges
4. How Claims are Handled
5. Complaints not falling within these four categories

FMCSA claims that this limited, vague approach will help the public “compare and measure meaningfully,”⁶ yet these categories fail to delineate which specific types of complaints are contained within the “general categories.” Absent from the proposed quarterly reporting requirements are any substantive definitions encompassing or detailing what types of complaints would be logged in these excessively broad categories. While SAFETEA-LU called for “general categories,” it did not call for undefined, overly broad categories that fail to convey a clear message and could potentially confuse inexperienced consumers.

A. FMCSA’s proposed complaint structure grants excessive discretion to household goods movers when categorizing complaints.

The NPRM’s general complaint categorization structure grants carriers significant leeway when examining and categorizing complaints, providing opportunity for carriers to potentially understate or misinterpret the proper complaint classification or severity. As written, the proposed rule lacks sufficient guidance instructing *how* specific complaints should be categorized such as examples of common consumer complaints and the categories in which they should be placed. This omission is disadvantageous to consumers, who could benefit greatly from standard reporting procedures that would provide assurances that all complaints among carriers are being classified similarly and correctly.

For instance, the GAO cites hostage as one of the most frequently recurring consumer complaints documented.⁷ Incredibly, hostage does not have its own category within the quarterly reporting requirements. The proposed rule provides no guidance on the proper classification for complaints of movers holding household goods hostage, leaving it up to potentially rogue carriers to best decide the proper category in which the complaint should be filed. This impermissible gap in consumer protection allows a moving company the ability to bury egregious violations within whatever general category it deems fit. This will jeopardize consistency in reporting among carriers and make meaningful comparison among carriers near impossible, since each carrier is allowed independent discretion in complaint categorization.

B. FMCSA’s proposed general complaint categories frustrate SAFETEA-LU’s rulemaking objectives.

SAFETEA-LU envisioned the use of both the consumer complaint database and the quarterly reporting requirement database for DOT compliance and enforcement programs within the household

⁵ *Id.* at 9268.

⁶ *Id.* at 9267.

⁷ GAO REPORT at 22.

goods sector.⁸ It follows from this direction that FMCSA should strive when developing each of the databases to gather detailed, accurate, and comprehensive data for potential compliance/enforcement projects.

Since consumers are most likely to log complaints first with the motor carrier, in order to initiate the dispute resolution process, moving companies are in the best position to provide the most accurate and detailed information to FMCSA regarding their complaint histories. FMCSA already requires that moving companies document all complaints received in detail.⁹ Yet FMCSA in this proposed rule, which mandates disclosure of these complaints received, opts to allow moving companies to report their complaint histories only in the most general terms. This approach impedes SAFETEA-LU objectives by reducing the quality and quantity of complaint information submitted by the players in the best position to provide such information.

FMCSA's current proposal fails to adequately bolster consumer protections and empower consumers with data of potential moving issues. Because FMCSA has proposed overly-broad, undefined complaint categories, household movers as an industry have less accountability than they would in a more detailed complaint structure. This decreased accountability conflicts with the consumer protection objectives established in SAFETEA-LU § 4214.

II. FMCSA HAS FAILED TO CREATE A UNIFORM SET OF COMPLAINT CATEGORIES FOR USE IN BOTH THE CONSUMER COMPLAINT DATABASE AND THE QUARTERLY REPORTING REQUIREMENTS DATABASE.

Under the proposed rule, FMCSA is in essence creating two separate complaint structure systems for the documentation of moving complaints: one structure for those received directly by FMCSA in the Mover and Complaint History Database (consumer complaint database), and a wholly separate complaint structure for those received and then reported by the carrier in the quarterly reporting requirements database. This decision to segregate complaint categories has the potential to create user confusion. It also discourages efficient cross reference between the two databases. FMCSA must remedy these database distinctions and provide for a uniform set of categories to be used by both systems. A unified approach to consumer complaint data would reduce confusion and unify complaint reporting priorities processes for the household movers sector. Doing so will also help implement GAO report recommendations, which highlighted the need for a consumer database with comprehensive, centralized data.¹⁰

A. Uniform categories should be modeled on categories in current consumer complaint database.

In contrast to the proposed quarterly reporting database, FMCSA's current consumer complaint database infrastructure provides useful, identifiable categories into which consumer complaints may fall. Where the proposed quarterly reporting requirements database contains only five broad, undefined categories, the currently accessible consumer complaint database¹¹ provides for nine different identifiable complaint categories and one generic category for uncategorized complaints. This approach, while providing "general categories" as described by SAFETEA-LU, provides far more recognizable distinction and utility to searching consumers:

⁸ See SAFETEA-LU § 4214 (b).

⁹ 73 Fed. Reg. 9267.

¹⁰ GAO REPORT at 18.

¹¹ See <http://ai.volpe.dot.gov/hhg/search.asp>.

1. Unauthorized Operations
2. Shipment Documents
3. Estimates/Final Charges
4. Weighing
5. Hostage
6. Pickup/Delivery
7. Loss and Damage
8. Claim Settlement
9. Other Commercial Complaints
10. Non-Categorized

The complaint categories in the proposed quarterly reporting database,¹² when compared to the consumer complaint database complaint categories, are significantly broader, less defined, and substantially vaguer. The result of these differences between the dual complaint databases is inconsistency and friction, rather than a streamlined, uniform, and complimentary system. FMCSA must remedy this inconsistency and provide for a uniform set of categories to be used by both systems.

In doing so, Public Citizen insists that FMCSA adopt the complaint category structure currently used by the consumer complaint database system. Not only would this create valuable consistency and uniformity among the dual complaint databases, but doing so would also force household goods movers to divulge in greater detail the nature of complaints received. Additional, thorough disclosure would provide valuable details to consumers researching moving complaint histories. The uniformity among the dual complaint databases would help reduce potential confusion among researching consumers and make it more visible and apparent that both databases document mover complaint histories. It will also provide the added benefit of allowing consumers to cross-reference complaints received by FMCSA and by carrier companies.

B. The general category structure embodied in the consumer complaint database provides more accessible, detailed information, benefiting consumers.

There are many reasons that the complaint classification structure used by the consumer complaint database is preferable that proposed for the quarterly reporting requirements database. In order to make the best informed decision when selecting an interstate moving service, it is vital that consumers have access to the most detailed complaint information possible. It is clear that FMCSA recognizes the value in establishing specific, discrete complaint categories; it chose when establishing the consumer complaint database to adopt more than twice as many complaint categories than the quarterly reporting requirement proposes.

Consumers using the currently accessible consumer complaint database can access specific details about any number of complaints with minimal effort, since the most common complaint types each receive a specific complaint category. This eases the resource burden of database use by allowing consumers, if they so desire, to pinpoint specific information without being forced to search ill-defined, excessively broad categories.

For example, when researching movers consumers would benefit from being able to obtain specific information within a broad category such as "Service" or "Loss/Damage." It would allow meaningful comparison and research into issues most important in their own, personal move. Yet

¹² *Supra* page 2.

FMCSA's proposed quarterly reporting system provides no such means of access. It provides only five categories, placing the burden of unearthing specific types of complaints (of which there are many) and the details therein fully on consumers, even though motor carriers could be made to straightforwardly divulge them under this regulatory scheme.

C. The consumer complaint database alone is insufficient to comprehensively document moving complaints.

The consumer complaint database, though it offers detailed complaint classifications alone, fails to provide a complete measure of household moving reputations. Since consumers must voluntarily submit complaint information as a separate transaction from the dispute resolution process, the number of complaints received by FMCSA does not accurately portray the number of complaints actually received throughout the industry.

In contrast, the quarterly reporting database, if structured adequately, could be a comprehensive resource for consumers researching moves, since under the SAFETEA-LU mandates moving companies *must* report *each complaint received*. Adopting the consumer complaint database category structure for the quarterly reporting requirements would provide the triple benefit of maximizing the number of consumers complaints documented, maximizing the detail of the complaints recorded and unifying and simplifying a consumer-oriented reporting system.

D. Moving companies are in the best position to provide additional details regarding complaints.

Finally, it must be noted that savvy moving companies, charged with the statutory duty to submit complaints received and familiar with regulatory moving requirements, are fully capable of providing complaint history in far greater detail. In establishing such minimal requirements for complaint categorization, FMCSA dramatically underestimates movers' capacity to report.

Moving companies are in a unique position to provide comprehensive information; they not only possess technical and regulatory familiarity, knowledge and expertise but also are capable of providing full and complete disclosure of all relevant complaint details. Despite the relative expertise of a carrier company compared to a consumer, FMCSA has chosen to grant carrier companies far more generic complaint categories that do little to explain the nature of the complaint to a researching consumer. This decision benefits no one but carrier companies as an industry and sets the bar in these consumer protection regulations shamefully low.

This proposed set of excessively broad categories allows moving companies to evade their full reporting responsibility by omitting valuable details about the alleged complaint. FMCSA must err on the side of oversight and consumer protection by raising the bar higher and insisting that fully capable moving companies disclose in greater detail the nature of complaints received.

III. FMCSA CORRECTLY IDENTIFIED NEED TO GATHER TOTAL CARRIER TRIP DATA.

Public Citizen believes that it is necessary for all of a shipper's household goods transactions to be made searchable in order to effectuate SAFETEA-LU requirements. We applaud FMCSA for

proposing this comprehensive approach to quarterly reporting requirements and urge FMCSA to retain the requirement that quarterly reports submitted contain details, including total number of trips and trip length, of household good transaction handled by the carrier. Mandatory reporting of total transactions processed rather than simple number of complaints received promotes efficient and comprehensive record-keeping by the carrier. GAO has determined that FMCSA lacks sufficient information to determine the effectiveness of its programs,¹³ but mandatory reporting of all transit activities will help maximize FMCSA's oversight capacity by providing comprehensive information from which to judge efficacy. It will create business practice transparency that will have positive benefits for the vulnerable household goods consumer community.

Public Citizen agrees that public disclosure of this transactional data is also necessary to ensure that consumers can best inform their moving decisions. Publication of such information in the searchable database provides a point of reference with which to compare aggregate complaints lodged against a carrier and with FMCSA in the separate consumer complaint database. It will provide a "bigger picture" explanation of a mover's complaint reputation by permitting investigation of the actual percentage of moving transactions resulting in complaints, rather just complaints received. Such thorough disclosure may benefit a carrier even in the event a complaint is reported, since it will by necessity provide clear indication of how many processed transaction did *not* result in complaints. FMCSA must strive to ensure that pertinent information likely to aid the consumer in choosing a moving carrier is easy to access.

IV. FMCSA MUST INITIATE A RENEWED CONSUMER AWARENESS CAMPAIGN TO INFORM THE PUBLIC ABOUT THE AVAILABILITY OF QUARTERLY REPORTING DATA.

Visibility and transparency is absolutely crucial to any consumer complaint reporting system's success. If consumers are unaware of the ability to report complaints or search complaints logged against a potential carrier, even the most well structured and accessible database will fail to improve consumer protections.

A successful consumer protection campaign should fully exploit the potential of online services. FMCSA's web presence as federal regulator of consumer moving issues is absolutely vital. Data indicates that "consumers are increasingly choosing movers over the Internet, based on price alone"¹⁴ Often these decisions are made with little or no knowledge of the quality of service provided.¹⁵ Accessibility of complaint data online has the potential to increase use of the data, provided that consumers have the requisite knowledge that the databases exist.

It follows that FMCSA must do more to ensure that consumers researching movers online are made aware of FMCSA's role in moving regulation and of the complaint resource databases FMCSA maintains for consumer research. Establishing a web-based consumer information campaign in conjunction with the quarterly reporting requirements would provide maximum assurances that consumers are made aware of FMCSA's regulatory role and are best prepared to make informed moving decisions.

Data indicate that despite FMCSA's recent consumer-directed "Protect Your Move" education campaign, consumers experiencing dissatisfaction with household movers may be uncertain of their ability to report complaints directly to FMCSA. Reports indicate that the Better Business Bureau of

¹³ GAO REPORT at 35.

¹⁴ GAO REPORT at 35.

¹⁵ *Id.*

America receive over three times more complaints against household movers than FMCSA,¹⁶ even though FMCSA is charged with the statutory duty of regulating household movers. This disappointing data only further reiterates the need for a renewed consumer awareness campaign.

FMCSA is not without options to better enhance the visibility of its consumer moving protection programs. The GAO in its report also noted, “If consumers become aware of the information available on FMCSA’s Website while researching moving companies over the Internet, they may make a more informed choice and avoid being a victim of an illegitimate mover.”¹⁷ Public Citizen fully agrees with this observation and advises FMCSA to study the feasibility and impact of a regulatory requirement that moving companies with sites accessible through the internet provide a link to FMCSA’s moving regulatory homepage. Moving companies contracting with consumers must already provide an informational booklet¹⁸ to consumers upon contracting. Mandating that moving company websites link to FMCSA’s site would act as a logical extension and ensure that consumers researching and contracting online are informed and provided access to consumer moving protection information.

FMCSA could also require all moving companies provide disclosure statements informing potential customers of FMCSA’s complaint databases and complaint reporting hotline before entering contractual agreements. Notably, FMCSA’s currently marketed six-page “Protect Your Move”¹⁹ brochure fails to recommend in the “Choosing a Reputable Mover”²⁰ section that customers search the already accessible consumer complaint database. Instead, the section recommends consumers contact a local Better Business Bureau and other consumer protection agencies. While the “Questions” sections notes that complaints may be filed with FMCSA,²¹ it omits mention that these complaints are also searchable online. It is clear this brochure needs a thorough update to include information on the consumer complaint database. Based on the current insufficiencies of this brochure, mandating distribution of a second document informing consumers of the option to search complaints online would best ensure customers are informed when choosing a mover.

V. FMCSA FAILS TO OUTLINE HOW NON-COMPLIANCE WITH THE PROPOSED REQUIREMENTS WILL BE MONITORED OR DETECTED.

FMCSA in the NPRM proposes minimum penalties of \$650 to be assessed to carriers who are found to be in non-compliance with the outlined quarterly reporting requirement mandates. Fines can be imposed under the proposed regulations for a number of infractions, including failing to file the mandated quarterly report, omitting or providing false information, failing to adhere to the standardized form for reporting created by FMCSA.²² Public Citizen supports FMCSA for adopting penalties as an enforcement mechanism to help ensure carriers continuously comply with the proposed regulations.

Though Public Citizen strongly supports FMCSA in establishing a civil penalty system for non-compliant moving companies, we are disturbed that FMCSA’s proposed rule completely lacks any guidance as to *how* FMCSA will actually discover any qualifying violations. Absent from the proposed

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 31.

¹⁸ FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE, available at <http://www.protectyourmove.gov/consumer/awareness/rights/rights.htm>.

¹⁹ See FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, PROTECT YOUR MOVE, available at <http://www.protectyourmove.gov/documents/protect-brochure.pdf>.

²⁰ FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, PROTECT YOUR MOVE, 4.

²¹ FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, PROTECT YOUR MOVE, 5.

²² 73 Fed. Reg. 9268.

rule are any commitments to audits or compliance reviews that might uncover violations. Since FMCSA proposes to permit moving companies to submit the standardized reporting form electronically, without interaction or verification from any FMCSA employee, there is potential for omissions, misstatements, or oversights in reporting. Left unchecked, this high potential for material errors would greatly jeopardize the accuracy and integrity of the quarterly reporting database.

FMCSA has in the past been plagued with similar quantitative measurement issues, making it impossible to determine the efficacy of FMCSA programs. This failure to enact significant enforcement and oversight measures is a historic FMCSA shortcoming within the household goods regulatory sector. In evaluating the overall functionality of FMCSA's household good protections programs, GAO stated, "Without performance goals that are meaningful, comprehensive, and measurable, and without evaluation, it is difficult to determine whether FMCSA's household goods program is accomplishing its intended purpose and whether the resources dedicated to the program efforts should be increased, used in other ways, or applied elsewhere."²³

FMCSA must provide strict commitments to quarterly verification of reports submitted to ensure the feasibility of the enforcement program it has established. The strategy must contain performance goals and measures that delineate a method for monitoring and evaluating FMCSA's performance against set goals and timelines, to improve consumer protection.

Without a system in place to actually detect infractions by moving companies, FMCSA's proposed penalty structure is rendered worthless. This tremendous oversight in actual enforcement feasibility is impermissible, and FMCSA must establish a review system when implementing the final rule.

VI. FMCSA MUST FURTHER DEVELOP A UNIFIED, STRUCTURED PLAN FOR DATABASE INTEGRATION.

We applaud FMCSA for proposing to integrate the quarterly reports required under this proposed rule into the COMPASS program²⁴ and to link the reports to the currently accessible consumer complaint database.²⁵ In order to best inform individual moving decisions, it is necessary that consumers have access both to consumer complaints logged directly with FMCSA and those complaints logged with individual carriers. Unifying a system to include streamlined access to both FMCSA-logged and carrier-logged complaints best ensures that consumers can readily discover the information they need to inform their carrier selection.

We stress, however, that as proposed FMCSA has failed to develop a concrete and orderly plan for the rapid integration of this information into the searchable database. The notice issued is completely devoid of *how* FMCSA will execute a successful integration into the COMPASS program and the searchable database template. The notice also lacks any explanation of whether or how the quarterly reporting database will be accessible through the consumer complaint database of FMCSA-logged complaints. FMCSA has also failed to provide meaningful assurances that integration into the under-development COMPASS system will be timely, how the information will be accessible in the interim, or when the delivery of the fully integrated COMPASS system could be expected.

²³ GAO REPORT at 20.

²⁴ 73 Fed. Reg. 9268.

²⁵ *Id.*

FMCSA must establish a specific and detailed information delivery timeline that ensures access to the quarterly reporting data as soon as feasible following the enactment of the final rule. If the final rule precedes the full integration and delivery of the COMPASS system, FMCSA must assure consumers that the quarterly reporting information will be accessible during the interim period, and that such information will be easy to find and accessible as a link from the currently operational consumer complaint database.

We believe that having a unified point of access for both searchable databases, both before and after the delivery of the COMPASS system, would have many advantages. Users already familiar with the FMCSA consumer complaint database would have instant exposure to the quarterly reporting database as soon as it is developed and functional. Sharing a point of access would provide exposure to the newly searchable database, potentially enabling consumers to access a greater amount of data and better inform their move. Of course, as we have already stressed, the two databases should be similarly categorized so the complaints from both sources can be effectively integrated.

VII. FMCSA SHOULD MONITOR THE CONSUMER USAGE OF BOTH THE CONSUMER COMPLAINT DATABASE AND THE QUARTERLY REPORTING REQUIREMENTS DATABASE.

Based on the findings of the GAO regarding FMCSA oversight, accountability and efficacy, Public Citizen urges FMCSA to track both its consumer complaint database and quarterly report database usage. Doing so could provide FMCSA with valuable insight into the actual utility these databases provide to consumers concerned with moving issues, and it would also allow FMCSA a measure of success in the development of consumer moving protections. Continued monitoring would also provide insight on areas in need of improvement and aid FMCSA in ensuring the best quality deliverable product.