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Docket Management Facility
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE. West Building,
Ground Floor, Room W12-140
Washington D.C. 20590-0001

RE: Docket No. FMCSA-2014-0211

Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers

The California Construction Trucking Association (“CCTA”) submits these comments in response to the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (“FMCSA” or “Agency”) publication of an advanced notice of proposed rulemaking (“ANPRM”) published in the Federal Register on November 28, 2014 (79 FR 70839), Docket No. FMCSA-2014-0211 concerning the Agency deciding whether to move to a full rulemaking intended to increase the minimum levels of financial responsibility for motor carriers.

The CCTA is a 501(c) (6) nonprofit trade association incorporated in 1941. CCTA’s over 1,000 member companies and another 5,000 affiliated member motor carriers engage in multiple modes of trucking operations from construction related to general freight operations. Our diversified group of member motor carriers operates in intrastate, interstate, and foreign commerce. Our members operate many different types and classes of commercial motor vehicles, including dump trucks, concrete pumpers and mixers, water trucks, port and border dray trucks, heavy-haul trucks, and class 8 over-the-road tractors. Member companies range in size from one-truck owner-operators to fleets with over 350 trucks.

Any proposed increase in the minimum levels of financial responsibility by FMCSA will directly affect each and every member of the CCTA – even those who only operate in intrastate commerce.

COMMENTS:

FMCSA has asked for a specific response to 26 different questions in the ANPRM. The CCTA offers the following comments on selected questions.

Premium Rates

Question #1: What are the current insurance premium rates (baseline) for each category of carriers (property, hazardous materials, and passenger) covered under the current financial responsibility regulations? To what extent do the premiums vary based on carriers’ safety performance information from FMCSA?

Since our members engage in a wide array of trucking operations, their insurance costs vary based on underwriting criteria involving many different factors such as: fleet size, previous loss-ratios, commodity hauled, time in the industry, range of operations (mileage based), individual driver safety data, and available fleet safety data such as that contained in FMCSA’s SAFER system.

We note that FMCSA claims on page 70841 that “Insurance premiums have declined in real terms since the 1980’s.” The CCTA questions the currency of that claim as our members across the board have experienced dramatic increases in the cost of liability coverage over the past three years.

While many carriers are reticent to share their actual insurance costs for competitive reasons, the CCTA has endorsed insurance brokers who have openly discussed the dramatic increases in the cost of liability coverage – especially for motor carriers based in California. Policies that cost only \$2,500 per truck three years ago now cost typically \$4-5,000 per unit to operate within a short-haul radius. Long-haul operations have experienced a similar dramatic increase in costs raising from approximately \$6,000 per unit and now widely ranging between \$8,000 and \$16,000 per unit.

In many instances, “new entrants” cannot find affordable coverage as the marketplace “hardens” as insurance carriers become more risk adverse. Even owner-operators with decades of verifiable safe driving experience who decide to no longer lease to an overlaying motor carrier and instead get their own operating authority have difficulty finding affordable coverage oftentimes paying premiums of 40% over standard rates simply to be underwritten.

Part of the issue California based motor carriers are facing is the exit from the marketplace of insurance providers related to losses partly attributable to the litigious nature in the market after a crash. Reduced competition within a market will always lead to increased costs associated with any product or service.

Question #3: What percentage of fleets, based on size and the type of operation of the carrier (passenger, property, hazmat), already have liability coverage that exceed the minimum financial responsibility requirement and by how much? What are the premiums for the policies that exceed the Federal minimums?

The insurance industry has a practice of filing proof-of-liability insurance coverage reflecting only the minimum required by FMCSA (\$750,000) – even when actual coverage amount exceeds the minimum required. Clearly, this practice removes the ability of FMCSA to effectively evaluate through its own database how many motor carriers already are carrying amounts in excess of the current minimum.

Most of CCTA’s members actually have one million dollars in liability coverage in-place – 33% more coverage than required by FMCSA. Carrying more liability coverage than the statutory limit has been a common practice for nearly 20 years as a direct result of transportation contracting requirements. A smaller sub-set of members also have excess lines (umbrella) of liability insurance coverage taking their combined coverage to two million dollars.

The premium range for primary liability coverage our members are experiencing was explained in our response to question #1. Excess lines (umbrella) coverage also goes through underwriting criteria however the cost is significantly less than the primary coverage in-place.

Impacts of Increasing the Minimum Level of Financial Responsibility

Question #7: Would an increase in financial responsibility requirements affect small and large motor carriers differently? If so, how?

The CCTA has a business services unit – *American Alliance Authority & Compliance* that assists people wishing to get U.S. operating authority. One of our business practices is to encourage a potential client as a first step to first seek out estimates on the cost of securing liability insurance coverage. Proceeding with the authority process without them having a comfort level that they in-fact will be bound over for coverage can end up being nothing more than a waste of their money.

In the market today, new entrants do face barriers in acquiring quality rated insurance coverage. Non-rated insurance is available but can be a hinderance to an upstart company if those they choose to conduct business refuse to accept the coverage.

Basically, the marketplace already has significant self-policing mechanisms that place a premium on most new start-ups. Any increase in the minimum levels of financial responsibility can be expected to further erode the ability of small upstarts to secure coverage at any price – likely the very reasons the proposal to increase minimum levels of insurance is supported by The Trucking Alliance, a small group of like minded large truck load carriers – it will eliminate competition.

Question #8: How would increasing the minimum financial responsibility requirements affect the ability of a carrier to obtain insurance?

See response to question #7.

Question #9: How would increasing minimum levels of financial responsibility affect safety, e.g., would carriers put off “optional costs” such as safety programs, preventive maintenance and investments in new technology, to cover the high cost of premiums? Would higher minimum levels drive unsafe carriers out of business? Is there any evidence that CMV carriers take more risks because they know they are insured? How could these effects be measured?

Anytime a business faces increased costs without a requisite increase in revenues something must “give.” The nature of trucking makes it difficult for small to mid-sized motor carriers to get cost recovery everytime there is an increase in their operational costs. In an already over-regulated environment, all businesses and especially small-businesses without the buying power of their larger competitors already make different purchasing decisions. Owner-operators and small-businesses “hold” their equipment for significantly more years than their larger competitors who have trade/turn-over cycles typically in the 3-5 year range. It’s not beyond speculation that smaller entities would hold onto their equipment even longer styming the natural attrition rate that would place more safety advanced trucks into the hands of smaller competitors.

The biggest unawered question concerning this ANPRM which makes it difficult for any meaningful assessment of the impact of a higher minimum level of insurance is: What would that level be and what would the cost increase be? Many industry pundits have made broad claims of the cost impact being anywhere from hundreds of dollars annually to cataclysmic predictions measured in the thousands of dollars just if the agency doubled the current minimum.

FMCSA asks whether higher insurance minimums would drive unsafe carrier’s out-of-business. We believe this is the wrong question. The question should be: would higher insurance premiums drive exceptionally safe operations from the marketplace? The answer is simply, yes.

The current insurance marketplace is puntative to poor performers. Motor carriers who are unable to secure liability coverage have an incentive to “re-incarnate” themselves as different corporate entities and attempt to re-enter the insurance marketplace as a new entrant. FMCSA is well aware of this type of sham to evade federal out-of-service orders, the same behavior occurs solely for insurance reasons.

Question #10: What are the current State insurance requirements and how do they vary from the Federal requirements?

Any increase in minimum levels of financial responsibility at the federal level can be expected to be emulated by many states. California law authorizes the commissioner of the Department of Motor Vehicles to adopt regulations incorporating by reference the federal financial responsibility requirements for operators of commercial motor vehicles – this affects vehicles engaged in intrastate commerce. The

following is a chart of California’s current requirements for getting a Motor Carrier Permit (intrastate operating authority):

LIABILITY INSURANCE REQUIREMENTS:

Use this chart to determine the level of liability insurance your operation requires based upon the Transportation Activities you marked in **SECTION 5** of the application. Activity B can qualify under any of the insurance limits depending on the type of property transported and the Gross Vehicle Weight Rating (GVWR) of the vehicle(s).

<i>If you are transporting...</i>	<i>then you are required to provide insurance at the following combined single limit...</i>
Property, other than hazardous materials, in vehicles with a GVWR of 10,000 lbs or less	\$300,000
Property, other than hazardous materials, in vehicles with a GVWR of 10,001 lbs or more	\$750,000
Any quantity of hazardous materials not subject to a higher minimum coverage	\$1,000,000
Oil listed in Section 172.101 of Title 49, Code of Federal Regulations (Hazardous Materials Table)	\$1,000,000
Non-RCRA hazardous waste (California-regulated only)	\$1,000,000
Petroleum products in bulk including waste petroleum and waste petroleum products	\$1,200,000
Hazardous substances as defined in Section 171.8 of Title 49, Code of Federal Regulations, in cargo tanks, portable tanks, and hopper vehicles in excess of 3,500 water gallon capacity	\$5,000,000
Division 2.1 or 2.2 gases in cargo tanks or portable tanks in excess of 3,500 water gallon capacity	\$5,000,000
Any quantity of Division 2.3 gas, Hazard Zone A (poison gas)	\$5,000,000
Any quantity of Division 1.1, 1.2, or 1.3 explosives	\$5,000,000

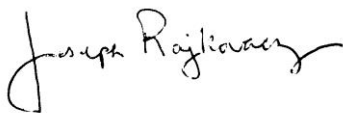
While some states “may” elect to keep lower levels of financial responsibility, it is not sound public policy to create a marketplace distortion where one motor carrier pays significantly less for coverage because they never leave a state, and their competitor next door who just happens to have U.S. operating authority and infrequently operates into neighboring states is saddled with much higher insurance costs.

Conversely, it would not be sound public policy to have two identically laden commercial motor vehicles operating in the same traffic lane within a state have two different levels of liability protection for the public.

As FMCSA weighs any cost benefit analysis of increasing the minimum levels of financial responsibility, the cost benefit analysis should necessarily take into consideration the states which will adopt by reference the federal requirements.

CONCLUSION:

To the extent FMCSA considers increasing the minimum level of financial responsibility, the least disruptive solution would be to increase the mandatory requirement to \$1 million as most trucking companies already carry that amount of coverage.



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