



MOTOR CARRIER SAFETY ADVISORY COMMITTEE

C/O: Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

November 5, 2014

The Honorable T. F. Scott Darling, III
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Acting Administrator Darling:

In May 2014, the Federal Motor Carrier Safety Administration (FMCSA) tasked its Motor Carrier Safety Advisory Committee (MCSAC) with providing advice to the Agency relating to financial responsibility and security requirements for motor carriers, brokers, and freight forwarders for FMCSA to consider as it develops a proposed rule.

The MCSAC met in public meetings on May 19-20 and October 28, 2014, to develop and discuss ideas relating to financial responsibility. The attached report includes recommendations for the Agency on various types of information, data, and concepts it should consider during the upcoming financial responsibility rulemaking.

I respectfully submit this report to FMCSA for its consideration.

Sincerely,

//signed//

Stephen C. Owings
Chairman, Motor Carrier Safety Advisory Committee

Enclosure

MCSAC Task 14-2: Recommendations to the Agency on Financial Responsibility and Security Requirements for Motor Carriers, Brokers, and Freight Forwarders

Introduction

In Task Statement 14-2, FMCSA requested recommendations from the MCSAC regarding financial responsibility and security requirements for motor carriers, brokers, and freight forwarders for the Agency to consider in its development of a proposed rule on financial responsibility. In making its recommendations to the Administrator, the Agency requested that the MCSAC consider FMCSA's recent Report to Congress, the Volpe study on financial responsibility, and other publicly available and privately held data and information from the insurance, motor carrier, and broker/freight forwarder industry.

Initially, the Committee struggled with this task, as many members felt that the MCSAC lacked sufficient information and data regarding commercial vehicle insurance markets or the impacts of increased coverage costs on motor carriers to develop recommendations regarding whether FMCSA should raise the minimum levels of financial responsibility and what those appropriate revised levels might be. However, Larry Minor, Associate Administrator for Policy, FMCSA, and the MCSAC's Designated Federal Official, clarified that the Agency did not expect the MCSAC to recommend specific required levels of minimum financial responsibility. Rather, the Agency expressed that it was interested in the Committee's ideas about ranges of numbers to consider, types of inflationary indices to consider, and potential precautions that might address damages associated with rare, catastrophic crashes. In line with this clarified guidance from FMCSA, the MCSAC presents the accompanying recommendations to the Agency on various types of information and concepts it should consider during the upcoming financial responsibility rulemaking.

I. What information should FMCSA consider as it develops a rulemaking on financial responsibility?

A. What is needed to cover claims?

1. What are the range of claims for property damage, for personal injury, and for fatalities?
2. What are the mean/median cost of claims that are settled without trial?
3. What is the distribution of those costs nationally?
4. Trial outcomes and pre-trial settlements should both be reviewed, although settlements may not be accurate regarding actual cost of claims.
 - a. Settlements may often be dictated by insurance policy more than cost of injury.
 - b. For this reason, it might be helpful to look to settlements paid by larger carriers that have policies for more than \$750,000 per vehicle.
5. Do settlements with carriers who self-insure differ from settlements paid by a conventional insurance policy?
6. Consider looking at settlement information outside of the trucking industry but that relates to the same type of injuries.
7. Because FMCSA contends the intent is to cover all but the rarest of crashes, the Agency should understand the percentage of crashes that are covered by the current minimum requirements.

8. FMCSA should consider the differences between passenger carrier claims versus property carrier crash claims.
 9. FMCSA should develop distinct datasets that differentiate the risk profiles of passenger carriers versus those of property carriers.
 10. FMCSA should consider the varying ranges of operating risks faced by different types of passenger carriers.
- B. What do varying levels of insurance coverage cost for different sized carriers? What impacts would different coverage cost increases have on different segments of the motor carrier industry?
1. FMCSA should find out from the insurance industry how the typical policy that they would write looks and how it would vary based on carrier size?
 2. What are the increases in coverage costs for additional \$1 million of coverage? Are the cost increases calculated per truck? Does the cost for such coverage increases vary with carrier size?
 3. FMCSA should consider developing a separate economic impact analysis for the passenger carrier industry.
- C. What are the values of lost life and of losses from catastrophic injuries (brain and spinal injuries)?
1. DOT uses value of statistical life of \$9.1 million (\$5.2-12.9 million for purposes of sensitivity).
 2. What are the ranges of life care plans necessary for brain/spinal injuries?
- D. FMCSA should try to determine (from safety technology providers?) which carriers are investing in proven safety technologies (e.g., collision avoidance technologies).
1. If they are informed investments, the additional cost must be worth the crash risk reduction and the Agency can learn something from that decision. Knowing the profile of such carriers might be informative.
 2. Are insurance companies factoring the use of such technologies into the cost of coverage? If so, how?
 3. Cost-benefit analysis of such technologies could help determine the appropriate minimum levels.
 4. J. Todd Spencer, OOIDA: For-hire companies that invest in advanced safety technologies do not have fewer crashes than those that do not.
 5. But other members noted that technologies can reduce crash severity, which is important in terms of risk coverage.
- E. FMCSA should confirm and be clear on the original baseline date for purposes of inflation and health care costs inflation (i.e., 1980 or 1985?).
- F. FMCSA should evaluate the costs and benefits of increased financial responsibility requirements on various segments of the motor carrier industry and on the residual insurance market.
- G. FMCSA should obtain more information regarding insurance coverage per vehicle for passenger carriers and motorcoaches specifically.
- H. How have other industries determined increases in minimum insurance levels?
- I. How many crashes include what could be considered as catastrophic injuries (if such data exists)?
- J. Gary Catapano, National School Transportation Association (NSTA); Rob Abbott, American Trucking Associations (ATA): There should be some standard of

reasonableness applied and some consideration of parity regarding passenger vehicle responsibility; often passenger vehicle insurance policies are not sufficient to cover resulting damage.

1. In States where there is joint liability and one underinsured party, commercial insurance policies may subsidize the underinsured passenger vehicle policies.
- K. FMCSA should reach out to primary and secondary insurance providers to inquire how they think minimum financial responsibility level increases would affect policy availability.
- L. FMCSA should talk to insurance providers that have exited the market to get their insight into what caused them to do so.

II. Inflationary Adjustment Approach

- A. In making the determination of an appropriate increase of minimum financial responsibility requirements, FMCSA should consider as a factor what such increases would look like if they were tied to the previous minimum insurance limits adjusted for inflation.
- B. Core vs. Medical Inflation
 - a. Generally, tying the increase in minimum limits to inflation of health care costs over time would be more appropriate for purposes of the coverage, i.e., compensation for injuries and death.
 - b. Tying an increase to core Consumer Price Index (CPI) (1985 base year) would result in minimum requirements of \$1.6 million for property carriers (~ \$10 million for passenger carriers).
 - c. Tying an increase to health care costs inflation (1985 base year) would result in minimum requirements of \$3.2 million for property carriers (~ \$21 million for passenger carriers).
 - d. Another option would be to tie the increases in minimum financial responsibility requirements to a hybrid of core CPI and medical CPI? For example, 75 percent medical CPI, 25 percent core CPI might be reasonable because not all compensatory costs are medical costs.
 - e. Another option would be a hybrid that would include a consideration of increased costs of claims settlements for well-insured carriers.
- C. Base Year (1980 vs. 1985)
 1. 1985 was the year in which the previous minimum limits were published, but it was based on 1980 dollars.
 2. FMCSA should give careful consideration to which base year is used as a starting point from which to adjust minimum financial responsibility levels for inflation.
 3. Using 1980 base year and medical CPI would raise property carrier minimums to \$4.3 million (~ \$28.4 million for passenger carriers).
 4. One option would be to compromise by using the 1980 base year, but a hybrid inflation factor that combined medical CPI and core CPI.
 5. Rob Abbott, ATA: The Volpe report indicates that no analysis has been developed that shows the basis for the previous established financial responsibility requirements/limits.
- D. Ongoing Adjustment Factor based on Medical Costs Inflation

1. The time period for review and adjustment of minimum financial responsibility requirements should be every 3-5 years.
2. FMCSA should consider carefully whether regular adjustments should be based on a review of data or an automatic adjustment based on CPI. Automatic adjustments may be something to consider because a full review based on new data would require notice and comment rulemaking and may delay an increase.
3. Option A: FMCSA could implement an automatic adjustment in minimum insurance limits based on medical CPI every 4 years.
 - a. In addition to an automatic adjustment, FMCSA should review the minimum insurance limits every 4 years to examine any new data and the state of the industry to potentially revise the minimum limits by some rate other than medical CPI at that time.
 - b. If review is not complete or is inconclusive at the 4-year deadline, the minimum limits would be automatically increased by medical CPI.
 - c. The Agency would likely use projected medical CPI in a rulemaking implementing this recommendation.
4. Option B: FMCSA could review the minimum insurance limits based on the data and state of the industry every 4 years.
 - a. This would require FMCSA to promulgate a notice and comment rule.
 - b. ATA believes that increases in the limits should only be made if data can show that that the current minimum limits are not covering a sufficient amount of claims and that the resultant premium increases could be borne by carriers at a reasonable cost.

III. Other Comments

A. Victims Compensation Fund

1. FMCSA should consider seeking authorization from Congress to implement a Victims Compensation Fund to pay motor carrier crash victims when their established claims exceed a carrier's insurance policies.
2. Funding could be attained in several different ways:
 - a. Via a surcharge paid when registering a vehicle in a State.
 - b. Based on risk – charge a fee that would go towards the fund for each citation.
 - i. Concerns about charging via citations: States may implement this charge differently. For this reason, some members expressed that the surcharge for the fund should be implemented the same way nationally.
3. Several members suggested that both intrastate and interstate carriers should have to pay into any Victims Compensation Fund.
 - a. FMCSA (Larry Minor) noted that 49 CFR part 387 (Minimum Levels of Financial Responsibility for Motor Carriers) does not cover intrastate carriers, except certain hazardous materials bulk intrastate carriers.
4. Compensation via a Victims Compensation Fund should not go to persons other than victims.
5. A Victims Compensation Fund with decisions on claim payments controlled by FMCSA would address concerns about too much insurance payout going towards attorneys' fees as well as crashes with multiple victims with catastrophic injuries that require long-term care.

6. Concern: A national Victims Compensation Fund may result in large carriers rationalizing that they can carry less insurance than they ordinarily would because the fund would be viewed as a fall back/back stop for victims of crashes when insurance did not cover the full amount of a claim.
- B. Passenger Carrier Mitigation/Relief
 1. FMCSA should consider the need for some mitigation/relief for passenger carriers if the Agency ties the increase of current limits to medical CPI (i.e., ~ \$28.4 million for passenger carriers based on 1980 base year).
- C. Economic Practicality
 1. FMCSA should consider an adjustment to make the minimum financial responsibility requirements practicable.
 2. Based on the economic impact analysis, FMCSA could determine whether a downward adjustment or a phase-in period would be appropriate to prevent significant job losses or elimination of small carriers in the industry.
- D. Phase-in Period
 1. A phase-in of increased minimum limits would allow carriers time to adjust their businesses to afford increased coverage.
 2. For both property and passenger carriers, FMCSA should allow a phase-in period that is calculated based on the Agency's estimate of costs, i.e., premium increases.
 3. Time periods that members expressed that might be reasonable: 3-5 years.
 4. Phase-ins were tied to capped minimum limits, i.e., not \$30 million.

IV. Dissenting Views

- A. Danny Schnautz, Clark Freight Lines: In light of the overwhelming absence of information and without an informed discussion on the impact of increased financial responsibility requirements on the industry or society, a recommendation that involves a specific number would be inappropriate.
- B. J. Todd Spencer, OOIDA: Regarding the topic of financial responsibility requirements, there is a lack of information, a lack of discussion regarding cost effectiveness, and lack of consideration of from where any numbers quoted came. Minimum financial responsibility requirements do not correlate to safety.
- C. Rob Abbott, ATA: FMCSA should acknowledge and consider the following statements from the Volpe analysis:
 1. If the limits are set too high, the costs will exceed the benefits.
 2. Contingency fees create strong incentives to maximize claims and direct a significant amount of insurance compensation away from victims.
 3. FMCSA should look at alternative means to reduce the number and severity of crashes.
- D. Peter Pantuso, American Bus Association (ABA):
 1. The Committee did not have enough reliable information to evaluate the task; much more detail was needed.
 2. Information presented from plaintiffs' attorneys is biased.
 3. More information was needed from the insurance industry. It would have been better to hear from someone on the inside of underwriting in the insurance industry, as opposed to someone on the sales side.