



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 387

[Docket No. FMCSA-2014-0211]

RIN 2126-AB74

Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: FMCSA withdraws its November 28, 2014 advance notice of proposed rulemaking (ANPRM) concerning financial responsibility for motor carriers, freight forwarders, and brokers. FMCSA is authorized to establish minimum levels of financial responsibility for motor carriers at or above the minimum levels set by Congress. In the ANPRM, FMCSA sought public comment on whether to exercise its discretion to increase the minimum levels of financial responsibility, and, if so, to what levels. After reviewing all public comments to the ANPRM, FMCSA has determined that it has insufficient data or information to support moving forward with a rulemaking proposal, at this time.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] the proposed published on November 28, 2014 at 79 FR 70839 is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jeff Secrist, Chief, Registration, Licensing & Insurance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, by telephone at 202-385-2367 or by e-mail at jeff.secrist@dot.gov. If you have questions on viewing or submitting

material to the docket, please contact Docket Services at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

ANPRM

On November 28, 2014, FMCSA published an ANPRM regarding Financial Responsibility for Motor Carriers, Brokers, and Freight Forwarders (79 FR 70839). In the ANPRM, the Agency announced that it was considering a rulemaking that would increase minimum levels of motor carrier financial responsibility for bodily injury or property damage¹ and sought information in connection with that potential rulemaking. In addition, the Agency asked several questions related to broker/freight forwarder financial responsibility as it continues to implement Section 32918 of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) (MAP-21)(79 FR at 70842).² Finally, the Agency asked a series of questions in the ANPRM pertaining to (1) trip insurance for Mexican carriers, (2) the discretionary imposition of financial responsibility requirements for motor passenger carrier brokers pursuant to 49 U.S.C. 13904(f), and (3) its self-insurance program for motor carriers.

Regarding the core ANPRM issue of motor carrier financial responsibility limits, FMCSA sought public comment on whether to exercise its discretion to increase the minimum levels, and, if so, to what levels. Specifically, in the effort to gather relevant data, FMCSA posed a series of questions addressing the following matters:

¹ FMCSA's regulations (49 CFR Part 387 Subparts A and B) require certain property and passenger motor carriers to maintain financial responsibility at the statutory minimums set forth in 49 U.S.C. 31138 and 31139.

² While FMCSA is withdrawing this ANPRM, the Agency continues its implementation of MAP-21 Section 32918 in a separate docket (FMCSA-2016-0102). On May 20, 2016, the Agency held a full-day informal roundtable discussion pertaining to broker/freight forwarder financial responsibility (81 FR 24935). The Agency received approximately 30 public comments in the meeting docket and is continuing to examine options for addressing the issues covered in that discussion.

- Premium Rates.
- Current Minimum Levels of Financial Responsibility.
- Impacts of Increasing the Minimum Level of Financial Responsibility.
- Compensation.
- Sources of Information.
- Timelines for implementation.

Discussion of Comments

The Agency received 2,181 public comments in response to the ANPRM. Various stakeholders commented, including representatives of motor carriers, insurance companies, broker/freight forwarders, safety advocates, attorneys, drivers, and many others. Approximately 120 submissions, including one submission reflecting a petition signed by 11,366 individuals, expressed general support for increasing the minimum levels of financial responsibility for motor carriers without providing a substantive rationale for their opinion. Approximately 145 submissions expressed general opposition to increasing the minimum levels of financial responsibility for motor carriers without providing a substantive rationale for their opinions. The Agency appreciates the level of interest shown in the ANPRM and the efforts that stakeholders made to provide responsive information.

FMCSA Decision

After considering whether to move forward with this rulemaking, the Agency has decided to withdraw the November 28, 2014 ANPRM because the Agency does not have sufficient data or information to support further rulemaking.

Despite receiving a significant number of comments in response to the ANPRM,

commenters did not provide responsive information necessary to allow the Agency to proceed to a Notice of Proposed Rulemaking.³ In particular, commenters did not provide sufficient cost or benefit data and the Agency was unable to otherwise obtain sufficient data on industry practice with respect to the level of liability limits in excess of the Agency's minimum financial responsibility requirements, the cost of such premiums and the frequency of, and the amount by which bodily injury and property damage claims exceed policy liability limits. The anecdotal and hypothetical data provided by commenters are not sufficient to allow the Agency to perform a systematic cost-benefit analysis that would be required to raise motor carrier minimum financial responsibility through a rulemaking. That is, based on the information provided, FMCSA is not able to determine (1) potential increases in insurance premiums associated with increased financial responsibility limits, or (2) or the impact of an increase in minimum financial responsibility requirements on insurance company capital requirements set by insurance regulators to ensure there are sufficient reserves to minimize the risk of insolvency and protect consumers. Moreover, FMCSA is not able to calculate economic benefits from having more financial resources available to assist crash victims associated with increased minimum financial responsibility limits.

³ In a November 5, 2014 letter to the Acting Administrator of FMCSA, the Agency's Motor Carrier Safety Advisory Committee (MCSAC) provided recommendations to the Agency related to financial responsibility requirements. While MCSAC provided useful information, its task was not to develop cost and benefit information for use in a rulemaking proceeding.

Issued under the authority of delegation in 49 CFR 1.87 on: May 25, 2017

Daphne Y. Jefferson,
Deputy Administrator

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