



August 10, 2009

U.S. Department of Transportation
Docket Operations M-30
West Building
Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Gentlemen:

RE: Federal Register Notice of Proposed Rulemaking (NPRM)
June 10, 2009
Docket No. FMCSA-2006-26262
RIN 2126-AB05
Minimum Levels of Financial Responsibility for Motor Carriers

The American Trucking Associations, Inc. (ATA), based at 950 N. Glebe Road, Arlington, Virginia 22203, is pleased to submit the following comments in response to the above referenced NPRM published in the June 10, 2009, Federal Register. The NPRM was prompted by a petition for rulemaking for changes in motor carrier minimum levels of financial responsibility, originally submitted on September 29, 2005, by the Government of Canada.

ATA is the national trade association of the trucking industry. Through our affiliated trucking associations, and their over 37,000 motor carrier members, affiliated conferences, and other organizations, ATA represents every type and class of motor carrier. The trucking industry plays a critical role in trade with the United States' number one trading partner, Canada, carrying 65.7% of goods by truck; trade that grew from 1991 to 2008 from \$176 to \$554 billion.

Background

The Government of Canada's petition requests that FMCSA amend 49 CFR Section 387.11 to permit Canada-based licensed insurance companies – both federal and provincial – to a) write motor vehicle liability insurance policies and b) to issue Form MCS-90 endorsements on these policies. These changes would allow Canada-domiciled motor carriers operating inside of the United States to satisfy FMCSA's insurance liability requirements by purchasing insurance policies through a Canadian insurance company that is authorized by law to issue these policies in the Canadian province or territory of the carrier's principal place of business. Currently, Canadian motor carriers that operate in the boundaries of the U.S. must "reinsure" through a U.S.-based legally authorized insurance carrier. The Government of Canada requests this action in order to take away the competitive disadvantage suffered by Canadian carriers that must comply with this additional insurance burden.

In the NPRM, FMCSA proposes:

1. Amendments to 49 CFR 387.11, to allow Canadian insurance companies, licensed in the province or territory where the motor carrier has its principal place of business, to issue proof of financial responsibility for Canada-domiciled motor carriers by executing the Forms MCS-90 and MCS-90B directly rather than as the agent of a U.S. insurer;
2. Amendments to other sections of part 387 to ensure consistency, including sections 387.35, 387.315, and 387.409;
3. Revision of sections 387.11 and 387.35 to add a new paragraph (d) that would allow an insurance policy to satisfy the financial responsibility requirements with some caveats;
4. Revision of section 387.315 adding paragraph (d) to allow a certificate of insurance to be accepted by FMCSA under specific circumstances; and
5. Revision of section 387.409 with a new paragraph (d) that would allow a certificate of insurance to be accepted by FMCSA if issued by an insurance company authorized to issue insurance policies under specific circumstances.

These amendments to part 387 mean that Canadian insurers will be able to execute Forms MCS-90 and MCS-90B endorsements, and allow Canadian insurers to file the required certificates of insurance. ATA understands that Canada-domiciled motor carriers would be subject to all applicable U.S. federal laws and regulations requiring minimum levels of financial responsibility for a commercial vehicle operating in the U.S.

ATA believes these proposed changes align the agency with the North American Free Trade Agreement's general objective to promote "conditions of fair competition" and with the harmonization objectives contained in the Security and Prosperity Partnership.

ATA has several comments on the NPRM, which we present below.

Issues Raised – Government of Canada Petition

ATA would like to see resolution of several issues raised in the FMCSA NPRM prior to implementation of the rule. These include:

- Canada-based insurance companies must comply with all of FMCSA's requirements for U.S.-based insurers;
- The oversight applied to Canada-based insurance companies must be at least as stringent as that applied to U.S. companies. We offer three compelling reasons to have oversight on the insurance companies utilized to satisfy federal financial requirements for trucking:
 - The company has to offer the terms and conditions required by federal statutes; most importantly the inclusion of the MCS-90 and other statutory forms to satisfy the protection of the public.
 - It is critical to have the ability to assess the financial condition of the insurance companies writing policies to satisfy the federal requirements. The coverage and satisfaction of the FMCSA requirements is only as valuable as the ability of the issuing company to actually fulfill the financial obligations required. U.S. insurance agents and brokers must have some responsibility and accountability to inform customers about the financial viability of the insurance companies that underwrite risks. A.M. Best, S&P, Moody's and others are commonly used analyze and report on an insurance company's financial condition; and
 - Foreign companies may be "non-admitted" markets in some states and therefore may not be participants in the "guarantee funds" that are the states' pooling arrangements. These pooling arrangements create funds to pay claims covered by an insurance company financially unable to pay the claims. In the event of a bankrupt insurance company, there would only be a backstop of coverage if the company had been "admitted."
- Canada-based insurance companies must comply with any other applicable U.S. insurance regulations. On a state-by-state basis, this could prove to be difficult if Canadian companies must register in each state and are subject to a variety of additional requirements in each jurisdiction. This would tend to discourage Canadian carriers from participating in the U.S. market. Is a modified admission into the U.S. market available for these Canadian insurers;
- Every Canadian policy must contain an endorsement stating that the insurance complies with U.S. law, and that it unconditionally complies with 49 CFR 387,

et., seq. (Endorsement language should be universal and specifically stated via an FMCSA regulation);

- .FMCSA must require the Canadian insurance company to acknowledge and give “full faith and credit” to any final and non-appealable judgment rendered against their insured in the U. S.
- The Canadian insurance company must designate an agent in each state for service of process as required for U. S. insurance companies under 49 CFR 387.11 (b).

ATA believes, based on feedback from our members, that having more insurance companies eligible to underwrite trucking companies operating in the U.S.A. could increase capacity and competition, resulting in additional choices and perhaps better pricing.

Conclusion

To the extent that the issues above are addressed, ATA sees no legitimate reason not to allow Canadian insurance companies to insure and satisfy the statutory requirements for trucking companies operating in the U.S.A.

ATA is generally supportive of the changes proposed by FMCSA in the NPRM, if the agency’s responses to our concerns are met. We thank FMCSA for giving us the opportunity to respond to the NPRM, and look forward to further discussions in the future on these important issues.

Sincerely,



Director
Customs, Immigration & Cross-Border Operations