Comments in Response to

"Financial Responsibility for Carriers, Freight Forwarders and Brokers"

Docket No. FMCSA-2014-0211

Submitted by the
National Association of Small Trucking Companies,
The Air & Expedited Motor Carriers Association,
Automobile Haulers Association of America,
The Expedite Association of North America, and
the Tennessee Motor Coach Association

February 26, 2015

COMES NOW the National Association of Small Trucking Companies (NASTC), the Air & Expedited Motor Carriers Association (AEMCA), Auto Haulers Association of America (AHAA) The Expedite Association of North America (TEANA), and the Tennessee Motor Coach Association (TMCA) and files this their comments in response to the Advance Notice of Proposed Rulemaking at Docket No. FMCSA 2014-0211, 79 FR 70839 entitled "Financial Responsibility for Carriers, Freight Forwarders and Brokers."

I. IDENTITY OF COMMENTERS

1. NASTC. The National Association of Small Trucking Companies represents over 5,100 small motor carriers. It provides business resources including education and training to small and new carriers. Its average member operates less than 15 power units and looks to NASTC for assistance in purchasing truck insurance. Extensive comments are attached as hereto *Appendix A* by its President, David Owen.

2. AEMCA. The Air & Expedited Motor Carrier Association represents over-the-road, regional distribution and pickup and delivery carriers who specialize in transporting air freight and expedited shipments. With few exceptions, its members operate less than 100 units and the equipment its members operate include straight trucks as well as tandem axle combination units.

3. AHAA. The Auto Haulers Association of America specializes in the transportation of new and used automobiles. It currently has 55 members with 5500 power units throughout the United States. Attached as *Appendix B* is a Statement submitted on its behalf by a knowledgeable retail truck insurer who works with its members.

4. TEANA. The Expedite Association of North America is an association composed of for-hire motor carriers who provide exclusive use expedited services utilizing a variety of equipment, including cargo vans (300,000 gvw), straight trucks and combo units (750,000 gvw). Comments on its behalf are attached hereto as *Appendix C* by an experienced insurance professional specializing in the excess liability markets involved in this request.

5. TMCA. The Tennessee Motor Coach Association has approximately 55 members who provide special and chartered bus services. Their comments are limited to questions concerning the existing $5,000,000 per occurrence limitation which it believes is adequate and the question concerning the need for deregulation of passenger brokers and a bond for which it sees no need. *See Appendix D.*

II. RESPONSE TO EVIDENCE IN SUPPORT OF INCREASED INSURANCE REQUIREMENTS

The Agency's Notice of Advance Rulemaking establishes the factual predicate, background and evidence in support of the minimum level of financial responsibility required in 49 C.F.R. 387. After reciting the history of increasing minimum insurance requirements, the Agency notes the statutory mandate of MAP-21 (Section 32104) which requires the Secretary to issue a report on the appropriateness of the current minimum financial responsibility for carriers, brokers and freight forwarders.

Preliminary research conducted by the FMCSA appears limited to a Volpe Institute study which examined:

(1) Higher compensation for crash victims;
(2) Transferring more of the cost of crashes to motor carriers;
(3) Reduction in truck and bus involved crashes;
(4) Costs imposed on carriers in the insurance industry; and
(5) Other relevant considerations. (See Fed. Reg. Vol. 79 at p. 70841.)

The Agency's highlights of the Volpe Study are summarized as:

(1) Catastrophic crashes in which claims for bodily injury and property damage exceeded current minimums of financial responsibility composed less than 1% of all crashes involving commercial motor vehicles (approximately 3300 of 330,000 total crashes per year).

(2) Severe and critical injuries can easily exceed $1,000,000.

(3) Insurance premiums have declined in real terms since 1980 (Volpe's analysis allegedly shows the relative stability of insurance rates over the past 3 decades, hovering around $5,000 per power unit).

(4) Current insurance limits do not adequately cover catastrophic crashes because of increased medical costs.

(5) Comprehensive data on premiums motor carrier would incur to meet higher coverage limits were not readily available.

The Agency acknowledges that the Volpe Study did not assess the regulatory cost of potential insurance premium increases. In its report to Congress, the FMCSA augmented the Volpe Study with research conducted by the Pacific Institute for Research and Evaluation (PIRE), the Alliance for Driver Safety and Security (Trucking Alliance) and the American Trucking Association (ATA).

(1) By looking at the range of liability awards for the most serious large truck crashes, PIRE recommended DOT set a minimum insurance requirement of at least $10,000,000 per crash and index the amount of required insurance for inflation.

(2) The Trucking Alliance (an association of major carriers with large umbrella coverage) tracked 8,692 accidents between 2005 and 2011 and claims that 42% of the monetary exposure from these settlements would have exceeded the $750,000 minimum insurance requirement.

Both PIRE and the Trucking Alliance, whether based upon analysis of catastrophic losses or their own experience, recommend that all operators of commercial motor vehicles be burdened by unspecified increased premiums to ensure that all catastrophic losses are fully recompensed.

In contrast to these limited studies, the ATA submitted evidence which showed that based on ISO data, the chances of a claim exceeding $1,000,000 per occurrence were .73% and that the average cost of a claim totaled only $11,229.

The Agency has sought comments concerning this conflicting data. In response, the five trade associations which represent small carriers will demonstrate that unlike the accidents analyzed in the PIRE study or the experience of the mega fleets which compose the alliance, judgments against them seldom exceed the $1,000,000 per occurrence most maintain (the ATA study properly shows that less than 6% of carriers maintain between $750,000 and $1,000,000).

Commenters will also endeavor to address two fundamental issues to any rulemaking involving increased insurance requirements: (1) a cost benefit analysis; and (2) an evaluation of increased insurance limits on small businesses.

In order to support any increase in insurance minimums, a new rule must be supported by a cost benefit analysis showing the public benefit to be derived outweighs the cost and burden on regulated entities. (See OMB Circular 4 at http://www.whitehouse.gov/omb/circulars_a004_a-4/.) In addition, under the Paperwork Reduction Act, regulatory burden and costs to small businesses must be weighed against the benefit.

Missing from the Volpe, PIRE and Trucking Alliance reports is any estimate of the cost of increased insurance limits on small carriers. Petitioners will show any increase in the minimum insurance requirements will place an unequal burden on small and new carriers based upon the marketplace realities which affect the insurance industry making it costly if not impossible to obtain coverage at new limits of liability, thus stifling competition and entrepreneurship.

Similarly, Commenters will challenge any conclusion that increasing insurance premiums for motor carriers will have any concomitant benefit to the victims of accidents involving commercial motor vehicles is misleading. Minimum insurance limits are allocated solely to reimburse victims for uncompensated compensatory damages.

Missing from the Volpe Study and the Agency's summary of its research findings to Congress are the following germane facts:

(1) 75% of the accidents involving commercial motor vehicles are caused by private passenger cars whose insurance limits are not prescribed by the FMCSA. Under most state statutes, the minimum auto liability insurance which must be maintained by passenger cars is $40,000 per occurrence.

(2) Victims in auto accidents typically have primary insurance sources to compensate them for property damage and personal injury, including but not limited to (a) physical damage, auto liability; (b) health insurance covering hospital and doctor care; (c) Medicare; (d) Affordable Care Act coverage; (e) Medicaid, etc. Judgment amounts do not take into account non-compensatory private healthcare providers.

(3) The vast majority of the extreme excess judgments is made up of non-compensatory amounts, including punitive and exemplary damages, pain and suffering, and windfalls to plaintiff's attorney (40% or more).

Commenters will show that increasing insurance minimums on all carriers is not as simple as passing along a flat surcharge per unit on all carriers. The premium insurance market does not work that way. For small and new carriers who lack years of loss runs, access to letters of credit, must make minimum premium guarantees, and have no access to many large underwriters, captives and self-insurance, obtaining excess liability insurance over $1m could be difficult if not impossible to obtain.

Commenters will show that there is insufficient data to prove that the benefit of any increased insurance minimum can outweigh the cost to be borne by small businesses.

In addition to commenting and providing evidence in support of retention of current levels of financial responsibility for operators of trucks and buses, Commenters will address the following issues:

(1) Implementation of MAP-21 with respect to broker and freight forwarder bonds (Question 18 and 19);

(2) The need for a broker's bond for arranging for the transportation of passengers (Question 25); and

(3) The need for a self-insured carrier to submit enhanced evidence of an adequate safety program (Question 26).

Finally, Commenters note that this Comment is addressed to an Advanced Notice of Proposed Rulemaking and that the Agency states it will consider all comments and material received, and "may draft a Notice of Proposed Rulemaking based on comments and other information and analysis." (Page 70839.)

While Commenters have tried to be forthcoming and answer relevant questions with the best evidence available, the Notice provides no proposed rule, offers no cost benefit, Reg Flex or Paperwork Reduction Act analysis for comment.

Although the Federal Register of November 28 does not say, Commenters can only assume the Agency will await the report of its MCSAC to be considered along with these comments and the promulgation of a Notice of Proposed Rulemaking, at which time formal compliance with the Administrative Procedure Act will commence.

CONCLUSIONS OF FACT

The attached Statements speak for themselves and demonstrate:

1. The number of catastrophic settlements and judgments which exceed existing insurance requirements is negligible and does not warrant increasing existing limits (less than 1%).

2. Commenters represent a variety of specialized service providers, including new and small carriers (NASTC), carriers which operate vehicles weighing less than 10,000 pounds gvw and less than 26,000 pounds gvw (AEMCA and TEANA), auto haulers (AHAA) and bus companies (TMCA), none of these carrier groups loss experience suggests that raising existing minimums is necessary to protect the traveling public. Bus companies are currently required to maintain $5,000,000 in insurance which is adequate.

3. Proponents of increasing insurance minimums include mega fleets which procure excess liability coverage to protect assets. Each can obtain umbrella coverage and participate in insurance offerings which are unavailable to new and small carriers which make up the vast majority of the carriers the Agency regulates.

4. It is a misconception to believe that the sale of auto liability insurance is a product to which all carriers large and small have equal access to or that rates are based upon an underwriting science that is risk based. Existing insurers willing to underwrite small and niche carriers are limited. Many insurers cap their policy limits at $1,000,000 per occurrence. Minimum premium requirements prepayment obligations, the law of large numbers and the economies of scale all suggest that carriers which are small business enterprises would pay individual premiums for excess coverage which exceeded aggregate risk analysis and imposed an increased economic burden not commensurate with any cost benefit analysis.

5. CSA's SMS methodology is not a useful tool for handicapping risk for catastrophic loss and its use masks systemic problems of the law of large numbers and crash accountability which results in higher premiums and unstable underwriting practices which would only be exacerbated if minimum insurance requirements were raised and insurers' exposure to the plaintiff's bar's settlement demands were increased by any order of magnitude.

6. Any increase above $1,000,000 per occurrence would encourage plaintiff's bar to increase their settlement demand for non-compensatory damages, thus requiring the insurance companies to raise their reserves. The result would be increased premiums. Upon the filing of suits for excess demands, insurers would simply cancel the small carrier's insurance resulting in their default of registration requirements.

7. FMCSA minimum insurance requirements already far exceed the minimum insurance requirements imposed on commercial motor vehicles under state law by the states which do not adopt the current federal standard (i.e., Fla. $300,000). Increasing the amount would only place a further burden on interstate carriers. See *Appendix E.*

8. With respect to broker and forwarder limits of liability and implementation of MAP-21, the Agency should promulgate rules which implements the publication of bond foreclosure by allowing the prompt filing of notices in the fed. Reg. It should otherwise promulgate rules which otherwise that make clear that only appropriately qualified sureties and financial institutions can issue bonds or trust agreements and that the surety or trustee must pay claims in good faith without delay or by resorting to expensive interpleaders or mandating judgments where the intermediary does not contest the debt.

9. With respect to passenger carriers, the $5,000,000 existing requirement is adequate and realistic in view of the enhanced exposure to loss of life in transporting passengers, and no felt need has been shown for reinstituting passenger broker regulations or requiring a bond given the localized nature of the special and charter bus industry.

APPENDIX A

STATEMENT OF DAVID OWEN

My name is David Owen and I am President of the National Association of Small Trucking Companies (NASTC) located at 2054 Nashville Pike, Gallatin, TN 37066. NASTC is dedicated to providing education, training and business resources to new and small carriers to enable them to provide safe and dependable transportation and compete for customers and the resources necessary to conduct interstate operations as motor carriers.

NASTC commenced operations in 1989 and currently has over 5,100 small carrier members throughout the United States. Among the services we offer are new applicant training, safety and compliance education, drug testing programs, assistance with legal and regulatory problems, computer software for dispatch and accounting and insurance services through our affiliate, NASTC Insurance Services, Inc.

The typical profile of our member is a carrier which provides irregular route for-hire service in interstate commerce and operates less than 30 power units, although a number of our members have as many as 100 or more trucks.

As a result, I am well aware of the insurance needs and requirements of the small motor carriers which make up the vast majority of regulated entities which would be affected by any proposed increase in the minimum auto liability insurance standards under 49 U.S.C. 387 and offer the following comments in response to the questions asked by the Agency in the above-described docket.

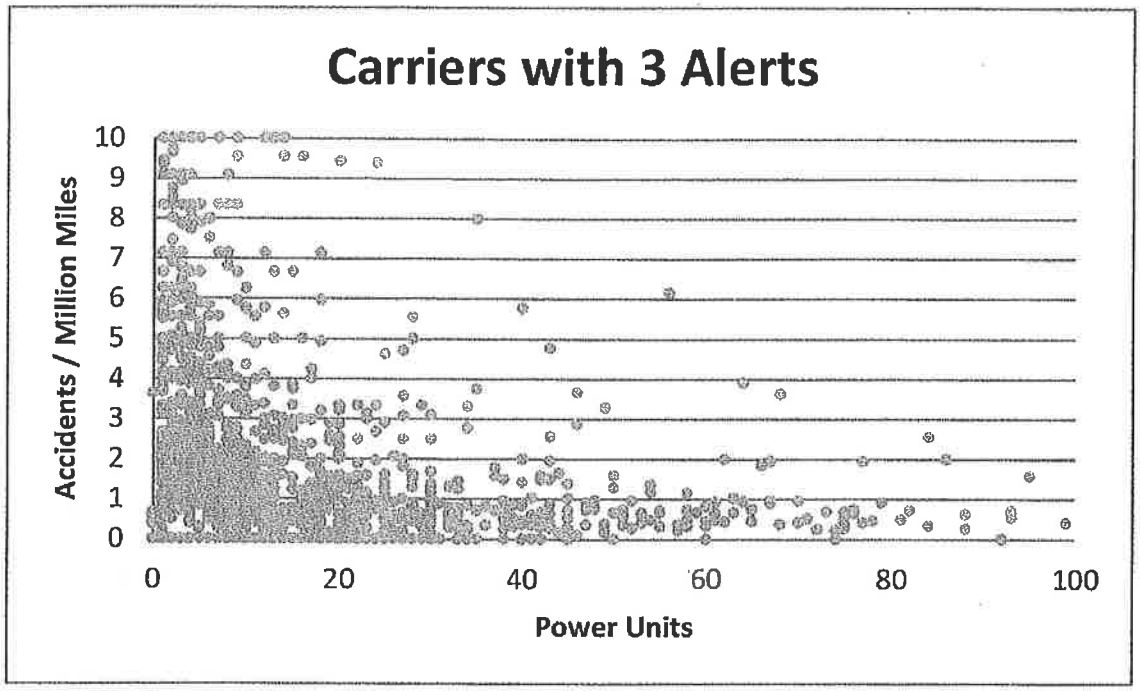
The first question the Agency asks is what is the current insurance base line for each category of carriers and to what extent premiums vary based upon carrier safety performance information from FMCSA. Based upon our experience, there is no "base line" premium rate for current insurance among over-the-road motor carriers of general commodities. Many of our clients carry $1,000,000 in BI and PD to meet the shipper's requirements.

Based on our experience, the premium a carrier must pay varies by a variety of factors including geography, length of haul, loss runs, competition among insurers, length of time in business, minimum premium requirements, carrier financial reserves and deductibles. Obtaining reasonably priced insurance is a major impediment to new entrants. Many underwriters simply will not write carriers with less than three years of experience and new entrants can be required to pay as much as two and a half times as much as established fleets, even though the new entrant must pass the Agency's audit procedures and its drivers must meet the same rigid hiring standards employed by the insurer on larger, more established fleets.

A good rate for a large, established fleet might be $4,000 per unit or less, while a new entrant can expect to pay as much as $10,000-$12,000 per unit for the same insurance. New and small carriers are going to incur significantly more costs for insurance than established mega fleets. Other countervailing factors such as geography may mean that carriers with identical profiles in one state may pay as much as two or three times more for insurance than similarly situated carriers in another. Accordingly, it would be entirely inaccurate to conclude that there is an underwritten base level for primary or excess liability that applies to all carriers, large or small, regardless of where they are located.

Safety performance information from the FMCSA is particularly unreliable when it comes to measuring new entrants and small carriers for several reasons. As the Gimpel Study shows and GAO found, the Agency lacks sufficient compliance data to accurately measure small carriers and new carriers are not profiled at all. Moreover, as long as crash data cannot be purged of its 75% error factor by determining preventability, concluding a small carrier is a bad risk because of random crash data is particularly unreliable.

Small carriers which exceed the Agency's SMS enforcement percentiles in three or more BASICs as a group have wildly fluctuating crash ratios which to the untutored suggests that as a group the small carriers are more crash prone, (yet the data further shows that 49% of the small carriers with three or more "alerts" have never had an accident).



The extent to which publication of SMS data, coupled with the Agency's suggestion that its algorithms are fit for use by insurers, has unjustifiably resulted in a hardening of the insurance market to the prejudice of new or small carriers. To my knowledge, no study of the use of SMS methodology by insurers has been undertaken. Yet, we have noticed churn among underwriters canceling coverage for small or new carriers based upon fluctuation in percentile rankings. We believe this volatility would only be exacerbated if insurance minimums were increased, making it more difficult for small carriers to get in business and procure stable sources of insurance.

Question 2: While I cannot assess how much additional capital insurance companies would need to cover new exposure if insurance rates were increased, based on current levels. Based on conversations **with** underwriters and the premium rates available to small carriers at the $750,000 dollar required levels, I believe any increase would damage the ability of small service providers to earn adequate profit and attract new capital contrary to the National Transportation Policy.

Question 3: What percentage of fleets based on size and type of operation have liability limits that exceed the minimum requirements and by how much? With very few exceptions, none of the under 50 truck fleets which are members of NASTC have in excess of $1,000,000 in public liability insurance. Based upon their risk assessment, the cost of umbrella coverage, and the very remote possibility of a judgment which exceeds policy limits, their cost benefit analysis does not justify the procurement of umbrella coverage. To my knowledge, no NASTC member has sustained a loss which exceeds its policy limits and accordingly, I believe there is no felt need for additional coverage.

For fleets of 100 trucks or more, their cost benefit analysis may be different. Umbrella coverage is cheaper, unsecured debt is greater, bank loans may require excess insurance coverage. Moreover, exposure to the possibility of excess judgment is greater when operating more units.

Question 4: How are insurance premiums determined? Each of the six questions concerning factors which are considered in establishing insurance premiums must be answered yes, but none of these six factors is determinative.

Questions 5 and 6 solicit information about how often carrier liability exceeds minimum financial requirements for crash and hazmat cleanup, how frequently carriers declare bankruptcy or attempt to reincorporate to avoid paying damages and what changes increasing the insurance requirements would have on such despicable behavior. Our truck insurance agency has not been involved in, nor am I aware of any liability claim for a NASTC member which has not been settled or resolved within policy limits or with any problem concerning bankruptcy or reincarnated carriers as a result of auto liability. We have no experience with unintentional release of hazardous materials from a NASTC carrier required to have $5,000,000 in coverage.

Questions 7 through 12 focus on the financial impact of increasing the minimum level of financial responsibility. In number 7, clearly any increase in financial responsibility would affect small carriers far more than large carriers. Small carriers do not enjoy the

advantages of high deductibles, risk retention groups, the economies of scale, the avoidance of minimum premium guarantees and fleet discounts.

Question 8, increasing financial levels significantly would affect the ability of small and new carriers to obtain insurance. The number of underwriters currently making markets for new and small carriers is constricted and many underwriters' risk appetite is for a maximum of $1,000,000 per occurrence. The URS and enrolling the BMC-91Xs for tens of thousands of new carriers in October will put strains on the truck insurance marketplace which would further exacerbate the difficulty in finding sources of excess coverage, particularly for small and new entrants.

Question 9 suggests that increased insurance costs could either adversely affect safety by reducing revenue available for new safety technology or encourage unsafe carriers because it would reduce carrier fears of uninsured loss. Both of these hypotheticals seem unreasonable as it relates to small and new carriers. Small and new carriers cannot afford to be cavalier about safety and recognize all too poignantly that a single at fault accident can put their business at risk. I know of no way any behavioral impact of increased limits could be measured.

Question 10. Attached are the intrastate requirements for operators of commercial motor vehicles. As shown, many states currently require far less than the federal minimum (e.g., Florida $300,000). If the Agency looked at the minimum financial standards for passenger vehicles, it would see that current FMCSA requirements for commercial motor vehicles are 10 to 20 times as much. Clearly, an increase in the current minimum would impact carriers crossing state lines, "including for-hire, exempt and private carriers." It would place a burden on interstate carriers inconsistent with the far lower minimum requirements applicable to intrastate CMV operators, much less the passenger vehicles with whom they share the highway.

Question 11. To my knowledge, none of NASTC's 5,100 carriers are large enough to participate in a risk retention group.

Question 12. To my knowledge, the vast majority of cases are settled before trial within the current minimum levels of financial responsibility. Based upon the report that the average claim settled for a per occurrence cost of $11,229 it would seem that the percentage of insurance cases settled before trial would not be greatly affected by an increase in the current minimums.

Yet, there is strong evidence to suggest that carriers with excess limits are far more subject to vexatious litigation and excess verdicts than small carriers. This results, I believe, because truck accident litigation is the province of plaintiff's bar which works on a contingency and typically surcharges the victims between 30% and 40% of any settlement or judgment in egregious fees. As an aside, I understand that the Congress member initiating this proposal is an attorney who specializes in truck litigation.

When a potential motor carrier defendant has excess liability coverage or "deep pockets" plaintiff's bar, regardless of the injury, is less likely to recommend that the client settle for policy limits and more likely to increase demand for settlement including not only compensatory but large non-compensatory claims which while included in any increase in the insurance minimum would not go to pay uncompensated compensatory hospital bills or loss of earnings.

Before the Agency becomes too enamored with the idea that increasing the financial minimum will ensure more complete compensation to all victims in catastrophic accidents, the cost benefit analysis must be weighed, recognizing that any increased compensation to the "victims" could result in compensation for non-compensatory damages.

Question 13. In this question the Agency asks what minimum levels of financial responsibility are needed to adequately protect against uncompensated losses associated with crashes.

Should over 500,000 interstate operators of commercial motor vehicles have umbrella coverage totaling millions per occurrence. Under Tennessee law, compensatory damages are capped at $750,000. Is that the appropriate limit?

The current $1,000,000 maintained by a large percentage of the for-hire motor carriers seems the reasonable amount, but what about the hundreds of thousands of private and exempt carriers for whom any per occurrence increase will seem like a specialized business tax for the benefit of unnamed possible victims and plaintiff's bar? It appears clear that there is no factual or legal predicate for increasing at all, the minimum financial requirements for operating a commercial motor vehicle. If Congress is concerned about ensuring lifetime medical care for every victim of an auto accident, the potential for uninsured risk does not lie with commercial motor vehicles alone and there are better ways of social reengineering than effectively taxing every operator of a truck in interstate commerce with what amounts to a surety bond for the full amount of any possible loss.

Question 14. In this question, the Agency asks for ideas on how the Agency can otherwise fund a pool to fully compensate persons who suffer catastrophic losses. This, I submit, is beyond the charter of the FMCSA. Minimum insurance requirements are specified in the Federal Code in order that there be one uniform minimum that applies across all state lines. The current level for interstate operations is many times more than the level imposed by state law. Under what enabling legislation could the Agency consider funding or administering a pool for victims of crashes caused by motor carriers operating in interstate commerce when no similar fund would exist for victims in crashes caused by non-commercial motor vehicles or commercial motor vehicles operating in intrastate commerce?

The final question in this section asks how would increasing the minimum financial responsibility requirements affect out of court crash settlement agreements? While it is somewhat speculative, I believe that increasing the amount of available insurance would simply raise plaintiff's bar's demands for settlement, making less likely that cases would be settled within policy limits. The result would be more litigation and more court.

Congestion and not for the intended purpose of paying otherwise unfunded compensatory damages

Many states have recognized the problem of court congestion. Michigan, for example, even enforces no fault provisions which require plaintiffs in potential property damage suits to seek sole recourse from their own insurer.

In response to Questions 16 and 17, I am not aware of how the FMCSA can obtain information concerning underwriting procedures and pricing from insurers. We have tried repeatedly to obtain a simplified pricing model from underwriters to better serve our members and have been unsuccessful.

In response to Questions 18 and 19, I do not believe any increase in financial responsibility can be justified in accordance with the Administrative Procedure Act and see no statutory warrant for a CPI escalator to ensure that every operator of a commercial motor vehicle had sufficient insurance to cover future losses.

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APPENDIX B

STATEMENT OF CARRIE WALL

My name is Carrie Wall and I am an insurance claims and risk manager employed by Bill Fralic Insurance. I have five years of experience in the insurance industry. I have been asked by the Auto Haulers Association of America (AHAA) to offer these comments in response to the Agency's Advance Notice of Proposed Rulemaking.

Our agency specializes in providing insurance services to the auto hauling industry and my comments are based upon my participation in claims and risk management for approximately 180 auto haulers. I will answer the questions asked by the Agency which are relevant to my experience.

Question 5: How often is the minimum level of financial responsibility insufficient to meet the actual cost? Do carriers file bankruptcy or attempt to reincorporate to avoid paying damages?

The minimum financial responsibility requirement, $1,000,000 per occurrence for light hazardous, is the amount which the vast majority of our auto insureds carry. It is nearly always more than sufficient to meet the actual cost associated with the crash. Only a very small percentage of our clients have claims where the actual costs exceed those limits and I am only aware of one case in which our client did not carry sufficient coverage to satisfy a judgment.

In my experience, cases in which judgments exceed $9,000,000 to $10,000,000 involve punitive damages which are frequently the major factor in exceeding the financial minimums, not the actual medical cost. In those cases, tort reform addressing non-economic and punitive damage caps is needed rather than higher minimums of insurance since truly catastrophic commercial wrecks are infrequent.

The Agency needs to understand that while the MCS-90 endorsement and the BMC-91X require the insurer to pay all judgments for which a carrier is legally liable, the Agency does not have control over the underlying policy. Thus, if the Agency requires endorsements and filings for higher levels of liability, the punitive damage portions of any judgment, if paid under the endorsement, will be charged back by the insurer to the underlying motor carrier.

It follows that any significant increase in minimum financial requirements will only further encourage plaintiff's bar to seek punitive and non-compensatory damages which, if paid under the endorsement, will be recoupable from the underlying motor carrier. There is no assurance that a judgment or settlement will be used to compensate plaintiffs for actual compensatory damages and not merely go to plaintiff's bar and to compensate the healthcare insurer.

With plaintiff's bar advertising for truck accident cases and promising plaintiffs windfall judgments, it is easy to foresee that increasing the minimum requirements would merely lead to greater litigation, the diversion of additional premium assessments in payouts to plaintiff's bar, and in punitive damages, without any assurance that all or any part of the settlement is going to pay the plaintiff's otherwise incurred medical expense or loss of wages.

Finally, the FMCSA cites studies stating the higher cost of medical care is the primary driver for this proposed rule. One of the biggest reasons for the rise in healthcare has been uninsured

patients. Hospitals cannot deny care to the uninsured and end up writing off large portions of their business which they offset by increasing the cost to those who have insurance and can pay. Since the Affordable Care Act was passed, more Americans will be insured and the amount of bad debt that the hospitals and other providers will have to write off will decrease. While the ACA is unlikely to reverse the rise in healthcare costs, ostensibly, it should slow it down.

In this context, to raise the cost of insurance on regulated motor carriers to fix unfunded gaps in the health insurance industry would appear to be social engineering to stop-gap the personal insurance/healthcare crisis with respect to operators of trucks. However, it would leave unaddressed the highway fatality figures which show that the vast majority of catastrophic accidents are self-inflicted or caused by other non-commercial motorists, whose state-mandated minimum financial responsibility requirement ranges from $10,000 to $50,000 per occurrence.

In our experience in the auto hauling industry, only one client has gone out of business after several bad losses, but that was due to the cost of insurance becoming unaffordable, not because a catastrophic judgment was too great to be paid.

Finally, I am not aware of any of our 180 insureds which have attempted to reincarnate themselves to avoid paying judgments, and I would assume that any fraudulent transfer of assets to escape liability would be subject to judicial process and recoupment.

Question 6: Financial responsibility requirements and the release of hazardous materials.

Our clients' policies have always been sufficient for hazmat spill cleanup.

Question 7: The effect of an increase in financial responsibility requirements on small carriers.

Small carriers would definitely be affected more than large carriers by any increased minimum. The markets available to small and new carriers are restricted. Many insurers are not interested in writing excess coverage over $1,000,000 per occurrence. Small carriers would have to turn to the excess market and pay higher setup fees and costs. Small carriers are already disadvantaged in purchasing primary coverage and the cost of umbrella or additional amounts would be far greater per unit than the cost to larger fleets. If small carriers could initially afford higher limits, they could easily lose their license to operate with one higher demand for settlement. One bad loss would clearly result in cancellation on 30-days' notice of most small carriers which would quickly label the small carrier as "damaged goods" and, in the absence of immediately finding a replacement, the carrier could easily be forced out of business.

In this regard, underwriters make coverage decisions based upon loss reserves, a conservative estimate of what settlement or judgment amounts may be incurred on specific claims. Higher catastrophic losses would clearly cause instability in the underwriting community and make it particularly difficult for small carriers to obtain and keep insurance.

Given the state of the current insurance market and the requirement that all operators of commercial motor vehicles (including private and exempt carriers) must soon file BMC-91Xs and complete the URS program, I seriously doubt the truck insurance industry has the appetite or the ability to offer increased limits of financial responsibility above $1,000,000 per occurrence to

the approximately 500,000 carriers which must be brought into compliance in October. I can easily see underwriters insisting on minimum premiums for small fleets that would be cost prohibitive or simply refusing to make an excess market given the risk involved.

Question 9: How would increased minimums affect safety?

There is no way to measure the effect of increased minimums on safety. Clearly, there is no evidence to suggest that drivers take more risks because they know there is catastrophic insurance coverage if they kill or maim someone. With the existing limits of $750,000 or $1,000,000 and insurance premiums of $5,000 to $12,000 per vehicle, carriers understand that their insurance costs are substantial. They know that accidents, if covered by insurance, are reflected in increased premiums, and carriers already put pressure on drivers to drive safely to prevent their rates from increasing.

Question 12: What percentage of insurance cases settled before trial and would increasing the minimums result in the same percentage of cases being settled?

Currently, only a very small percentage of cases make it to trial. Our experience is consistent with the FMCSA's data which shows that the vast majority of cases appropriately settle well under the primary liability policy's limits. A strong argument can be made, I believe, that if the minimums are increased, plaintiff's bar working on a contingency will increase their demands for settlement and efforts to increase judgment amounts through non-compensatory damages by litigating more cases. Thus insurance payments and carrier premiums will increase without any determinable correlation to whether or not the settlements that cause the increase are attributable to incurred or future medical expenses, long term disability, or otherwise unreimbursed health costs.

Question 13: What minimum levels of financial responsibility are needed to adequately protect against uncompensated losses associated with crashes?

The current minimum is adequate for the vast majority of claims. Substantially increasing the minimums to ensure coverage for very rare, uncompensated direct costs does not justify requiring hundreds of thousands of carriers to have excess liability insurance that is not needed.

Question 14: What other mechanisms, besides increased minimum levels of financial responsibility, are available to more fully compensate persons who suffer catastrophic loss?

Currently, risk retention groups exist for very large carriers who might also qualify for umbrella or excess limits policies, but I am aware of no other private industry solutions or alternatives. After conferring with our agency's top producer and counsel, both of whom consult for the AHAA, I agree with their assessment that, if the FMCSA were to consider a compensation fund for victims of catastrophic auto accidents, the program should be offered as a Social Security benefit to victims regardless of causation. Whether the accident is caused by commercial motor vehicle or otherwise, the government insurer would have subrogation rights for the direct excess medical costs against any party responsible for the accident.

Question 15: How would increasing the minimum financial responsibility requirements affect out-of-court crash damage settlement agreements?

Increasing minimum levels would increase litigation and drive up settlement/damage amounts. If claimants and plaintiff's attorneys know there are greater limits to pursue, they will be more willing to file suit since their chances of more lucrative jury verdicts will also increase. In turn, that will drive up pre-litigation insurance settlements, since insurance companies know they run the risk of bad faith suits if a jury returns a verdict in excess of policy limits.

Since historical judgments and verdicts are what drives plaintiffs' settlement demands, without serious tort reform, more lawsuits with higher settlements will increase the probability of runaway verdicts further. As a result, this will make insurance companies more inclined to settle high to avoid the courtroom and the expense of litigation.

Dated this 26th day of February, 2015.

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APPENDIX C

STATEMENT OF RICHARD BREN

My name is Richard Bren and I am Vice President of Transportation for International Excess Program Managers. I have 27 years of experience in the truck insurance industry. I am familiar with premiums and coverage issues involving motor carriers and the underwriting of primary and excess coverage. I have been asked to provide this Statement on behalf of The Expedite Association of North America (TEANA) a trade group with which I work to explain the unique underwriting and niche problems faced by TEANA members and other carriers which operate a variety of cargo vans, straight trucks, and tandem axle combination units in local PU and PD and over-the-road services. Some tractor trailer operations occur but light to medium vehicles are a significant part of this industry group's fleet design.

TEANA members provide exclusive use or hot shot services to industrial accounts offering a variety of vehicles depending upon the type of shipment. Although most of its members have less than 50 units of various sizes, several include fleets of 100 or more trucks. The type of equipment operated by TEANA members, courier services and members of the Air and Expedited Motor Carriers Association (AEMCA) is not of one type or description. This creates underwriting challenges and proves that in assessing the effects of any increase in minimum insurance requirements, does not meet the adage of "one size fits all" or permit the establishment of any base line to assess effects of increasing existing insurance limits.

Many of the vehicles operated by the expedite community weigh less than 10,000 pounds and are not classified as commercial motor vehicles, yet are subject to economic regulation and currently are required to maintain $300,000 in BI and PD coverage. But for the fact that these cargo vans provide for-hire service transporting regulated commodities and hence are subject to economic regulation, they would not be on the FMCSA's radar screen or subject to safety regulations.

This type of small equipment, including cargo vans, station wagons, and pickups is maintained by private industry, exempt carriers and other non-regulated enterprises which under the new URS and the dictates of Congress will soon be required to comply with insurance requirements placing extreme pressure on an already constricted number of underwriters.

Another significant segment of the fleets of expediters are composed of straight trucks, weighing between 10,000 and 26,000 pounds gvw which, though currently are required to have $750,000 in minimum liability coverage, do not fit the crash profile of 18 wheel, 80,000 pound OTR trucks which typically populate the current $750,000 minimum class of carriers.

There are few insurers which make markets for the expedite industry and other carriers which operate a variety of different sizes and descriptions of commercial motor vehicles. Expeditors have long complained to the Agency to no avail that the SMS peer group system unfairly lumps expeditors together with local pickup and delivery carriers in the important BASIC of Unsafe Driving where, because of the over-the-road nature of their operations, their scores are unfairly compared. Statistics show that when SMS methodology was initially implemented, for example, all the major van lines, like expeditors, were classified in a straight truck group for unsafe driving because they had 30% or more straight trucks, yet because of their OTR operations, all were found seriously above the enforcement threshold.

In the four years SMS has been published, the van lines have all rearranged their carrier profile, exited the straight truck peer group to find that their Unsafe Driving scores have decreased by an average of over 40 points. This demonstrates, I believe, how unreliable and prejudicial SMS methodology is to the expedite industry and how threatening publication of SMS scores can be if used by underwriters in assessing premium requirements, particularly for small and new expeditors where loss runs are not available.

Although I am not aware of any settlement or judgment by a member of TEANA operating less than 50 units which has exceeded the $750,000 minimum, most members maintain $1,000,000 in coverage and are forced to pay per unit premiums commensurate with the rates paid by fleets operating 80,000 gcwr combo units.

Because of the lack of underwriters and available markets, it is not uncommon for expeditors to pay $5,000 to $10,000 per unit, inclusive of cargo vans, sprinters and straight trucks which, for primary coverage, may be two to two and a half times more than the premium for large fleets operating heavier and hence potentially more dangerous equipment.

Large fleets are often eligible to develop Experience Ratings (ERs). ER is part of an overall rating program filed with the Department of Insurance and subject to oversight and control that varies by state. In assessing the cost of the increased insurance, though, the Agency must keep in mind that a cost of doing business exists and just to issue and maintain a policy, even with no losses, results in a cost factor. This basic cost is a larger percentage of a total premium charged for a smaller versus a larger account.

In this regard, the limited underwriting markets currently available to expeditors have limited appetite for writing excess coverage over $1,000,000. If the Agency were to impose increased premiums, virtually every expeditor would have to purchase a stand-alone excess policy which would include substantial underwriting costs not tied to loss experience. The fleets have a more analysis points, years of data to help demonstrate actual outcome and, with more data points, are generally able to obtain more favorable rates per unit than small and niche carriers.

Moreover, the truck insurance industry is subject to scrutiny by the state department of insurance and rating agencies such as A.M. Best. Such regulatory oversight has a chilling effect on the insurer's appetite. When new ventures and limited data on small accounts combine, underwriters apply more conservative rates resulting in higher insurance costs and less flexibility options.

As a result, if even higher limits of coverage are required of small and new ventures (and the expedite community in particular), insurers will likely cap their risk exposure and send additional risk elsewhere regardless of the rate that can be charged. They simply do not want to expose their surplus and underwriting results to an additional severity factor.

Over my career I have worked with three large truck insurers and their underwriting departments. They simply do not want to expose their surplus and underwriting results to a severity factor. Claims data suggests that the average claim and frequency of loss payment is under $100,000 per occurrence - this is the area where frequency in lost payments generally occur.

It is possible that any increase in the general minimum insurance requirements over $1,000,000 would leave the expedite community without primary markets and force many expeditors into the surplus market labeled as undesired or damaged goods with large required costs, set up fees, and premiums, if insurance were even available.

In the underwriting context, the Agency must understand that catastrophic jury awards are very few and far between, yet they are a wildcard in underwriting and handicapping losses. Moreover, the Agency cannot require truck insurers to change their insurance policies nor to ensure that the payment of claims pursuant to the BMC-90 or the BMC-91X will go as intended to defer non-reimbursable compensatory damages. Extremely high excess verdicts over the current minimums which would be covered by any increase in the insurance requirements are not limited to compensable damages or unpaid medical bills and a loss of income.

If the Agency could set minimum insurance requirements high enough to ensure payment in full of all catastrophic losses, it has no regulatory power over the insurance market to force the writing of policies for motor carriers which they could afford. In this regard, the support by larger fleets for increased insurance requirements for all carriers results largely, I believe, from their frustration at being targets of plaintiff's bar attorneys who know they have excess insurance limits available and that insurers wish to avoid litigation at all cost. Multi-party litigation with depositions and expert witnesses can result in legal costs approaching $1,000,000 and the threat of excess jury verdicts obviously colors the fleets' attitude towards the unfairness of plaintiff's bar's tactics.

Clearly, the preference of insurers is to settle out of court. Insurers owe their insured motor carrier a defense and it can be costly and the clear preference of all adjusters is to avoid litigation when possible.

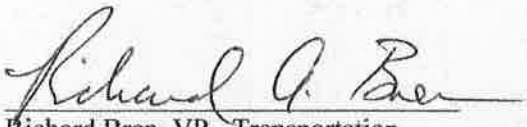
Accordingly, I believe to substantially increase the minimum insurance which motor carriers are required to maintain would frustrate the settlement of cases within policy limits and result in additional litigation and threats of litigation to increase the settlement demands and insurance payments, and hence overall costs in premiums and greater reluctance of insurers to participate at all in the truck market.

Finally, the Agency has asked for concrete studies and data on the effect of raising the minimum insurance requirements in increments of $100,000 and one commenter has suggested that the amount to be compensatory should be $9,000,000 to $10,000,000 per occurrence. It is impossible, I believe, for the Agency to predict premium levels or to ensure that any substantial increase in the minimum requirement would not result in prohibitive premiums or constrict competition simply because new, small and niche carriers simply could not obtain coverage.

Clearly, larger established fleets have loss runs, premium volume, the ability to bargain with high self-insured retentions, risk retention groups, and other means and bargaining power to obtain excess coverage which is simply not available to the vast majority of the operators of commercial motor vehicles the Agency regulates. When the average minimum insurance requirement for operating commercial motor vehicles in intrastate commerce is less than $750,000, any substantial increase in the minimum requirement for carriers operating in interstate commerce, based on my experience in the truck insurance industry, with the current FMCSA minimum of $750,000 per occurrence, any substantial increase in the existing interstate minimum would create a serious entry barrier for new carriers and could cripple the ability of many existing carriers to continue operations. Contractually, most carriers already carry $1,000,000 limits; 33% more than required for these general freight haulers.

The runaway jury verdicts and excess policy demands are most often laden with plaintiff's bar's fees (usually 30% to 40% contingency) and punitive and non-compensatory claims which have no nexus to plaintiff's uncompensated medical bills or loss of wages. Under standard truck insurance policies (for both excess and primary coverage) the insurer has to pay these unrelated "legal liability claims" but has recourse to its insured for recoupment. The insurance industry would have little appetite for accepting liability for catastrophic loss for small carriers which requires payment beyond coverage with little chance of recoupment.

Dated: February 26, 2015



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APPENDIX D

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TENNESSEE MOTOR COACH ASSOCIATION (TMCA)

The Tennessee Motor Coach Association (TMCA) is a trade association composed of special and charter bus companies domiciled in Tennessee. It has approximately 45 members. TMCA's comments concerning the "Financial Responsibility for Carriers, Freight Forwarders and Brokers" at Docket No. FMCSA-2014-0211 are as follows:

The motor coach industry should not be simply included with the trucking industry for possible increases in minimum financial responsibility obligations. The current limits are already five times greater than the limits for truck companies and the accident frequency rate is far different.

The excess judgment awards which face the trucking industry are to a large extent the product of excessive jury awards, plaintiff's bar's limited success in obtaining special and consequential damages and the contingency fee structure for compensating plaintiff's counsel. On the other hand, the commercial motor coach bus industry has professionally trained and monitored drivers who are subject to FMCSA oversight and insurance requirements which at $5,000,000 per occurrence are 100 times greater than the financial responsibilities imposed on the operator of passenger vehicles and vacation motor homes with whom they occupy the road.

The TMCA believes that the few anomalous wrecks involving bus companies get major attention in the press which distorts the view of bus safety. The FMCSA can and should do a better job of inspecting, training and qualifying new entrants, particularly neophytes with no proven experience which offer discounted intercity bus service and seem to be the source of a high percentage of the reported incidents.

To the TMCSA's knowledge, none of its members have been involved in any settlement or judgment which exceeds the $5,000,000 minimum requirement and hence believe that any increase would only add an additional unnecessary burden. In this regard, encouraging use of bus service, whether for commuters or for specialty charters in lieu of the added congestion of private motor vehicles is clearly in the national interest and consistent with environmental concerns and reducing congestion on the road. The FMCSA should exercise care not to overregulate the motor coach industry by imposing additional financial obligations upon it when in fact, under existing regulations and minimums, the for-hire bus industry is far better insured and monitored for safety than private passenger operations.

Finally, with respect to Question 25, the Agency should understand that the bus industry is entirely different from the trucking industry with regard to the use of brokers. Brokers are necessary in the trucking industry because each shipment is one way in nature and finding return freight is necessary for interstate truckload carriers to operate efficiently. Yet, in the bus industry, special and charter operations are roundtrip in nature. By and large our customers are clubs, schools, and local pre-formed groups that charter bus service on a roundtrip basis. As transportation service providers, we have no collection problem with respect to the kinds of double brokerage scams which necessitated MAP-21 or which have resulted in the FMCSA maintaining property broker requirements while dropping the passenger-broker requirements decades ago.

There is no basis for reinstituting regulatory restrictions that would place financial burdens and regulations on the way interstate bus services are arranged.

Deborah Neese

Deborah Neese
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Tennessee Motor Coach Association
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APPENDIX E

Interstate/Exempt/Intrastate/Oversize-Overweight Requirements (01/2003)

State	FHWA w/Exempt	Exempt	Intrastate/Limits	Cargo	OS/OW	Additional Comments
AL	FHWA	Form E	Form E – 100/300/50	5,000	100/300/50	All OS/OW carriers need certificates – cannot be continuous
AZ	NR	NR	Form E – 750,000	NR	NR	Not participating in SSRS
AR	FHWA	NR	Accord Certificate – 50/100/30	NR	400,000	OS/OW for Mobile Homes/House Movers
CA	FHWA	Form E	MCP65 – 750,000	NR	500,000	OS/OW for San Bernardino County
CO	FHWA	Form E	Form E – 750,000	10,000	NR	Haz-Mat needs form E + MCS90
CT	FHWA	Form E	Form E – 750,000	NR	NR	
DE	NR	NR	NR	NR	NR	Not participating in SSRS
FL	NR	NR	Certificate – 300,000	NR	NR	Only if plated in Florida
GA	FHWA	Form E	Form E – 100/300/50	NR	NR	
ID	FHWA	NR	Form E – 750,000	NR	NR	
IL	FHWA	Form E	Form E – 750,000	10,000	NR	300,000 limit if GVW < 10,000
IN	FHWA	Form E	Form E – 750,000	NR	NR	
IA	FHWA	Form E	Form E – 750,000	NR	NR	300,000 limit if GVW < 10,000
KS	FHWA	Form E	Form E – 350,000	3,000	NR	No fax
KY	FHWA	Form E	Form E – 100/300/50	NR	NR	
LA	FHWA	Form E	Form E – 250/500/10	5,000	250,000	All OS/OW require cert/cargo for exempt over $2500
ME	FHWA	Form E	Form E – 350,000	NR	NR	
MD	NR	NR	NR	NR	NR	Not participating in SSRS
MA	NR	NR	NR	NR	NR	Interstate truck deregulated
MI	FHWA/Form E	Form E	Form E – 750,000	NR	NR	300,000 limit if GVW < 10,000
MN	FHWA	Form E	Form E – 100/300/50	NR	10/100/5	Mobile Home Toter require Dealer In Transit certificate
MS	FHWA	NR	Form E – 750,000	5,000	25,000	
MO	FHWA/Form E	Form E	Form E – 350,000	NR	NR	
MT	FHWA	NR	Form E – 500,000	NR	NR	Intrastate for household goods, public trans, haz mat only
NE	FHWA	Form E	Form E – 750,000	NR	400,000	Mobile Home Toter
NV	NR	NR	Form E – 500,000	NR	450,000	Not participating SSRS – intra passengers, HH goods, tow's
NH	FHWA	NR	NR	To Value	NR	Interstate truck deregulated
NJ	NR	NR	NR	NR	400,000	All OS/OW need certificate of insurance – not continuous
NM	FHWA	NR	Form E – 750,000	NR	175,000	$15 filing fee required
NY	FHWA	NR	Form E – 100/300/50	NR	1,000,000	Perm 17 for OS/OW
NC	FHWA	Form E	Form E – 750,000	NR	NR	
ND	FHWA	NR	NR	NR	100/300/50	Mobile home movers require OS/OW
OH	FHWA	Form E	Form E – 350,000	NR	200,000	OS32 required – need phone # and either/or FID/SSN
OK	FHWA	Form E	Form E – 350/750,000	NR	NR	350 limit for sand, gravel, rock – 1M for haz mat carriers
OR	Form E	Form E	Form E – 750,000	10,000	NR	Form H if hauling damageable goods
PA	NR	NR	Form E – 300,000	5,000	NR	Not participating in SSRS
RI	FHWA	NR	Form E – 250/500	25,000	10/25/50	
SC	FHWA	Form E	Form E – 750,000	2,500	NR	No cargo required for low value commodities
SD	FHWA	Form E	NR	NR	NR	Do not regulate intrastate carriers
TN	FHWA	Form E	Form E – 750,000	5,000	NR	MCS90 must be attached to form E – common require cargo
TX	FHWA	Form E	Form E – 500,000	NR	10,000	$100 fee for intrastate – OS/OW for non-FHWA regulated
UT	FHWA	NR	NR	NR	750,000	
VT	NR	NR	NR	NR	NR	Not participating in SSRS
VA	FHWA	NR	Form E – 750,000	5,000	NR	Cargo not required for low value commodities
WA	FHWA	Form E	Form E – 750,000	NR	NR	
WV	FHWA	NR	Form E – 750,000	20,000	350,000	E's for wreckers, passengers carriers, solid waste carriers OS/OW cannot be continuous
WI	FHWA/Form E	Form E	Form E – 750,000	NR	NR	
WY	NR	NR	Form E – 500,000	10,000	NR	Not participating in SSRS – no cargo for sand, dirt, gravel

- FHWA regulated carriers based in a non-participating state must select a base state for Single State Registration.
- Interstate carriers hauling for hire are subject to the Motor Carrier act which requires an MCS90 and a minimum liability limit of 750,000.